North Australian Aboriginal Justice Agency

Submissions on Care and Protection

Royal Commission into the Protection and Detention of Children in the Northern Territory

August 2017

About NAAJA

The North Australian Aboriginal Justice Agency (NAAJA) provides high quality, culturally appropriate legal aid services for Aboriginal people in the northern region of the Northern Territory in the areas of criminal, civil and family law, prison support and through-care services. NAAJA is active in systemic advocacy and law reform in areas impacting on Aboriginal peoples' legal rights and access to justice. NAAJA travels to remote communities across the Top End to provide legal advice and advocacy.

About these submissions

These submissions respond to topics 1–11 identified by the Royal Commission in its call for submissions on care and protection. Topics 1-Child Protection Systems, 2-The NT Child Protection System, 3-The 2010 BOI Report "Growing Them Strong, Together", 9-Aboriginal community issues, 11-Amendments which should be made to legislation and portions of 10-Reform options, are addressed throughout the submissions in the relevant chapters.

Chapter 1 – Breaking the cycle of crisis, looks at a whole of system reform to the mechanisms of Government and oversight mechanisms in partial response to topic 10. **Chapter 2 – Early intervention and prevention** addresses Topic 4-Early intervention programs. **Chapter 3 – Out of home care** addresses topic 5-Out of home care, topic 6-Reunification and leaving care and topic 8-Cross-over issues. **Chapter 4 – Legal processes** addresses topic 7-The Legal Process.

Our submissions are forward looking and aim to assist the Commission to frame practical recommendations that will improve outcomes for Aboriginal children and young people. We have drawn on NAAJA's unique organisational knowledge, Aboriginal understandings and expertise as a long-term provider of culturally competent legal, therapeutic and social services to Aboriginal young people in Northern Australia. We have been particularly informed by the experiences of our clients, many who have bravely come forward to tell their stories to the Commission and share their ideas for change in the hope that the abuse and indignities they endured are never repeated. NAAJA endorses each of the submissions made on behalf of its clients who gave evidence to the Commission.

List of acronyms

ACCA	Aboriginal child care agency
ACCO	Aboriginal community controlled organisation
ACPP	Aboriginal Child Placement Principle
ACW	Aboriginal Community Worker
AFLDM	Aboriginal family-led decision-making
AMSANT	Aboriginal Medical Services Alliance Northern Territory
APO NT	Aboriginal Peak Organisations Northern Territory
CE	Chief Executive
CEO	Chief Executive Officer
DCF	Department of Children and Families
DFAT	Department of Foreign Affairs and Trade
FASD	Foetal alcohol spectrum disorder
FGC	Family Group Conferencing
ICCPR	*International Covenant on Civil and Political Rights*
ICL	Independent children's lawyer
MOU	Memorandum of understanding
NAAJA	North Australian Aboriginal Justice Agency
NTCAT	Northern Territory Civil and Administrative Tribunal
NGO	Non-government organisation
OOHC	Out of home care
RACW	Remote Aboriginal Community Worker
SDM	Structured decision-making
SFNT	Solicitor for the Northern Territory
SNAICC	Secretariat of National Aboriginal and Islander Child Care
TF	Territory Families

TPA	Temporary Placement Arrangement
TPO	Temporary Protection Order
VACCA	Victorian Aboriginal Child Care Agency

Recommendations

Recommendation 1 That the Northern Territory Government, after consultation with the community and stakeholders, establishes a statutory authority with responsibility for child and family and youth justice services.

Recommendation 2 That the board of the statutory authority is chaired by an Aboriginal person and comprise three Aboriginal members as well as members with relevant expertise in areas such as youth justice, child protection, law, health and education (mirrors recommendation 3 of NAAJAs *Submissions for Youth Detention*)

Recommendation 3 That two Aboriginal Child Care Agencies are legislatively created to service the Top End and Central Australia, with delegations in relation to the delivery of early intervention and prevention services and out of home care services. Such arrangements could be based on the Victorian model.

Recommendation 4 That the statutory authority partner with newly created Aboriginal child care agencies, Aboriginal entities, organisations and communities to deliver child and family *and* youth justice services in the Northern Territory.

Recommendation 5 That the Northern Territory Government explore which government services (including those currently residing in other departments such as health and education) are most appropriately housed within the statutory authority, using a consultative and investigatory process akin to the Irish *Taskforce on the Child and Family Support Agency*.

Recommendation 6 That the Northern Territory Government and statutory authority regionalise statutory child protection services, and consider the implementation of local area offices and local area committees, which would have localised control over intake, investigation and assessment processes.

Recommendation 7 That all partnerships between the Northern Territory Government, statutory authority, non-government organisations and Aboriginal community controlled organisations adhere to the APO NT Partnership Principles (mirrors recommendation 6 of NAAJAs *Submissions for Youth Detention*).

Recommendation 8 That the Northern Territory Government ensures that sufficient resources and support is provided to the statutory authority so that Aboriginal people are genuinely empowered to have ownership and control of service delivery (mirrors recommendation 5 of NAAJAs *Submissions for Youth Detention*).

Recommendation 9 That the Children's Commissioner is legislatively empowered to perform the function of monitoring the implementation of the Royal Commission's recommendations.

Recommendation 10 That the Children's Commissioner is legislatively empowered to perform the function of inspecting and monitoring all secure facilities (including, health, disability and justice) where young people are detained.

Recommendation 11 That a team of child advocates is established in the Office of the Children's Commissioner to advocate on behalf of children in care and/or secure facilities. The role should be designed with community, and include the following features:

- Extensive information gathering powers relating to government and non government organisations that are involved in making decisions about the child, including access to all and any documents relating to statutory child protection services;
- Extensive powers of entry in relation to facilities where children in out of home care reside and for all secure facilities where children are detained; and
- The ability to be accessible to the child, and the ability to access the child at all times, other than in exceptional circumstances.

Recommendation 12 That a team of Aboriginal community visitors is established in the Office of the Children's Commissioner to advocate on behalf of children in care and/or secure facilities. The role should be designed with community, and include the following features:

- Extensive powers of entry in relation to facilities where children in out of home care reside and for all secure facilities where children are detained;
- Extensive powers to access records and documents relating to the place or facility where the child is in care or detained; and
- The ability to be accessible to the child, and the ability to access the child at all times, other than in exceptional circumstances.

Recommendation 13 That legislation is amended to create an administrative review mechanism such as NTCAT. Decisions that can be appealed should reflect concerns of children in care, parents, the Aboriginal community and stakeholders. But should at a minimum include the following types of decisions:

- Decisions in relation to the out of home care placement of any child;
- Decisions related to the child's contact with family, kin, community and significant others; and
- Decisions which impact on an Aboriginal child's continued cultural connection.

Recommendation 14 That it is a requirement of any Northern Territory or Commonwealth government contract for early intervention or prevention services provided to an Aboriginal community that the organisation must agree and adhere to the APO NT Partnership Principles.

Recommendation 15 That those service providers, whether government or non-government, are required to have an exit plan and to have handed over service delivery to their partner ACCOs within five years or as agreed by the ACCO and APO NT prior to the contract for service.

Recommendation 16 That the Northern Territory and Commonwealth governments increase funding for early intervention and prevention services to exceed that of the expenditure on statutory child protective services and out of home care.

Recommendation 17 That the Northern Territory Government reassesses the funding allocation to early intervention services and before the end of 2017 commit to additional funding being immediately allocated to these services at a level that at least matches the funding of tertiary child protection services.

Recommendation 18 That support is provided for the re-establishment of regional Aboriginal community controlled child welfare organisations through a long-term plan and resourcing to build capacity. This plan should be based on the current proposal and strategy developed by relevant sector organisations and build on existing capacity in the Aboriginal community-controlled community services and health sectors.

Recommendation 19 That legislation and practice instructions are amended to require and provide protocols for the participation of representative Aboriginal community controlled organisations and/or Aboriginal community entities (such as Law and Justice Groups) in all significant decisions for children in contact with child protection services, and that these requirements are phased in to begin immediately where there is existing capacity, and expanded alongside the development of the ACCO sector in the Northern Territory.

Recommendation 20 That legislation is amended to emphasise the need for children to have continuing and meaningful contact with family, including parents, siblings and extended family and other elders; to permit the court to order contact; and to provide for the maintenance of such contact as a condition of all placement agreements. Further, that the principle is enshrined that siblings in care ought to be cared for together or at least in close proximity to each other, with contact to be facilitated. And further, that resources are dedicated, and guidelines and training implemented, to facilitate meaningful contact.

Recommendation 21 That the Northern Territory Government develop and implement a process of Aboriginal Family-Led Decision-Making applied early in the life of a case that comes to the attention of child protection authorities. The model should be delivered by or in partnership with Aboriginal agencies and facilitated by Aboriginal people. Appropriate alternative arrangements should be explored to ensure Aboriginal Family-Led Decision-Making can proceed while the capacity of Aboriginal agencies to lead this process is developed in particular locations. Protocols should be implemented to ensure sufficient and effective family and/or elder participation.

Recommendation 22 That a support service for parents of children who are at risk of being taken into care, or who are in care, is instigated as an urgent priority.

Recommendation 23 That such a support service is delivered by Aboriginal Community Controlled Organisations, and is wholly independent of the Department.

Recommendation 24 That requirements are introduced in legislation and policy for the completion, implementation and review of cultural support plans for all Aboriginal and Torres Strait Islander children in out of home care in the Northern Territory. Where possible, Northern Territory ACCOs should have a resourced role to support the development of cultural support plans and this role should increase over time in line with the development of ACCO capacity across the Northern Territory.

Recommendation 25 That the Aboriginal Child Placement Principle, and its underpinning values, are the subject of ongoing training alongside cultural competency training, provided to all staff and carers. That cultural competency forms part of accreditation, monitoring and promotion within the Department and in its agreements with carers. Training in cultural issues pertaining to particular localities and communities from which children come should be given.

Recommendation 26 That the Department actively recruit more Aboriginal staff, including to executive positions. That the First Nations Advisory Board model from Queensland is considered for adoption within Territory Families.

Recommendation 27 That Territory Families review the role of a caseworker to make it more child-friendly, to permit greater time to establish rapport with the child, to ensure the child's full participation in case management decision-making, and ensure that each officer brings the necessary level of cultural sensitivity and awareness to the role.

Recommendation 28 That the Department extend its services, including transitional services, until a child is 25 years old. That transitional planning is required to begin when a child in care is 15 years of age if on permanent care orders, and to be an ongoing essential element of case planning if the child is subject to short term child protection orders.

Recommendation 29 That legislation be amended to make explicitly clear that removal of children from their community is to be a last resort and only after, in urgent cases, there has been contact to ACCOs or in the short term, local elders groups to identify kin or community based care or in other situations (a) AFLDM processes have been held to communicate concerns, obtain response, and develop a plan to keep the child safe at home or elsewhere in the community and (b) family support services have been engaged.

Recommendation 30 That the Department review the cultural appropriateness of the structured risk assessment tool currently employed and if necessary, develop a new holistic risk assessment process which will take in account relevant cultural factors.

Recommendation 31 That the Department review its processes for interviewing children and their families to ensure that they comply with best practice in terms of cultural appropriateness and fairness. In particular, to ensure support persons are available for persons interviewed and interpreters are used where appropriate.

Recommendation 32 That the Department review is processes of removal in particular, to provide guidance about the limited circumstances in which police should be used, to ensure that families and children are informed in a timely way of what has occurred and why, and to prohibit the deception of children being taken into care.

Recommendation 33 That there is an emphasis on stronger and more transparent processes for reunification, better resourcing, accessible, culturally safe, confidential and independent family support services that help address the circumstances of removal.

Recommendation 34 That legislative definitions, policies and procedures relating to reunification be urgently amended to reflect the Aboriginal concept of family, and allow for reunification to be considered in that context and not narrowly construed as only encompassing biological parents of the child.

Recommendation 35 That the legislation, policies and procedures relating to permanency planning be amended to reflect the Aboriginal concept of family and to encourage permanency planning in the context of the child's immediate family, extended family, kin and community.

Recommendation 36 That the Aboriginal Children's Commissioner, Northern Territory conduct an initial and then periodic review into the Northern Territory child protection system's legislative, policy, and practice compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, with reference to the aims and elements of the Principle as described in this submission and reflected in the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.

Recommendation 37 That the Northern Territory Government develop and implement a detailed practice guidance and training program for child protection practitioners on full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, drawing on the expertise of Aboriginal and Torres Strait Islander community controlled organisations and community members to inform content and delivery.

Recommendation 38 That the Northern Territory Government develop a program of culturally appropriate kinship carer identification, recruitment, assessment and financially supported. Where possible this program should be delivered by ACCOs or transferred over time in line with their capacity development. In particular, the program should also seek to drive increased use of kinship care through processes of family-led decision making.

Recommendation 39 That there be mandatory training provided to all carers, including foster carers, in trauma-informed practice to assist in caring for children exhibiting troubling behaviours.

Recommendation 40 That residential care outside of individual community groups homes be phased out as an OOHC options.

Recommendation 41 That purchased care arrangements be phased out unless they are able to be incorporated into a standardised training, accreditation and monitoring framework alongside other care providers.

Recommendation 42 That two Aboriginal Children's Commissioner positions, located in the north and central regions of the Territory, be established under statute.

Recommendation 43 That a community visitor scheme, involving Aboriginal community visitors, be established to be run out of the Children's Commission office.

Recommendation 44 That Aboriginal Child Advocates, who are accessible to every child in care and who can advocate on behalf of a child in relation to any decision or dispute that affects or impacts upon the rights of that child, are employed under the Office of the Children's Commissioner.

Recommendation 45 That standardised training, accreditation and monitoring of OOHC providers be implemented across all care providers, to include cultural care and trauma-informed practice components.

Recommendation 46 That the following is established under statute:

- Administrative review of placements and family contact decisions
- So that a court considering protection orders can make orders for minimum family contact arrangements
- An independent legal agency to take over the conduct of child protection proceedings.

Recommendation 47 That s 12 of the *Care and Protection of Children Act* is amended to require Territory Families to address how an Aboriginal child's cultural needs will be met if it is decided that a family or kinship placement is not in the child's best interests.

Recommendation 48 That s 70(2) of the *Care and Protection of Children Act* is amended to require Territory Families to address how an Aboriginal child's cultural needs will be met in care plans.

Recommendation 49 That Territory Families must file a comprehensive report of all efforts made to comply with the Aboriginal Child Placement Principle when making applications to the court.

Recommendation 50 That the Care and Protection Court shall adjudicate in the community where the families who are the subject of its decision-making are located.

Recommendation 51 That s 10(2) of the *Care and Protection of Children Act* is expanded to include the importance of a child's Aboriginality, to bring it in line with s 60CC of the *Family Law Act 1975* (Cth) where Aboriginality is considered as one of the factors in deciding the best interests of the child and is considered equally with other factors set out in s 60CC of the *Family Law Act*.

Recommendation 52 That s 10 of the *Care and Protection of Children Act* is amended so that a child's right to enjoy their Aboriginal and Torres Strait Islander Culture is considered as part of determining their best interests. For that purpose, s 10 should be brought in line with s 60CC of the *Family Law Act*.

Recommendation 53 That permanency planning is not elevated in priority to usurp a child's right to enjoy their Aboriginal culture.

Recommendation 54 That long-term orders are only considered upon a culturally appropriate court report being provided to the court.

Recommendation 55 That a child's family and community is consulted before a long-term order is made and that if a long-term order has been applied for, the matter is heard in the child's home community.

Recommendation 56 That all judges of the Family Matters Jurisdiction of the Local Court receive regular cultural awareness and competence training.

Recommendation 57 That s 49 of the *Care and Protection of Children Act* is amended to provide scope for parents or the legal representative of a child to request convening of a mediation conference and that the CEO must convene a mediation conference where concerns have been raised about the wellbeing of a child and a mediation conference might reasonably address those concerns.

Recommendation 58 That Part 2.1 Division 6 of the *Care and Protection of Children Act* is enacted and mediation facilities are established across the Territory.

Recommendation 59 That the *Care and Protection of Children Act* is amended in accordance with the Northern Territory Coroner's recommendation: 'to permit a regular court review of protection order made under Subdivision 3 of Division 4 of Part 2.3 of the Act'.

Recommendation 60 That s 73(2) is amended to require the CEO to bring an application before the court if the CEO seeks to dispense with the service obligations of the care plans pursuant to s 73. Service may only be dispensed with by order of the court.

Recommendation 61 That section 137 of the *Care and Protection of Children Act* is amended to allow 'any other person who is considered to have a direct and significant interest in the wellbeing of the child' to apply for an order to be varied or revoked.

Recommendation 62 That s 46 of the *Care and Protection of Children Act* is amended to compel Territory Families to refer parents and carers for independent legal advice prior to entering into a Temporary Placement Agreement.

Recommendation 63 That s 70 of the *Care and Protection of Children Act* is amended to compel the CEO to prepare a care plan that identifies the needs of the child and outlines measures that must be taken to address those needs. Where it is an Aboriginal child, the care plan must address 'promoting the child's ongoing affiliation with the culture of the child's community'.

Recommendation 64 That s 124(2)(b) of the *Care and Protection of Children Act* is amended so that personal service of applications is not at the discretion of the CEO.

Recommendation 65 That if substituted service of an application is required then the CEO make an application to the Court and the legislation and regulations be amended to reflect the requirements of Chapter 7 of the Family Law Rules 2004.

Recommendation 66 That Chapter 2 Division 7 and Part 2.3 subdivision 1 of the *Care and Protection of Children Act* is repealed and replaced with sections modelled on ss 240–243 of the *Child and Youth Families Act 2005* (Vic).

Recommendation 67 That the *Care and Protection of Children Act* is amended to promote the preservation of family responsibility for and involvement in decisions relating to their children as follows:

- A section is inserted in the *Care and Protection of Children Act* explicitly confirming that the court should only make an order if it is the least intrusive option available that provides the protection sought.
- A section is inserted in the *Care and Protection of Children Act* explicitly articulating the types of orders that a court may make in relation to children. In particular, NAAJA recommends it specify that an order may be made giving daily care and control to a person (inclusive of the chief executive of the Department) other than a parent of the child, while the parents or family retain parental responsibility.

Recommendation 68 That long-term and permanent care orders cannot be applied for as the first protection order that a child is subject to.

Recommendation 69 That Territory Families must provide detailed affidavit material of all attempts made to place a child with kinship carers and that a permanent care order must not be made unless the court is satisfied that the Department has diligently exhausted all other options.

Recommendation 70 That support services are appropriately funded in remote communities.

Recommendation 71 That any permanent care order must be reviewed by the court within two years and in doing so the Department must file with the court all care plans for the child for that period.

Recommendation 72 That Territory Families consider implementing a policy of proactive referrals to legal service providers at the time of investigating child protection concerns and are legislatively required to do so prior to seeking provisional protection of a child.

Recommendation 73 That s 143A of the *Care and Protection of Children Act* requires that the legal representative for a child should be nominated by the Court and independently funded, to bring the child protection system in line with the Family Law Court system.

Recommendation 74 That s 143A of the *Care and Protection of Children Act* is amended to require that a legal representative is appointed for all children involved in child protection proceedings.

Recommendation 75 That the *Care and Protection of Children Act* is amended to establish a child advocate with an ongoing role for each child in the child protection system, be that the child's legal representative, child advocate or a community visitor.

Recommendation 76 That children's legal representatives in child protection matters are required to be accredited to a standard that is reflective of independent children's lawyers in family law matters.

Recommendation 77 That the Court ensures that all parties are provided with an interpreter for all families for whom English is not their first language.

Recommendation 78 That the *Care and Protection of Children Act* is amended to explicitly compel the Department (or other entity investigating child protection concerns) to use interpreters in any case where English is not the first language of a participant, unless the offer of an interpreter in the relevant language is explicitly declined by the participant.

Recommendation 79 That the *Care and Protection of Children Act* is amended to compel Territory Families to provide affidavit material detailing its use of interpreters in all interactions with Aboriginal families and if an interpreter has not been used, the basis of the decision to not use an interpreter.

Recommendation 80 That the Northern Territory Government appropriately fund and support the Aboriginal Interpreter Service so that all language groups are appropriately resourced.

Recommendation 81 That independent of Territory Families and well-funded support services are established to assist families work towards reunification.

Recommendation 82 That the support service is, at a minimum, developed in consultation with Aboriginal people and tailored to each community.

Recommendation 83 That s 149 of the *Care and Protection of Children Act* is amended to enable the court to order, arrange and fund the preparation of independent reports in relation to a child.

Recommendation 84 That the investigative powers of the Family Matters Jurisdiction in the Local Court are brought into line with s 62G of the *Family Law Act 1975* (Cth).

Recommendation 85 That a standard is published by the court to outline minimum standards of practice for family assessments and preparing reports.

Recommendation 86 That Aboriginal community entities such as Aboriginal Elders and Law and Justice Groups are funded and supported to provide specialised cultural information and information about kinship options for Aboriginal young people.

Recommendation 87 That the *Care and Protection of Children Act* is amended to require all reports prepared for the court pursuant to s 149 to include a young person's cultural information as provided by Aboriginal Elders, family, Law and Justice Groups, or Aboriginal community entities.

1 Breaking the cycle of crisis: a statutory authority for child and family services

1.1 The case for reform

> It is the burden on good leadership to make the currently unthinkable thinkable, to question the obvious, to make the present systems unavailable as options for the future. The boundaries in our minds create fear about the consequences of crossing over to the undiscovered country. But the possibilities we really need do not lie on this side of our mental fences. Once crossed, these fences will look as foolish in retrospect as the beliefs of other times now often look to us – *Don Berwick (1998).*[1]

> Complex social issues cannot be dealt with merely by interventions with children or by strengthening families or by building community capacity. Policy needs an integrated focus on all 3 elements: children, families and communities – *A Hayes, M Gray AIFS (2008).*[2]

Evidence before the Commission clearly demonstrates that the Northern Territory's child protection system is in crisis. The number of child protection notifications, substantiations and out of home care placements have doubled since 2007.[3] Around half of all Aboriginal children have been the subject of at least one child protection notification by the age of 10, with one in four Aboriginal children the subject of a substantiated concern.[4] 90 per cent of children in out of home care in the Northern Territory are Aboriginal.[5] These staggering statistics should be cause for national concern and urgent action to address the gross over-representation of Aboriginal children in the child protection system. Professor Silburn observed:

> [I]f this trend continues, the current system is clearly not sustainable, and … some very radical changes need to be made if … the government is to meet its legislated responsibilities under the Care and Protection Act.[6]

The failings of the child protection system in the Northern Territory have been longstanding and well documented by previous reviews and inquiries, most notably the Board of Inquiry into the Child Protection System in the Northern Territory in 2010 and the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in 2007. Successive Northern Territory governments have consistently failed to meaningfully address these failings despite being aware of the severity of the problems. For example, the Department of Health (previously responsible for child protection) was aware in 2010 that it did not have 'capacity to sustain an adequate response to the growing demand' in child protection services, and that the system was not 'sustainable into the future.'[7]

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[1] Exhibit 455.004, Annexure 2 to the Statement of Professor Frank Oberklaid, 68.
[2] Ibid, 59.
[3] Oral evidence of Professor Sven Silburn, 19 June 2017, 4394:40-45.
[4] Ibid.
[5] Exhibit 459.000, Statement of John Burton, 22 May 2017, 6 [29]-[30], citing statistics from the Productivity Commission (2017); oral evidence of Marnie Couch, 31 May 2017, 4149.
[6] Oral evidence of Professor Sven Silburn, 19 June 2017, 4394:45–4395:5.
[7] Exhibit 540.004, Annexure 4 to the Statement of Clare Gardiner-Barnes, 5.

Not only is the crisis-driven approach to child protection failing Aboriginal children and families, but it disempowers and alienates Aboriginal communities. Aboriginal decision-making processes and traditional protection systems steeped in cultural understandings have not been respected.[8] The Commission has heard that there is a lack of trust between child protection services and Aboriginal people, and that this distrust is the most significant barrier to the provision of effective child services in communities.[9] The Lajamanu Kurdiji Group told the Commission:

> We are aware of many children being taken from their family and we feel like there is another stolen generation happening. Aboriginal people from all over the Northern Territory feel like this and we're all feeling really worried and hurt by this … We are really worried about our children and we don't have any say in what happens to them. We want Welfare to keep children in the family, in the community and to try much harder to find a way to make this happen.[10]

A fundamental rethink of the approach to child safety and wellbeing in the Northern Territory is required. As Professor Frank Oberklaid posed: 'If we were to start all over again from scratch, how would we design a system to best support families and build capacity in communities?'[11]

This calls for whole-of-system reform, with a shift in focus and investment from 'downstream' statutory intervention towards 'upstream' early intervention and family support.[12] Given that the overwhelming majority of families involved with child protection services are Aboriginal, the new paradigm must be Aboriginal-centric and Aboriginal-controlled at all levels. This necessitates wholesale change to governance and service delivery arrangements, with an increased emphasis on local decision-making. In her evidence to the Commission, the Children's Commissioner summarised the key changes required:

> I think a commitment that exceeds election cycles. The – an element of expertise in these areas, and certainly Aboriginal people have got to be better represented in setting up, having a say and designing some of these – I guess, frameworks that fit within their communities. Often the statutory child protection, western model, doesn't fit within only communities, and we sometimes try and squeeze a square peg into a round hole. And there has to be a different way of structuring responses to the issues that are predominantly associated with indigenous people. If you look at the overrepresentation, I think we are looking at the wrong model often in trying to deal with those issues that – not only in just communities, but in the urban setting too.[13]

Like other jurisdictions in Australia, child protection in the Northern Territory has always been the responsibility of a standalone government department or an office within a government department. NAAJA submits that persisting with this approach will not deliver the extent of reform required. We outline below our proposal to establish a statutory authority with responsibility for child and family

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[8] Exhibit 526.000, Statement of Bunawarra Dispute Resolution Elders (Maningrida), 15 June 2017, 2 [9].
[9] Ibid, 2 [8].
[10] Exhibit 531.000, Lajamanu Kurdiji Submission, 9 March 2017, 1.
[11] Exhibit 455.004, Annexure 2 to the Statement of Professor Frank Oberklaid, 52.
[12] Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4017.
[13] Oral evidence of Colleen Gwynne, 12 October 2016, 136:6-15.

services. In NAAJA's submission, it is only through far-reaching structural reform that we will start to achieve better outcomes for Aboriginal children so that they can thrive as part of strong families and healthy communities.

In proposing this model, we have drawn heavily on Ireland's experience in establishing a Child and Family Agency arising out of the report of the Taskforce on the Child and Family Support Agency in 2012. There are a number of similarities between the circumstances that existed in Ireland prior to this reform and those currently existing in the Northern Territory: a legacy of previous reviews and inquiries identifying significant systemic failings in child protection, fragmentation of service delivery and a lack of accountability of agencies delivery services.[14] While the Irish example is instructive – especially given the fundamental nature of this reform – NAAJA is acutely aware that solutions must be adapted to the Northern Territory context. Accordingly, the model we propose below should be subject to further consideration, refinement and consultation. However, we urge the Commission to consider this proposal as a much-needed circuit-breaker to guide a new approach to child safety and wellbeing in the Northern Territory. As was the case in Ireland, NAAJA submits that this is a 'once in a generation opportunity to fundamentally reform children's services.'[15]

1.2 Dual function statutory authority

In our Submissions on Youth Detention, we recommended the establishment of a statutory authority with responsibility for youth justice services in order to galvanise change and empower Aboriginal people to drive the solutions to challenges facing their communities.[16]

While mindful that the reform process requires time and consultation with government, Aboriginal organisations and communities, and the non-government organisation (NGO) sector – NAAJA proposed that the statutory authority include the following features:

- A board, chaired by an Aboriginal person, that is responsible for governance and oversight of the authority.
- Board members comprising three Aboriginal people, including from remote communities, and members with relevant experience in fields such as youth justice, child protection, law, health and education.
- Genuine partnerships between the statutory authority and Aboriginal organisations, with the authority providing resources, training and capacity building to enable Aboriginal organisations to drive the delivery of therapeutic, culturally relevant youth justice services in communities. Aboriginal Elders should be included and actively participate in this process.
- Youth justice services delivered through a family- and community-strengthening model, with joined-up approaches to case management and service delivery.[17] This promotes continuity

[14] Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012, i, iii.
[15] Ibid, i.
[16] NAAJA Submissions on Youth Detention, June 2017, 7, 162. See also oral evidence of Keith Hamburger, 5 December 2016, 342:34-38.
[17] Exhibit 031.002, Report 'A Safer Northern Territory Through Correctional Interventions', 31 July 2016, 7-8; Oral evidence of Keith Hamburger, 5 December 2016, 352:22-47.

> of service delivery across a continuum of interventions for young people, regardless of whether a young person is in a secure detention facility.[18]

Given the recent changes that have seen responsibility for youth justice move from the Department of Correctional Services to Territory Families, NAAJA also suggested that consideration be given to whether the statutory authority could have the dual functions of youth justice and child protection. In these submissions, we recommend that a statutory authority with the dual functions of youth justice and child and family services is established, and we outline the features of our proposed model.

1.3 Options for reform

There are three public governance models in use around Australia:

- Department of State: administered by a Secretary or Chief Executive appointed by a Minister
- Executive agency: an entity created by government typically to perform a subset of tasks for a department, and
- Statutory authority: created by an Act of Parliament and governed by its enabling legislation.[19]

At the time of the 2010 Board of Inquiry, responsibility for child protection rested with an executive agency: the Office of Children and Families within the Department of Health. The Commission heard evidence critical of this arrangement,[20] and NAAJA agrees with Dr Bath that responsibility for child and family wellbeing should rest with a standalone entity and not be subsumed within a Department.[21] NAAJA also notes that this option was discounted by the Irish Taskforce because the size and number of functions performed by the agency would likely overwhelm the department it sat in, and the agency would not have a separate board and distinct legal personality.[22] For these reasons, we do not give further consideration to establishing an executive agency.

Statutory authorities are distinctly different from government departments in terms of governance and management, as outlined in the table below.[23]

[18] NAAJA Submissions on Youth Detention, June 2017, 163.
[19] Australian Government, Department of Finance, 'Types of governance structures', August 2017. Retrieved from: https://www.finance.gov.au/resource-management/governance/policy/structure-types/.
[20] See, eg, oral evidence of Kon Vatskalis, 1 June 2017, 4244.
[21] Oral evidence of Dr Howard Bath, 31 May 2017, 4219:20-35.
[22] Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012, 14.
[23] Rob Laking, 'Agencies: Their Benefits and Risks,' (2005) *OECD Journal on Budgeting* 4(4) 7, 11; Victorian Public Sector Commission, 'Legal Form and Governance Arrangements for Public Entities,' (March 2015), 12.

Table 1: Governance and management of statutory authorities and government departments

Attribute	Department	Statutory authority
Institutional and legal foundations	• No separate legal identity from the Crown	• Separate legal identity
Governance, structure and control	• Chief Executive (CE) appointed by the Minister • Minister has formal control of the CE • While the CE has responsibility for management of the Department, they are bound by law to follow a direction from the Minister	• CE is appointed by the board • Minister has indirect control through setting strategic policy which the board is responsible for giving effect to • Authority has management autonomy; however, there may be mechanisms to allow for Ministerial intervention in certain circumstances
Financial, management and personnel rules	• Staff employed under general civil service rules • Funded through general State budget allocations	• Staff rules can be specific to authority and set by board • Financed under general budget law, but may carry surplus forward
Function	• Where direct accountability to the Minister is desired	• Created where there is a need for differentiated governance, allowing for management autonomy

In Australia, most statutory authorities provide oversight functions (e.g. Ombudsmen, Children's Commissioners and independent commissions against corruption) rather than deliver services. Local Area Health Authorities in New South Wales and Victoria are examples of statutory authorities that provide large-scale service delivery, with general managers of hospitals having a high degree of managerial autonomy and answering to the local health board. While regard can be had to these examples, each statutory authority is different and must be tailored to local circumstances and operational requirements.

There are two significant questions to be asked when considering whether to establish a statutory authority:

- Why establish a statutory authority?
- What form should the statutory authority take?

1.3.1 The threshold test – why establish a statutory authority?

The threshold test starts from the presumption that a department is capable of providing a service unless a 'public interest case' can be made providing compelling reasons as to why it cannot.[24] It requires consideration of whether government should be undertaking the activity in question at all, and whether it would be more suited to an NGO.[25] Some relevant considerations include:

- The capacity of a department to achieve the desired outcomes
- Whether the need for actual and/or perceived independence is beyond that which the department can provide
- The public interest risk posed if the activity remains with a department (e.g. the need for accountability, autonomy, level of independent expertise needed, financial sustainability)
- The need for essential public participation and consultation (i.e. can the department adequately consult with stakeholders and the community).[26]

In the Northern Territory context, NAAJA submits that there is a compelling public interest case for establishing a statutory authority having regard to:

- The need to address historic shameful child protection practice in the Northern Territory
- The need to address past and ongoing systemic failures
- The need to reconceptualise the child protection system towards a child-centred and children's rights orientation.[27]

The evidence heard over the course of the Commission's hearings highlights the history of shameful child protection practice in the Northern Territory and ongoing systemic failures, including fragmentation of services, lack of cultural competency and failure to meaningfully consult and collaborate with Aboriginal communities. Past systemic failures are well documented in the *Little Children are Sacred* and *Growing Them Stronger, Together* reports.

The need to reconceptualise child protection services was commented upon by Senior Counsel Assisting in his opening address at the care and protection hearings:

> Commissioner, there can be no doubt that the Child Protection System in the Northern Territory is comprised of many committed people, both within government and within the foster carers, kinship carers and non-government support service providers involved. But the evidence will show that it is never the less a system with many, many failings … Given that this is the very same observation that was made by the authors

[24] The Queensland Department of Premier and Cabinet has published a Public Interest Map Policy on establishing 'non-department bodies' (i.e. statutory authorities): see Queensland Department of Premier and Cabinet, 'Threshold Test,' (2016), 1.
[25] Ibid.
[26] Ibid, 2, 4.
[27] NAAJA has adopted the key elements of the public interest case for establishing a statutory authority in Ireland: see Caroline McGregor, 'Why is history important at moments of transition? The case of transformation of Irish child welfare via the new Child and Family Agency,' (2015) *European Journal of Social Work* 17(5) 771, 775.

> of the Growing Them Strong Report in 2010, the question must be asked whether the agency that was the Department of Children and Families and is now Territory Families is able to make the cultural and philosophical shift from policing child protection laws which facilitate removals to supporting communities and families in need.[28]

The Irish Taskforce identified that the specialist role and function of child protection and family support services, which rely on professional assessment and decision-making, called for it to be 'operationally separate from the department and governed by a board' with services more appropriately delivered independently of the civil service.[29] The Taskforce further observed that locating child protection within a government department meant that there is 'limited management autonomy' for the Chief Executive and senior team, which could 'hamper and slow decision making and limit the kind of innovation that such managerial autonomy has been seen to enhance.' Greater management autonomy is important for promoting innovation in service design and delivery, collaborative partnerships and the opportunity for communities to participate in design of programs and services at the local level.

It is also a significant risk that a department and Minister would be driven by 'short-term outlooks rather than focusing on medium to long term strategic policy making.'[30] This risk is particularly acute in the Northern Territory context, where the Commission has heard that child protection and family services has been 'bedevilled by policy churn, by changes of governments, by short-term funding contracts for many of the non-government and community sector services that are supporting families.'[31] This also speaks to the importance of a bipartisan approach to child protection and family services:

> And nobody solved these problems within two to three years, there were successive governments, probably they tried, I don't know how hard but they didn't solve the problems. But successive Labor governments, we tried and we [haven't] solved the problem. This is a Territory-wide problem. It's a Territory community problem, it's not a political problem and unless we have got a commitment by all parties we are going to work together to sort this out nothing is going to fix because our cycle is four years and playing games and a change of government another four years, and people come and go, it's not going to be fixed. It has to be a joint approach to fix this problem.[32]

In NAAJA's submission, establishing a statutory authority will help address the siloed approach to child and family services which has been the subject of much evidence before the Commission,[33] by aligning

[28] Opening address by Senior Counsel Assisting Tony McAvoy SC, 29 May 2017, 3992:5-25.
[29] Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012, vii.
[30] Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012, 13.
[31] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:15-27.
[32] Oral evidence of Kon Vatskalis, 1 June 2017, 4248:13-21.
[33] See, eg, Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:15-27; Oral evidence of Frank Oberklaid, 29 May 2017, 4010:25; Oral evidence of Patricia Anderson, 12 October 2016, 152:39.

services into a single, comprehensive, integrated and accountable agency for children and families. It is simply not possible for this to be achieved through one department. Professor Silburn explained:

> Territory Families is simply not in a position to deal with everything that's required to contain the levels of childhood vulnerability and unless the other departments, health, police and the other family services agencies can substantially increase the levels of support for those families that are experiencing greater vulnerability, I think we're going to see this trend [high number of notifications and substantiated concerns] continue.[34]

The Chief Psychiatrist, Dr Riordan, saw the potential benefits of a statutory authority that brought together services for vulnerable families. Dr Riordan observed of the Irish Child and Family Support Agency:

> I think it absolutely would be an important model to think about, and I think that any model that brings together the range of agencies that work across that sort of early years into adolescence and young adulthood has got the potential to have an awful lot of benefits. I think the fact that this process has been developed and set out in Ireland and I would be very honest in saying it is not dissimilar to the way that services are also configured across some of the jurisdictions or some of the local authorities in the UK. I think it certainly has a lot of potential and, in a sense, if the Territory were to think about that as the potential approach, it does then have the benefit of, you know taking advantage of other people's experiences and looking for what were the strengths of those services … the Territory wouldn't have to go right back to the drawing board.[35]

Creating an independent agency with responsibility for child and family wellbeing presents an opportunity to start to rebuild trust with Aboriginal communities and to break the perception that 'child protection' equates with removal of children from communities. Professor Bamblett explained that one of her major concerns arising out of the 2010 Board of Inquiry was the

> lack of understanding [in communities] of what child protection actually is. I think for a lot of Aboriginal people they only see it as a system that takes away children ... [because] the only time you see child protection is when they are coming to remove a child.[36]

Establishing an agency that has the trust of Aboriginal people is a critical step towards building effective strategic partnerships with Aboriginal communities and organisations. It will also ensure that cultural competence and expertise is embedded from the top with an Aboriginal chaired board (discuss below) and services provided by Aboriginal community-controlled organisations.

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[34] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:6-11.
[35] Oral evidence of Dr Denise Riordan, 29 June 2017, 5355:5-19.
[36] Oral evidence of Professor Muriel Bamblett, 12 October 2016, 188:46–189:1, 189:31-32.

1.3.2 What form should the statutory authority take?

Statutory authorities can take a number of different forms. The two models relevant to this analysis are:

- Integrity/oversight: scrutinise actions and decisions of public officials (e.g. Ombudsman) and operate with the highest degree of independence from government and the Minister minimising the potential for a conflict of interest.[37]
- Service delivery: undertake delivery of essential services (e.g. local area health boards) that require specialist expertise. Government typically exercises a high degree of control over these services as they are politically and socially significant. A statutory authority in this area has a level of ministerial control in respect of policy and strategic direction to ensure consistency with government policy. However, there is a lesser degree of ministerial control over operational and management decisions.[38]

As the service model for responding to childhood vulnerability in the Northern Territory is not sustainable in its present form,[39] NAAJA submits that the most appropriate model is a statutory authority that undertakes delivery of specialist child and family services.

Governance of the statutory authority

A statutory authority is generally governed by a board, however in certain circumstances may be governed by an individual appointee.[40] A board model is most appropriate for a statutory authority delivering services due to the complex functions the authority performs, and the need for diversity of skill that would not be present if a single individual was appointed.[41]

There are a number of internal governance functions that a board may perform within a statutory authority:

- Appointment and monitoring of the performance of the Chief Executive
- Developing and reviewing organisational strategy, ensuring consistency with overall government policy and direction
- Ensuring compliance with applicable rules and decisions of the board
- Promoting a positive and ethical culture within the organisation
- Ensuring effective relationships and communication with the minister's department, and
- Promoting effective communication with stakeholders.[42]

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[37] Victorian Public Sector Commission, 'Legal Form and Governance Arrangements for Public Entities,' (March 2015), 15.
[38] Ibid, 14.
[39] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:3-4.
[40] Victorian Public Sector Commission, 'Legal Form and Governance Arrangements for Public Entities,' (March 2015), 19.
[41] Ibid, 26.
[42] Ibid, 24.

If a board structure is selected, there must be consideration of the number and nature of appointments to the board, which will depend on the size of the activity to be performed.[43] Consideration should also be given to:

- The need for autonomy and independence in the exercise of functions or decisions made by the body
- Continuous nature of the body's functions and the extent to which a strategic focus is needed
- Whether it is inappropriate for the responsible minister to receive a direct report from the Chief Executive alone, and
- Need for quality and quantity of specialist or expert judgement, or a diverse range of perspectives and experience.[44]

In NAAJA's submission, the board of the statutory authority should be chaired by an Aboriginal person and be comprised of Aboriginal people and members with specialist skills and knowledge in areas relevant to the statutory authority's mandate such as youth justice, child protection, law, health and education. The independence of board members should be reflected in the terms of appointment (e.g. five-year terms) and the method of appointing board members should be co-designed with Aboriginal communities to ensure it is representative.

Key design principles

NAAJA is conscious that the final organisational structure of the statutory authority will need to be subject to further consideration, consultation and design to ensure that it is appropriately adapted to the Northern Territory context.

We set out below a set of core design values and principles which should inform the establishment of the statutory authority:

- The child should be at the centre of policy and services and the best interests of the child a primary consideration
- The needs of children and families are identified as early as possible
- Services are evidence-informed and needs-led (i.e. centred on needs of families rather than existing professional or organisational boundaries)
- The effectiveness of the supports is monitored and continuously reviewed
- Services should be provided at the most local level, with local services supported by strong central direction and oversight
- Flexibility in delivery of services based on local requirements
- Clear accountability to the public and Parliament
- Integrated service delivery model – system integration within the authority from universal and primary services through to secondary and tertiary level services[45]

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[43] Ibid, 26.

[44] Queensland Department of Premier and Cabinet, 'Organisational Form Guide,' (2016), 4.

[45] Integrated service delivery means 'the process of building connections between services in order to work together as one to deliver more comprehensive and cohesive services, improve accessibility and be more

- Clear and consistent referral pathways for children and families that are based on their assessed needs.[46]

Success will depend on carefully designed responsibilities at executive and board level. Interdepartmental and intersectional relationships are important to support collaboration and integration, such as the newly established 'CEO cluster arrangements', which are designed to promote cooperation between government departments in broad areas of social policy.[47]

Proposed features of the statutory authority

The **Minister for Children and Families** remains responsible for strategic policy and setting long-term objectives consistent with the legislative framework. **Territory Families** provides financial oversight of the statutory authority and assists the Minister develop policy. The **board** would be responsible for providing the authority with direction and advice, with its members having specialist knowledge and expertise in fields such as youth justice, child protection law, health and education.

The **Chief Executives** (one each for youth justice and child and family services) are appointed by and work under the direction of the board. NAAJA recommends that a Deputy Chief Executive position in both streams be an Aboriginal identified position. The **Chief Executive for Child and Family Services** holds parental responsibility for children in out of home care. The **Deputy Chief Executive** is responsible for management of services through the local area offices and the Territory office.

The **Territory Office** is only intended to perform those services that cannot feasibly be delivered by a local area office (e.g. child and adolescent mental health services). Functions of the Territory Office would include operational policy and strategy, overall resource allocation and service planning, monitoring and evaluation and the setting of clear targets/deliverables, ensuring consistency of approach across local area offices, leadership and workforce management and development. The role of the Territory Office is important to provide strong central direction over performance oversight, combined with decision-making and service responsibilities at the local level.

Services should be provided at the lowest appropriate level with strong local accountability. Accordingly, out of home care and family support are functions that NAAJA recommends be delivered by **Aboriginal community controlled organisations** (ACCOs). These ACCOs will receive support and training from **Aboriginal child care agencies** (ACCAs). NAAJA proposes that there be two ACCAs, with a Top End ACCA and a Central ACCA. These ACCAs will build the capacity of ACCOs to deliver out of home care services to Aboriginal children at a local or regional level. The ACCA may also deliver out of home care services, however service delivery at a local level by ACCOs must be preferred. Furthermore, we envision ACCAs playing a central role in facilitating the delivery of many of the early intervention and prevention services.

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responsive to children and families' needs thereby improving outcomes': see Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012, 36.

[46] These principles have been drawn from the Irish Task Force Report: see Exhibit 650.000, Report of the Taskforce on the Child and Family Support Agency, July 2012.

[47] Exhibit 424.000, Statement of Ken Davies, 17 March 2017, 3 [9].

Local area offices will be responsible for performing child protection functions including investigations. **Local Area Committees** act as the principle source of advice to the local area office and are comprised of ACCOs, police, health, education and other NGOs. They also act as an avenue for Law and Justice Group involvement. NAAJA envisages that the Local Area Committees would provide a platform for discussing issues of concern in the community and ensuring multi-agency responses to vulnerable children and families. NAAJA recommends that the Committee chair is an Aboriginal identified position and recognised as a local community member with cultural authority.

In section 2.3.4, we discuss the proposed 'dual pathway' model for early intervention and family support. Notifications will be received by a central family support referral gateway and then directed to the relevant local area office, which may result in a referral to a local ACCO for family support services. It can also result in referral to a child protection practitioner or the local area office for investigation. Such investigation should be done in close consultation with an ACCO, which may (if circumstances allow) provide family support.

NAAJA notes that there is an opportunity for other services to form part of the statutory authority so it is as broad-based as possible. Some of these services include nursing, speech and language therapy, child and adolescent mental health, psychology services, domestic and sexual violence services. Services will still need to be provided outside the authority, which will require well defined and developed formal relationships (e.g. universal services such as maternal and child health, schools, primary health care networks).

Recommendation 1	That the Northern Territory Government, after consultation with the community and stakeholders, establishes a statutory authority with responsibility for child and family and youth justice services.
Recommendation 2	That the board of the statutory authority is chaired by an Aboriginal person and comprise three Aboriginal members as well as members with relevant expertise in areas such as youth justice, child protection, law, health and education (mirrors recommendation 3 of NAAJAs *Submissions for Youth Detention*)
Recommendation 3	That two Aboriginal Child Care Agencies are legislatively created to service the Top End and Central Australia, with delegations in relation to the delivery of early intervention and prevention services and out of home care services. Such arrangements could be based on the Victorian model.
Recommendation 4	That the statutory authority partner with newly created Aboriginal child care agencies, Aboriginal entities, organisations and communities to deliver child and family *and* youth justice services in the Northern Territory.
Recommendation 5	That the Northern Territory Government explore which government services (including those currently residing in other departments such as health and education) are most appropriately housed within the statutory authority, using a consultative and investigatory process akin to the Irish *Taskforce on the Child and Family Support Agency*.

Recommendation 6	That the Northern Territory Government and statutory authority regionalise statutory child protection services, and consider the implementation of local area offices and local area committees, which would have localised control over intake, investigation and assessment processes.
Recommendation 7	That all partnerships between the Northern Territory Government, statutory authority, non-government organisations and Aboriginal community controlled organisations adhere to the APO NT Partnership Principles (mirrors recommendation 6 of NAAJAs *Submissions for Youth Detention*).
Recommendation 8	That the Northern Territory Government ensures that sufficient resources and support is provided to the statutory authority so that Aboriginal people are genuinely empowered to have ownership and control of service delivery (mirrors recommendation 5 of NAAJAs *Submissions for Youth Detention*).

1.4 Oversight

A significant risk of increased managerial independence is that there is insufficient accountability for the statutory authority. NAAJA proposes a significant overhaul of the Office of the Children's Commissioner, which would mitigate any risk posed by a statutory authority operating at arm's length from government. This proposal should not detract from our contention that the current oversight and accountability mechanisms in relation to child protection are woefully inadequate. NAAJA recommends that, whether the statutory authority model is implemented or child protection and wellbeing services remain within a traditional departmental structure, that restructured oversight and accountability mechanisms must have the following features as outlined below.

1.4.1 Office of the Children's Commissioner

Commissioner for Aboriginal Children and Young People

As has been discussed and recommended throughout our submissions (on Youth Detention, Pre- and Post-Detention and in these submissions), NAAJA recommends the establishment of an Aboriginal Children's Commissioner/s, preferably with two Commissioners to monitor and advocate the rights and interests of vulnerable Aboriginal children in the distinct regions of the Centre and Top End of the Northern Territory. The establishment of an Aboriginal Children's Commissioner is supported by the current Children's Commissioner.[48]

As the experience in Victoria has shown, having an Aboriginal Children's Commissioner enhances the effectiveness of its important monitoring functions.[49] In Mr Jackomos' evidence, it makes complaints

[48] Oral evidence of Colleen Gwynne, 19 June 2017, 4495.15.
[49] Oral evidence of Larissa Behrendt, 29 May 2017, 4006:30-38; Exhibit 459.000, Statement of John Burton, 22 May 2017, [17].

more likely, it provides an Aboriginal-centric view at a high level, support for the Aboriginal community sector and ability to engage with the Aboriginal community more generally.[50] Mr Jackomos made the point that it is critical that the Commissioner is known to the community and knows the community they serve.

For further discussion of the role, and our subsequent recommendation, see section 3.10.1.

Royal Commission recommendations implementation monitoring role

In our Submissions on Youth Detention at section 10.2, we discuss monitoring Government responses to the Royal Commission. NAAJA recommends that the Northern Territory Office of the Children's Commissioner be appropriately funded and resourced to perform the role of an independent implementation monitor.[51] NAAJA envisions the Children's Commissioner performing this role for recommendations spanning across the Terms of Reference.

Recommendation 9	That the Children's Commissioner is legislatively empowered to perform the function of monitoring the implementation of the Royal Commission's recommendations.

Secure facility inspector role

In our Submissions on Youth Detention at section 8.3.5, NAAJA recommends that the Office of the Children's Commissioner be legislatively provided with unfettered powers to access detention facilities and unrestricted access to records, young people and staff.[52] To ensure that the rights of all vulnerable children in secure facilities are protected, NAAJA calls for the role of the Children's Commissioner to be expanded to monitor and report on all secure facilities where young people are detained.

Recommendation 10	That the Children's Commissioner is legislatively empowered to perform the function of inspecting and monitoring all secure facilities (including, health, disability and justice) where young people are detained.

Child advocate and Aboriginal Community Visitor Functions

At 3.10.2 and 4.5.2 of these submissions, the establishment of child advocates and Aboriginal community visitors is discussed and recommended. NAAJA envisions that child advocates and community visitors will perform child advocacy functions ensuring participation of vulnerable children and the consideration of their views and wishes and best interests in all processes and decisions involving them. The Aboriginal Children's Commissioner should be provided with information gathering and investigative powers that can be delegated to child advocates and community visitors. The role should have a nexus to the Charter of Rights for Children in care, and also a role in ensuring

[50] Exhibit 558.000, Statement of Andrew Jackomos, 13 June 2017, [21]-[22].
[51] NAAJA Submissions on Youth Detention, July 2017: Recommendations 111-113, pp 175-6.
[52] Ibid, Recommendations 94-5. See also discussion at 148-150.

that the standards, policies and procedures in relation to statutory child protection are adhered to. Recommendations 43, 44 and 75 of these submissions relate to the roles of child advocates and community visitors.

Recommendation 11	That a team of child advocates is established in the Office of the Children's Commissioner to advocate on behalf of children in care and/or secure facilities. The role should be designed with community, and include the following features: • Extensive information gathering powers relating to government and non government organisations that are involved in making decisions about the child, including access to all and any documents relating to statutory child protection services; • Extensive powers of entry in relation to facilities where children in out of home care reside and for all secure facilities where children are detained; and • The ability to be accessible to the child, and the ability to access the child at all times, other than in exceptional circumstances.

Recommendation 12	That a team of Aboriginal community visitors is established in the Office of the Children's Commissioner to advocate on behalf of children in care and/or secure facilities. The role should be designed with community, and include the following features: • Extensive powers of entry in relation to facilities where children in out of home care reside and for all secure facilities where children are detained; • Extensive powers to access records and documents relating to the place or facility where the child is in care or detained; and • The ability to be accessible to the child, and the ability to access the child at all times, other than in exceptional circumstances.

1.4.2 An independent review body to review statutory child protection decisions

The importance of an independent review mechanism is discussed in these submissions at 3.10.2 and recommendation 46 calls for the implementation of such a mechanism.

Recommendation 13	That legislation is amended to create an administrative review mechanism such as NTCAT. Decisions that can be appealed should reflect concerns of children in care, parents, the Aboriginal community and stakeholders. But should at a minimum include the following types of decisions:

- Decisions in relation to the out of home care placement of any child;
- Decisions related to the child's contact with family, kin, community and significant others; and
- Decisions which impact on an Aboriginal child's continued cultural connection.

2 Early intervention and prevention

As has already been articulated, the irrefutable evidence before this Royal Commission is that the Northern Territory's child protection system is in crisis. Child protection notifications, substantiations and out of home care placements have all doubled since 2007.[1] Around half of all Aboriginal children in the Northern Territory have been the subject of at least one child protection notification by the age of 10.[2] Professor Silburn described this situation as a 'humanitarian crisis ... one which has been long in its creation and ... highly complex in its nature.'[3] The current way of doing things is clearly not sustainable and a fundamental rethink of the approach to child wellbeing in the Northern Territory is called for.[4]

The Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children.[5] Government and the community must accept that the crisis-driven way in which child protection has been delivered is not building safer families or communities and is not stemming the increase in children needing protection. National and international research into effective child protection systems overwhelmingly signals that the Northern Territory must reconsider its current level of investment in, and tertiary service centred approach to, addressing child safety and wellbeing.[6] Rather than investing in the 'ambulance at the bottom of the cliff',[7] there must be a public health approach and increased and sustained investment and emphasis on developing early intervention and prevention initiatives to meet the needs of Aboriginal families and communities.

Without a committed shift towards early intervention and prevention measures receiving significantly more funding than the intake, assessment, out of home care and formal case management functions of the system, there is no doubt that the system will continue to fail not only Aboriginal children and young people, but all children and young people of the Northern Territory.

NAAJA endorses recommendations 16–19 on early intervention in the SNAICC submission to this Commission, and also supports the Family Matters campaign roadmap as it relates to early intervention.[8] The Northern Territory Government is a signatory to the Family Matters Statement of Commitment, including its six core principles and all corresponding action items aligned to the campaign.[9]

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[1] Oral evidence of Professor Sven Silburn, 19 June 2017, 4394:39-41.
[2] Oral evidence of Professor Sven Silburn, 19 June 2017, 4394:43-44.
[3] Oral evidence of Professor Sven Silburn, 19 May 2017, 4397:17-18.
[4] Oral evidence of Professor Sven Silburn, 19 June 2017, 4394:47–4395:1.
[5] Care and Protection of Children Act 2007 (NT), s 7.
[6] See, eg, oral evidence of Professor Frank Oberklaid, 29 May 2017, 4016:42-45.
[7] Oral evidence of Howard Bath, 31 May 2017, 4217:10-11.
[8] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 19-23; Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal.
[9] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, 4 [26(e)].

2.1 The importance of early intervention to child protection outcomes

Data shows that Aboriginal and Torres Strait Islander families coming to the attention of child protection services often present with multiple risk factors that are at the intersection of child protection concerns and broader family needs.[10] Such risk factors include homelessness and housing concerns, family violence and parental mental health. Indigenous Australians are grossly over-represented in the child protection system and on key indicators of social and economic disadvantage, yet under-represented in universal and targeted services aimed at addressing the problems associated with this disadvantage, and the subsequent intervention of statutory child protection.[11]

The Board of Inquiry into the Child Protection System in the Northern Territory in 2010 recognised the role that social inequity plays in driving the high rates of Aboriginal involvement in the child protection system. The Board of Inquiry concluded:

> The issue of child protection in the Northern Territory could be seen as one of inequity and of social injustice. The high rates of neglect and exposure to physical violence are, to a large extent, by-products of poverty and extreme disadvantage.[12]

Comprehensive, appropriately adapted and resourced early intervention provides an opportunity to break a cycle of poverty, neglect and engagement with statutory child protection services.[13] The Children's Commissioner Colleen Gwynne gave evidence that much of the abuse or neglect identified in Aboriginal families could be avoided if social determinants of disadvantage were addressed (such as health and housing).[14]

Early intervention and prevention approaches must therefore be available for all members of the family throughout the primary, secondary and tertiary prevention continuum, including early education for expecting mothers, postnatal services and support from early childhood and beyond.[15] Improved early intervention will help address these risk factors that commonly underlie the involvement of child protection services in the lives of Aboriginal people.

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[10] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 4.

[11] Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal

[12] Exhibit 014.001, Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1, 2; see also Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 4.

[13] See, eg, Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 19.

[14] Oral evidence of Colleen Gwynne, 19 June 2017, 4478-4479.

[15] See, eg, Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 5, 29; Oral evidence of Frank Oberklaid, 29 May 2017, 4017:15-39.

2.1.1 Benefits of early intervention

Early intervention measures 'support, heal and strengthen families early in the life cycle and as early as possible when issues that impact family functioning emerge.'[16] They offer an opportunity for meaningful change in the life path of vulnerable children and families by providing support and services to address risk factors before the involvement of statutory child protection services.

There is overwhelming evidence that the early stages of a child's development are vital to their future prosperity and wellbeing.[17] Promoting the healthy development of children is both an ethical imperative and a critical social and economic investment.[18] Lifelong consequences of early life trauma can be reduced with early, evidence-based interventions.[19] Professor Oberklaid told the Commission:

> [T]here's no doubt that as a society, as a country, we do have to start to embrace prevention and early intervention, because the evidence is just so strong now. And if we wait until these problems are entrenched and then try and do something about it later on, it's not only much, much more expensive, but they're far less effective.[20]

Research shows that if families have adequate support to address issues of concern, the interaction with child protection services decreases.[21] This is supported by the findings of the Family Matters[22] and Moving to Prevention[23] reports and data from other international models that demonstrates there is a clear evidentiary basis for investment in early intervention and preventative services.[24]

Investment in early intervention is most cost-effective in the long term, as opposed to a system that is crisis driven and responsive.[25] Successful early intervention provides the opportunity for significant long-term economic efficiency, decreasing public money spent on statutory child protection services, promoting employment in communities and decreasing strain on other expenditure such as local court services.[26] How early intervention programs are delivered and by whom is critical to the success of

[16] Exhibit 459.000, Statement of John Burton, 22 May 2017, 7 [34].
[17] Exhibit 455.000, Precis of evidence of Professor Frank Oberklaid, 25 May 2017, 1 [1].
[18] Exhibit 455.001, Annexure A to the Precis of evidence of Professor Frank Oberklaid, 111.
[19] Oral evidence of Professor Sven Silburn, 19 June 2017, 4403:1-4.
[20] Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4016:41-45.
[21] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 22.
[22] Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal
[23] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children.
[24] See, eg, Exhibit 510.000, Statement of Sven Silburn, 12 December 2016, 9 [56]; Oral evidence of Howard Bath, 31 May 2017, 4221:46-47, 4222:1-8.
[25] See, eg, Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4016:15-16; Exhibit 024.016, Annual Report to the Council of Australian Governments 2009-2010: Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020, 17.
[26] See, eg, Oral evidence of Frank Oberklaid, 29 May 2017, 4016:1-18.

these programs.[27] If the right preconditions are met, early intervention can create sustainable change.[28]

2.1.2 Preventing strain on a system in crisis

The 2010 Northern Territory Board of Inquiry into the Northern Territory Child Protection System recognised the link between early and effective service provision in remote communities and a reduction in demand for statutory child protection intervention, noting:

> Unless there is a robust concomitant commitment to developing culturally-appropriate, early intervention and prevention services, the statutory service will never be able to keep up with demand.[29]

The Sisyphean strain on Territory Families to manage notifications, predicted by the 2010 Inquiry,[30] was highlighted by the evidence of Professor Silburn, who identified statistical inconsistencies in notifications substantiated in the Northern Territory between 2011 and 2015.[31] During this period, the gap between substantiations and notifications widened, reflecting the backlog of notifications that the Department could not keep up with.[32] This highlights the need for better investment in early intervention and prevention strategies and services.[33]

2.2 Failings in current approaches to early intervention

The Commission has heard that early intervention, in most cases, does not exist or is insufficient to prevent statutory intervention.[34] Where early intervention strategies are in place, there is a lack of alignment of policy, legislation and the principles of Aboriginal participation.[35] Funding of early intervention services is woefully inadequate. The Family Matters report found that '[t]he Northern Territory demonstrates a lack of engagement with evidence informed solutions to concerns around child neglect, abuse and removal.'[36]

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[27] See, eg, Oral evidence of Andrew Jackomos, 23 June 2017, 4874:23-36; Oral evidence of Sven Silburn, 19 June 2017, 4395:37-46, 4396:1-2.
[28] See, eg, Oral evidence of Andrew Jackomos, 23 June 2017, 4874:23-36.
[29] Exhibit 014.001, Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1, 2.
[30] Exhibit 014.001, Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1, 2.
[31] Oral evidence of Professor Sven Silburn, 19 June 2017, 4400:44-45, 4401:1-8.
[32] Ibid.
[33] Ibid.
[34] See, eg, Oral evidence of Tracey Hancock, 20 June 2017, 4526:6-25; Oral evidence of Peter Fletcher, 21 June 2017, 4734:24-25, 4735:31-33.
[35] Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal, 44.
[36] Ibid, 11.

Service responses must be individualised and targeted to address the actual needs of the individual children and their families.[37] However, many existing services are not culturally responsive and do not address the needs of Aboriginal people.[38]

2.2.1 Inadequate funding

There is inadequate investment in early intervention programs and strategies across the Northern Territory. This includes, in particular, inadequate government resourcing and engagement of ACCOs to deliver early intervention services.[39] Only 22.5% of child protection expenditure in the Northern Territory in 2016 was directed toward family support services, highlighting a continued failure to promote early intervention initiatives, despite the evidence that shows their worth.[40] The 2010 NT Board of Inquiry recommended that expenditure for prevention and therapeutic services should match or exceed that of the expenditure for tertiary child protection services, including out of home care.[41]

Worse still, targeted family support services that play an important role in early intervention have had their funding significantly cut. For example, the Ketyeye Program, an early intervention casework support program, was defunded in June 2016.[42] Ketyeye was delivered by the Tangentyere Council in Alice Springs and focused on improving parenting knowledge and skills and overall family wellbeing.[43] Mr Walder told the Commission the decision to cease funding the program means there 'is a huge gap in the services that families are able to access in Alice Springs.'[44]

Ms Lambley gave evidence that, due to resource constraints, funding for early intervention in the Northern Territory was reduced to enable the Department to meet the growing demand to manage notifications.[45] Ms Lambley acknowledged that this decision 'set back the early intervention agenda by at least six to 12 months, possibly longer.'[46] The steady increase in notifications since this time reflects the dysfunctional cycle created by the lack of initial funding of, and further withdrawal of, funding from early intervention services.[47]

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[37] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 15-16, 22, 25, 28.
[38] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 11, 20.
[39] See, eg, oral evidence of Olga Havnen, 22 June 2017, 4761:4-46, 4762:1-12.
[40] Exhibit 024.027, Report on Government Services 2016, Chapter 16, Annexure 16.1.
[41] Exhibit 014.001, Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1, 2 and Recommendation 10.
[42] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, 2 [12].
[43] Ibid.
[44] Oral evidence of Andrew Walder, 29 May 2017, 4034:14-15.
[45] Oral evidence of Robyn Lambley, 20 June 2017, 4634:6-45.
[46] Oral evidence of Robyn Lambley, 20 June 2017, 4634:36-37.
[47] See oral evidence of Professor Sven Silburn, 19 June 2017, 4394:40-41; oral evidence of Robyn Lambley, 6 June 2017, 4635:46-47, 4636:1-7.

2.2.2 Lack of services outside major centres

Service provision does not match the population distribution of the Northern Territory. It is NAAJA's experience that most services operate solely in or in close proximity to the major centres along the Stuart Highway. This means that families and children of remote communities and townships outside the major centres do not have easy access to vital early intervention and prevention programs and support services.

2.2.3 Poorly coordinated services

Another gap in the approach to early intervention is the lack of coordination between services that intersect with child welfare. The lack of coordination encompasses the delivery of services from both service providers and government departments.[48] Professor Silburn stated in relation to the implementation of the Board of Inquiry's recommendation for early intervention:

> I think the department struggled to get the level of commitment from health and education and other departments in addressing some of those primary health care needs. I think the department was very much on its own in trying to deal with all aspects of the implementation of the report.[49]

It is clear from the evidence of Andrew Tongue, Associate Secretary Indigenous Affairs, Department of Prime Minister and Cabinet, that Commonwealth funding of early intervention and prevention services in the Northern Territory has been poorly coordinated. Departments were not necessarily aware of what programs and services other Commonwealth departments, or the Northern Territory, were funding, nor was there monitoring of intended outcomes or robust accountability mechanisms in place.[50]

The Commission heard that a lack of cohesion between different service providers significantly impacts the effectiveness of service delivery.[51] For example, former Northern Territory Ombudsman Carolyn Richards described the significant problems experienced by allied health workers attempting to report and follow up potential child abuse due to lack of responsiveness from the Department's central intake team, failure to understand the significance of the facts reported by the health workers and a lack of information sharing between agencies.[52] The Commission has also heard that families experience 'service provider fatigue' because different organisations are funded to provide discrete programs and there is a lack of coordinated, holistic approaches.[53]

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[48] Oral evidence of Professor Sven Silburn, 19 June 2017, 4400:7-10.
[49] Ibid.
[50] Oral evidence of Andrew Tongue, 26 June 2017, 4992, 4995.
[51] Oral evidence of Tracey Hancock, 19 June 2017, 4516:18-36.
[52] Oral evidence of Carolyn Richards, 11 October 2016, 62:18-45, 63:1-12.
[53] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, 17 [55].

2.2.4 Lack of engagement and empowerment of Aboriginal communities and organisations

The Northern Territory and Australian governments have consistently failed to promote the participation of Aboriginal communities in services addressing their needs.[54] Child protection for Aboriginal people in the Northern Territory encompasses more than just the child, engaging broader social determinants and family and community factors. In NAAJA's submission, failing to engage communities in preventative strategies is not only ineffective but entirely inappropriate. Evidence shows that 'well-resourced programs that are owned and run by the community are more successful than generic, short-term, and sometimes inflexible programs imposed on communities.'[55]

NAAJA is alarmed that of the service providers identified as providing support services under the priority areas of the Northern Territory Government's Family Intervention Framework,[56] only one is an Aboriginal organisation. It is not apparent whether there is any partnership to deliver services between the non-Aboriginal NGOs and Aboriginal organisations. This indicates a lack of engagement with the principle of participation espoused in the Family Matters Report.[57] It is NAAJA's position that all non-ACCOs that provide services to Aboriginal communities, including early intervention and prevention services, must adhere to the APO NT Partnership Principles that are designed to guide the development of a partnership-centred approach for non-Aboriginal organisations engaging in the delivery of services or development initiatives in Aboriginal communities in the Northern Territory.[58]

2.2.5 Intensive Family Support Services

Intensive Family Support Services are funded by the Commonwealth Government and designed to provide practical parenting education and support to families to help them improve the health and wellbeing of their children. While these services signal a positive approach to early intervention, they are not available Territory-wide, and participation is only possible on referral by Territory Families. Referral to the Child Protection Income Management scheme is also a requirement for participation in the program. NAAJA supports calls for increased funding of these services so they are more widely available, and for Intensive Family Support Services to accept self-referrals from families and remove the requirement to participate in the Income Management scheme.[59]

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[54] See, eg, oral evidence of Patricia Anderson, 12 October 2016, 151:41–45.
[55] Exhibit 018.001, Annexure 1 to the Statement of Patricia Anderson AO, "Little Children are Sacred" Report, 53 (Principle 5).
[56] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, 4–5.
[57] Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal, 44, Table 8.
[58] Exhibit 473.001, APO NT Partnership Principles for working with Aboriginal organisations and communities in the Northern Territory.
[59] See, eg, Exhibit 456.000, Statement of Donna Ah Chee, 22 May 2017, 5 [21]; Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, 17 [54].

2.3 The way forward

2.3.1 Bi-partisan, whole-of-government commitment to long-term investment

Shifting the focus to prevention and early intervention measures calls for bipartisan, long-term commitment and investment. It also requires whole-of-government approaches to policy development and service delivery. Professor Oberklaid told the Commission:

> [I]t's unfair to expect one section of Government to introduce policies and services and resources to 'fix up these problems'. We really do need a whole-of-government commitment – a whole-of-government approach. And it's challenging because there's no simple solution to this. And it has got to be generational. So we're not going to see major changes in the term of most governments. This is a long-term investment in the future prosperity of a society.[60]

Professor Silburn observed that 'the fragmentation in this area of service delivery has actually been working very contrary to the interests of children and families.'[61] He also identified long-term policy and funding as a prerequisite for improvement:

> [T]his sector has been bedevilled by policy churn, by changes of government, by short-term funding contracts for many of the non-government and community sector services that are supporting families ... it's absolutely essential that there be long-term policy and funding certainty as a prerequisite for improvement.[62]

Long-term investment and commitment is crucial to building effective strategic partnerships with Aboriginal community-controlled organisations and communities, and to ensuring that resources are directed to where evidence suggests they would make the biggest difference.

2.3.2 Taking a public health approach

Investment in early intervention programs and services aligns with the national and international movement towards public health approaches to child protection.[63] A public health approach aims to 'prevent or reduce a particular illness or social problem in a population by identifying risk indicators.'[64] It enables service providers to consider family issues as a whole and address their needs using a multidisciplinary approach. Professor Bamblett noted that Aboriginal families often present with multiple issues, so having a service provider who can take a multidisciplinary approach avoids referrals to multiple services, reducing the risk of disengagement.[65] Early intervention programs targeted at the

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[60] Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4017:38-44.
[61] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:21-23.
[62] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:15-19.
[63] Exhibit 024.016, Annual Report to the Council of Australian Governments 2009-2010: Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020, 17.
[64] Australian Institute of Family Studies, 'The public health approach to preventing child maltreatment', 22 June 2016, available at <https://aifs.gov.au/cfca/2016/06/22/public-health-approach-preventing-child-maltreatment>.
[65] Oral evidence of Professor Muriel Bamblett, 12 October 2016, 180:200–201.

entire family unit and capable of addressing their particular complex needs provide the best opportunity for children to avoid entering the statutory child protection system.[66]

Evidence before the Commission shows that 43 per cent of substantiated notifications for Aboriginal children are for reasons of neglect.[67] This figure necessitates an immediate shift towards a public health model, with a focus on early intervention and prevention.

This statistic also reflects the significant role that the social determinants of health play in the entry of Aboriginal children into the formal child protection system. One of the key drivers for neglect among Aboriginal people in the Northern Territory is poverty and social inequity.[68] These socio-economic factors significantly increase the involvement Aboriginal people with the child protection system. Professor Oberklaid highlighted to the Commission that early intervention must address issues such as poverty, unemployment, self-esteem, parenting skills and family violence.[69]

2.3.3 Early intervention must be Aboriginal-focused, culturally relevant and community-driven

Empowering Aboriginal participation and control

Considering the high involvement of Aboriginal children and families in the child protection system in the Northern Territory, any early intervention and prevention program must be specially targeted to Aboriginal families and communities. Aboriginal people and communities not only have the right to be consulted about the issues affecting them, but the best results for community wellbeing are achieved where Indigenous communities are empowered to form part of the solution.[70]

ACCOs delivering early intervention and prevention services can provide the nexus needed for sustainable change. Where such services operate, they provide a culturally competent buffer to the tertiary statutory services of the child protection system.[71]

The Moving to Prevention report demonstrates how the distinction between welfare services and community-controlled organisations impacts the voluntariness of families involved.[72] In the eyes of Aboriginal people in the Northern Territory, government welfare services are seen, understood and experienced as punitive.[73] In part, this is due to intergenerational trauma, ho wever can also be

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[66] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children.
[67] Oral evidence of Colleen Gwynne, 19 June 2017, 4479:2. See also: Exhibit 510.001, Annexure 1 to the Statement of Professor Sven Silburn, 4 (discussed in his oral evidence on 19 June 2017, 4389: 27-40).
[68] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 4, 16, 19.
[69] Oral Evidence of Professor Frank Oberklaid, 29 May 2017, 4017:35-38.
[70] See, eg, Exhibit 018.001, Little Children are Sacred Report, 30 April 2007, 53.
[71] See, eg, Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 29.
[72] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 15 [2], [13] 'Families' willingness to become and stay engaged with services is positively influenced by the services being delivered by an organisation that is separate to, and operates independently of, the statutory agency'.
[73] See, eg, oral evidence of Kon Vatskalis, 1 June 2017, 4249:21-47.

attributed to a lack of control or ownership that contributes to reluctant engagement. By contrast, ACCOs are viewed as 'our service', and empowerment is a motivating factor.[74]

It is clear from the evidence before this Commission that there has been a failure to invest adequately in preventative services in the Northern Territory,[75] particularly in rural and remote communities. The reality is that child protection notification criteria has a discriminatory effect on Aboriginal people living in these areas. They are not only far more likely to experience problems related to housing and overcrowding, poverty and family violence – all risk factors for child protection involvement – but they also do not have the supports or resources needed to address these problems.[76]

In its Submission to the Commission, SNAICC identified that:

> Families coming to the attention of child protection services have very complex and chronic needs with multiple risk factors requiring intensive, holistic and in-home casework support responses.[77]

The solution does not stop at better investment in family support services; it must include investment in community-informed and community-led programs. This is because the best outcomes in community wellbeing and development are achieved where those involved have control over their own lives and are empowered to respond to and address the problems impacting them.[78] The necessity for the participation of community controlled organisations, the importance of culture and the involvement of local family and community in the design and delivery of services is articulated further in the introduction, section 1 and section 5 of these submissions.

Community-driven, place-based solutions

Targeted early intervention, designed by communities and based on the needs of the community, can address the relevant social determinants and therefore decrease the likelihood of statutory child

[74] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 29.
[75] Oral evidence of Robyn Lambley, 20 June 2017, 4623-4638, 4643-4646.
Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal), 8.
[77] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 21.
[78] Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal, 41; Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children.

protection services becoming formally involved.[79] There is now an established international evidence base about the efficacy of place-based interventions that build on local knowledge and resources.[80]

Professor Okerklaid told the Commission that governments should be 'tight in outcomes and loose on inputs',[81] meaning that:

> [T]he closer you get to an issue or a problem, the more likely it is you will know what it is to do about it … So tight/loose controls means going into a community, negotiating with that community, 'What is it that you would like to see change? What would you like to improve?' And then, theoretically, giving that community a check, so that Government is very tight on outcomes, very tight on outputs, but loose on inputs on the basis that the community will know how to spend that money.[82]

Professor Oberklaid further identified that 'our best chance of sustainability' rests with place-based solutions where the community owns the whole process and the outcomes:[83]

> [A] one size fits all approach is unlikely to work. We really do need to go in and solve these sorts of issues, or address these issues, one community at a time. And that is identifying who the stakeholders are, who the community leaders are, getting them around the table, looking at what local data they have about demographics, and child – and the outcomes, mapping the resources and services that are there. So we build a profile of each community and then work with that community to say, 'What do you think your community needs in order to improve child and family outcomes?'[84]

It is crucial that Aboriginal communities are given every opportunity to participate in the design and have ownership and control of the delivery of future early intervention programs and initiatives to ensure that they best meet the needs of the community.

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[79] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory; Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal, 41; Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children, 29: 'the value lies in the services being delivered by Aboriginal community-controlled agencies as these entities are framed by the philosophy that community owns the service'. See also: Stephen Cornell & Jonathan Taylor, *Sovereignty, Devolution, and the Future of Tribal-State Relations* (Harvard University, Cambridge, 2000).
[80] Oral evidence of Professor Sven Silburn, 19 June 2017, 4395:39-45.
[81] Exhibit 455.000, Precis of evidence of Professor Frank Oberklaid, 25 May 2017, 1 [7].
[82] Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4019:19-27.
[83] Ibid, 4019:38-39.
[84] Ibid, 4019:29-36.

Recommendation 14	That it is a requirement of any Northern Territory or Commonwealth government contract for early intervention or prevention services provided to an Aboriginal community that the organisation must agree and adhere to the APO NT Partnership Principles.
Recommendation 15	That those service providers, whether government or non-government, are required to have an exit plan and to have handed over service delivery to their partner ACCOs within five years or as agreed by the ACCO and APO NT prior to the contract for service.

2.3.4 Dual pathways approach

Many jurisdictions around the world have implemented a 'differential response' model to child wellbeing.[85] Rather than conducting incident-based investigations into suspected child abuse or neglect to determine whether intervention is required, differential responses allow notifications to be filtered and the appropriate response determined (whether statutory or non-statutory) according to the level of risk.[86]

The 2010 Board of Inquiry recommended that individuals with concerns about the safety or wellbeing of a child should have a dual pathway of referral to address these concerns. The Board proposed referral through a designated family support service or a referral gateway, or to centralised intake.

The Northern Territory is the only jurisdiction in Australia not to incorporate a dual pathways model in its response to child safety and wellbeing.[87] The benefit of such an approach is that it allows vulnerable families to access the services they need without the need for a child protection investigation.

It is critical that the Northern Territory Government act on its commitment to implement a dual pathways model to reduce the number of vulnerable children and their families entering the statutory child protection system.[88] As part of this endeavour, the Government must also expand the range and scope of child and family services available across the Northern Territory. Services to assist vulnerable children and families must be accessible and there must be no 'wrong door'.[89]

2.3.5 Models for effective early intervention

Effective early intervention provides practical and meaningful support and engages families and communities in the process. The capacity to build trusting relationships and partnerships with families, the participation of family members in decision-making and case planning, and services matched to

[85] Child Protection Systems Royal Commission, *The life they deserve*, 2016, 164.
[86] Ibid.
[87] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, 10 [42].
[88] Ibid, 10 [43].
[89] Oral evidence of Professor Frank Oberklaid, 29 May 2017, 4019:17.

child and family needs are core elements of effective family support.[90] Early intervention should be strengths-based, focused on addressing areas of concern and should facilitate the family developing trust and rapport with the caseworker providing support.[91]

ACCOs are best placed to deliver holistic early intervention services. In addition to using their intimate understanding of the issues faced by people in the community, giving control of early intervention services to ACCOs more broadly empowers Aboriginal people and communities to address underlying causes that lead to statutory intervention in a way tailored to the particular community.[92]

From 2013 to 2015, SNAICC undertook a research project aimed at understanding the factors and conditions that contribute to family support services achieving positive outcomes for Aboriginal and Torres Strait Islander families in contact with the statutory child protection system.[93] The report, *Moving to Prevention: Intensive Family Support Services for Aboriginal and Torres Strait Islander Children*, examined the effectiveness and quality of community-controlled intensive or targeted family support services for Aboriginal families. The findings of the project highlighted seven important elements of effective intensive family support:

- Matching services to child and family needs
- Working with the statutory agency
- Building partnerships with family members
- Providing a mix of practical, educational, therapeutic and advocacy supports to children and families
- Intensity and duration of service delivery
- Family participation in decision-making and case planning, and
- Providing services in culturally competent and respectful ways.[94]

The report further identified characteristics of effective service delivery, which include:

- Comprehensive, open-minded and non-judgmental assessment at individual, family and structural levels was the starting point to match services to child and family needs.
- Interventions and case goals incorporated parental goals and perspectives. Each service placed a high priority on an inclusive, respectful process in which family members are supported to have control over planning forums, and the development of goals and strategies.

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[90] See, eg, Exhibit 662.023, Annexure 22 to the Statement of Luke Twyford, The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal, 20; Child Protection Systems Royal Commission, *The life they deserve*, 2016, 155–157.

[91] See, eg, SNAICC - Working and Walking Together: Supporting Family Relationship Services to Work with Aboriginal and Torres Strait Islander Families and Organisations (2010).

[92] SNAICC - National Voice for our Children, Submission to the Queensland Department of Communities, Child Safety and Disability Services – Review of the Child Protection Act 1999 (Qld) (2017) 10.

[93] Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children.

[94] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 8. Exhibit 459.005, Annexure 5 to the Statement of John Burton, Moving to Prevention research report: Intensive family support services for Aboriginal and Torres Strait Islander children.

- Services were delivered within a case management framework in which goals were developed, implemented and monitored and services were coordinated – families invariably had complex and multiple needs.
- Good working relationships between services and statutory agencies at all levels are needed, and take considerable work to develop and maintain.
- Organisational support enhanced the service – overall, the services employed skilled and experienced staff supported by good supervision and management, with strong team functioning.[95]

The report emphasised the importance of providing services in culturally competent and respectful ways and observed that this was important to engagement and take-up.[96]

The 'Closing the Gap' Clearinghouse reported in 2010 that the following principles and practices show 'promise' for preventing and responding to maltreatment of Aboriginal and Torres Strait Islander children:

- Actions that consider the historical context and prioritise cultural safety
- Control of services and responsibility for outcomes resting with Aboriginal controlled organisations that provide holistic services, and which are appropriately resourced and supported
- Providing support for families when it is needed, in addition to targeting services for vulnerable families that address the risk factors for child abuse and neglect, including parental risk factors
- Empowering families to make decisions to protect their children and create safe environments
- Community based strategies founded on social inclusion and situational crime prevention principles.[97]

The Commission has heard about several examples of effective early intervention programs that have been successfully delivered in Aboriginal communities. For example, the Let's Start program on the Tiwi Islands was adapted from a Victorian program and has shown 'very good effects in improving children's early education outcomes and child behaviour outcomes.'[98] It has since been rolled out to Maningrida and Daly River.[99] Professor Silburn explained:

> [A]t least a two year effort is put into training the local community members in the delivery of the program. They take on children aged four and five, particularly in the years before they're going to school. They get a lot of referrals of children who have child abuse concerns, and they involve the parents learning different ways of managing

[95] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, 8.
[96] Ibid.
[97] Daryl J Higgins, Closing the Gap Clearinghouse, *Resource Sheet 1: Community development approaches to safety and wellbeing of Indigenous children* (2010). Retrieved from: http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2010/ctgc-rs01.pdf.
[98] Oral evidence of Professor Sven Silburn, 19 June 2017, 4404:26-27.
[99] Oral evidence of Professor Sven Silburn, 19 June 2017, 4404:27-28.

> difficult behaviour, avoiding difficult behaviours emerging, and it also involves a group work activity for the children on their own, which they enjoy. They come with their parents. They have a time together. It involves a lot of traditional stuff. There's a lot of singing and activities that parents enjoy. A number of parents have come back voluntarily to do the program a second or a third time because they found it beneficial or they have come back when they have another child that's in that age range, and we see that as a good thing.[100]

Another example is the Positive Parenting Program, which is a globally recognised and run program that assists parents with raising children. It aims to equip parents with the appropriate skills needed to address and manage family issues. It has been adapted in different jurisdictions to meet the needs of the community it operates in.

Professor Bamblett referred to the Bairnsdale Positive Parenting Program, developed by the Gippsland and East Gippsland Aboriginal Co-Operative, as an example of how the programs may be successfully adapted to the needs of Aboriginal people. NAAJA agrees with Professor Bamblett that any implementation of the program in the Northern Territory must be locally focused and specially designed for that community or region.

Programs such as these should be supported and expanded across the Northern Territory, in consultation with communities to ensure they meet local needs. Regard should also be had to the work of the newly established Early Intervention Research Directorate in South Australia, recommended by the Nyland Royal Commission, which will identify service models that have proved effective in promoting child health, safety and wellbeing.[101]

Harnessing Aboriginal community-controlled health services

While not directly relevant to child protection early intervention models, the Aboriginal Medical Services Alliance Northern Territory (AMSANT) provides a model for integrating alcohol and other drugs, community mental health and primary health care in Aboriginal medical services in the Northern Territory. This model addresses some of the parental risk factors that lead to statutory intervention.

Given the success of Aboriginal community-controlled health organisations, the support they receive through AMSANT as a peak body and their ability to engage and deliver services to the community (especially in remote areas), these organisations could play a pivotal role in providing holistic early intervention supports before a standalone child protection and family services agency is established.[102] In her evidence to the Commission, Victorian Aboriginal Child Care Agency (VACCA) CEO Professor Bamblett reflected on the role that Aboriginal health services played in providing a model upon which Aboriginal organisations delivering child and family welfare services could establish

[100] Oral evidence of Professor Sven Silburn, 19 June 2017, 4406:4-15.
[101] Child Protection Systems Royal Commission, *The life they deserve*, 2016, 176.
[102] Oral evidence of Olga Havnen, 22 June 2017, 4758-4770; Oral evidence of Professor Sven Silburn, 19 June 2017, 4410–4411.

and build themselves on.[103] She emphasised the importance of embedding Aboriginal culture in the design and delivery of services.[104]

2.3.6 Funding for early intervention programs

As has been well documented before the Commission, there has been a lack of commitment to funding early intervention measures by the Northern Territory Government.[105] This is despite the recommendations by the Board of Inquiry[106] and the established evidence base on the benefits of such an investment.[107]

Olga Havnen gave evidence that there is a lack of transparency in the tendering process for early intervention services, which results in difficulties for Aboriginal organisations to compete for funding to deliver these services.[108] Capacity must be built within ACCOs where it does not already exist, with the ultimate goal of ACCOs delivering all early intervention services in communities.

Funding for services by the Commonwealth Government is largely through the Indigenous Advancement Strategy application process.[109] This process does not require engagement by the Commonwealth to ascertain what the appropriate organisations might be to deliver services, including early intervention services. Mr Tongue acknowledged that many of the NGOs that receive funding are non-Aboriginal. He noted that the Commonwealth asks for these organisations to partner with Aboriginal NGOs, however they do not always require any formal partnership agreement before providing funding.[110] This is a telling failing.

Aboriginal organisations should be the preferred service providers for funding under the Indigenous Advancement Strategy. Where an Aboriginal NGO does not exist or requires assistance, the APO NT Partnership Principles should be adopted.[111] As recommended above, any funding provided by the Commonwealth to non-Aboriginal NGOs under the Indigenous Advancement Strategy must require a formal partnership agreement between the NGO and an Aboriginal NGO to deliver services. Mr Tongue agreed that it would be beneficial to such partnerships being created if the APO NT principles were incorporated into the awarding of funds.[112]

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[103] Oral evidence of Professor Muriel Bamblett, 12 October 2016, 183.
[104] Oral evidence of Professor Muriel Bamblett, 13 October 2016, 216.
[105] See, eg, oral evidence of Olga Havnen, 22 June 2017, 4761:4-46, 4762:1-12; Exhibit 024.027, Report on Government Services 2016, Chapter 16, Annexure 16.1.
[106] Board of Inquiry Report – Growing Them Strong, Together, Promoting the Safety and Wellbeing of the Northern Territory's Children – Volume 1, 2.
[107] Oral evidence of Robyn Lambley, 20 June 2017, 4623-4624; Exhibit 014.001.
[108] Oral evidence of Olga Havnen, 22 June 2017, 4759, 4761.
[109] Oral evidence of Andrew Tongue, 26 June 2017, 4997.
[110] Oral evidence of Andrew Tongue, 26 June 2017, 5012.
[111] Exhibit 473.001, APO NT Partnership Principles for working with Aboriginal organisations and communities in the Northern Territory.
[112] Ibid.

Similarly, where funding is provided by the Northern Territory Government for early intervention and prevention services to non-Aboriginal NGOs, there must be an active partnership agreement with an Aboriginal organisation to deliver those services that incorporates the APO NT Partnership Principles.

Funding provided by both the Commonwealth and Northern Territory governments for early intervention and prevention services must not be redirected from statutory child protection services. Rather, a new stream of funding should be created, and consistent with the recommendations of the 2010 Board of Inquiry, should be equal to or exceed that that of statutory child protections services (including out of home care).

Recommendation 16	That the Northern Territory and Commonwealth governments increase funding for early intervention and prevention services to exceed that of the expenditure on statutory child protective services and out of home care.
Recommendation 17	That the Northern Territory Government reassesses the funding allocation to early intervention services and before the end of 2017 commit to additional funding being immediately allocated to these services at a level that at least matches the funding of tertiary child protection services.

2.3.7 The delivery, availability, oversight and evaluation of early intervention programs

As outlined in the Introduction, NAAJA proposes far-reaching reforms to the child protection system, including the establishment of an independent statutory authority to carry out child protection functions. As part of these reforms, NAAJA proposes that Aboriginal child care agencies (ACCAs) are established in the Northern Territory to deliver out of home care and provide capacity building, training and assistance to ACCOs. The ACCAs may also provide some child and family services while local ACCOs are building capacity. This would be a model akin to that delivered in Victoria through VACCA, and similar to that of the model for Aboriginal Medical Services. Having localised Aboriginal child care agencies allows for a more targeted response to early intervention tailored to the needs of communities. It also empowers Aboriginal people to take control of issues affecting their communities and ensures culture is central to the rehabilitative and early intervention responses.

3 Out of home care

3.1 Proposed strategic reforms to out of home care

Witness CR:

I'd like to see more Aboriginal people involved and more Aboriginal people working under FACSIA. Our elders being involved, telling them…

Witness CZ:

Not, like she said, bring somebody down from Darwin that don't have a no help in hell of knowing what the community is like, they don't know who the people are, they don't know them personally. I mean, you get the local ones like the case manager that she's got now, she's a great woman. She comes in, she knows...

Just the trauma of being ripped away from your family member, put into the system and then shoved where they think it's good for you. They always think they know what's best for that child without asking properly. No consultation or they'll consult with somebody that's not really closely associated with the family member, so that's a big gap there…

Meaning like, a go-between between the families and the welfare system. Yeah, like that. It does because it's either the police and that's the first place – I think that's the first place of contact I think, is the police and you get the police going and ripping these kids from underneath their mother's or their grandparents' noses, taking 'em to either a family member or they take 'em to the welfare or else it's in conjunction with the police. Welfare, police, pick these kids up, take them somewhere unfamiliar. The kids are wondering what's going on, especially if they're younger. Even when they're older. I've seen and heard of kids being really traumatised at an older age being done like that. Minor kids. But, yes, that idea of that go-between. A different group, specialist group that would involve elders of the community or people with standing in the community…

A couple of older members from the community, but you'd have to have one from each clan group or what they call themselves. You'd have to consult with each one of them because they're so diverse all these children. They don't all come from one – like we're talking about skin names and skin groups and all that. They'd have to come from each one, each group. You can't just have one or two, just say you can have a couple of town members because they don't know them people, probably. You need people from the community. Grass roots people… [1]

3.1.1 The time for change

When it is understood that 90 per cent of children in out of home care in the Northern Territory are Aboriginal,[2] the alienation – of Aboriginal families, communities, children and young people –

[1] Personal stories of CR and CZ, 2 June 2017, 1-4.

[2] Exhibit 459.000, Statement of John Burton, 22 May 2017, [29]-[30] citing statistics from the Productivity Commission (2017), Oral evidence of Marnie Couch, 31 May 2017, 4149.

perpetuated by current child protection practices is difficult to understand, except through the lens of history: a history of racism and systemic cultural biases. As Professors Bromfield and Arney have explained, the assumptions upon which the system originated have proven incorrect in time, leading to a need to refocus child welfare efforts on the needs of children and families and how they might be engaged with services and supports.[3] The new paradigm must, in the Northern Territory, be Aboriginal-led and controlled.[4] It must be culturally competent in intent, design and practice.

It is NAAJA's view that as the current situation is so dire for Aboriginal children and families, the entire service delivery system must be divorced from any government department. We thus urge the Commission and governments to consider a new statutory authority model. In our view, any lesser reform is likely to fail.

3.1.2 Aboriginal community controlled organisations

Consistent with the evidence of expert witnesses, importantly including the Victorian Aboriginal Children's Commissioner Mr Jackomos,[5] the current Northern Territory Children's Commissioner,[6] and representatives of Indigenous and non-Indigenous agencies operating in the sector, it is NAAJA's position that responsibility for out of home care (OOHC) should be steadily and purposefully transferred to locally-based Aboriginal community-controlled organisations (ACCOs). The potential benefits of ACCOs performing OOHC functions, which were described in evidence, include:

- ACCOs would use community networks and relationships to more effectively engage individuals who may not otherwise participate in programs and services or contemplate becoming a kinship or foster carer.
- They would have a deep intuitive knowledge and capacity to identify and coordinate potential kin and community-based carers, particularly knowledge of the formal and informal networks, politics and protocols that may be relevant for any particular child.
- They would bring a level of understanding of local family strengths and cultural and community supports.
- They would be more attuned to an Aboriginal child's best interests in the context of maintaining connection with their family, community and culture.
- Accordingly, ACCOS are uniquely placed to:
    - Provide family strengthening and early intervention services
    - Facilitate AFLDM processes around child safety concerns and culturally appropriate care arrangements
    - Recruit more Aboriginal carers
    - Make placement decisions – both before and after formal child protection processes occur. This would most likely lead to a more effective implementation of the Aboriginal Child Placement Principle (ACPP or the Principle) and provide the

[3] Exhibit 600.000, Précis of evidence Leah Bromfield and Fiona Arney, [2].
[4] Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [45]-[46]; oral evidence of Larissa Behrendt, 29 May 2017, 4003, 4006; Exhibit 459.000, Statement of John Burton, 22 May 2017, [22]-[23], [26]-[28] citing national and international research, Exhibit 600.000, Précis of evidence Leah Bromfield and Fiona Arney, [6b].
[5] Exhibit 558.000, Statement of Andrew Jackomos, 13 June 2017, [18].
[6] Oral evidence of Colleen Gwynne, 19 June 2017, 4498.

Northern Territory with the best opportunity to keep more (if not all) children within family groups and communities.
- Provide culturally appropriate out of home care within communities and/or localised regions to any Aboriginal child who cannot otherwise be placed with kin.[7]

The actual make-up and functions of each local ACCO should fit the local context and needs. It will also depend upon existing capacity. In any one community, an ACCO may take on some or all of these functions. It may be that an ACCO would partner with an existing NGO (e.g. Aboriginal health service) or with the overarching statutory authority (discussed in section 1), on either an interim or more long-term basis to provide the necessary services. Further, whether the ACCO is located in one community or takes the form of a slightly larger regional representation will need to be considered at the local level. It may be considered appropriate to vest the local community justice group or similar entity with the responsibilities of facilitating or mediating on behalf of the family and community significant decisions involving the care and placement of particular children.

Critical to these initiatives is:

- Community ownership and input – place-based interventions driven at the local level, building on local knowledge and resources to improve the safety of children in their communities and be more effective in identifying and supporting kin and other Aboriginal carers from the same community or region.
- Adequate long-term funding and support from government (optimally via the statutory authority).
- Genuine partnerships between government (or the statutory authority) and community agencies to identify community strengths and build further capacity. As Professor Oberklaid eloquently put, government should be 'tight on outcomes and loose on inputs' – it should have clear standards, which are appropriately monitored, but not prescribe the means by which they are to be met.
- Ensuring that community-controlled child care protections not only take on out of home care functions, but are resourced to provide the front-end preventative functions as well.
- Empowering children, families, and where appropriate, representatives of the community, by entrenching their involvement in all significant decisions affecting the children.[8]

Under the proposed model, community-based organisations would come under the umbrella of two Aboriginal child care agencies (ACCAs), one to service the Top End and another to service Central Australia. This reflects the approach taken to legal services, which recognises the unique interests of

[7] Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [50], [70]; oral evidence of Larissa Behrendt, 29 May 2017, 3995, 4006; Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [56]; Exhibit 459.000, Statement of John Burton, 22 May 2017, [22]; oral evidence of John Burton, 29 May 2017, 4056; Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 13-14; Exhibit 459.000, Letter to NTG from July 2016 out-of-home care sector meeting; Exhibit 662.035 Menzies School of Health Research, 'Foster and kinship care recruitment campaign', 36.

[8] Exhibit 600.000, Précis of evidence Leah Bromfield and Fiona Arney, [6b]; Exhibit 445.000, Précis of evidence of Professor Frank Oberklaid, 25 May 2017, [7]; oral evidence of Professor Sven Silburn, 19 June 2017, 4395-4396; Exhibit 459.000, Statement of John Burton, 22 May 2017, [58]; oral evidence of John Burton, 29 May 2017, 4060-4061; oral evidence of Lesley Taylor and Wendy Morton, 30 May 2017, 4123-4124, 4133; Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [21].

each region. These bodies would have oversight, contractual and accreditation responsibilities for out of home service delivery. They would facilitate the development of greater capacity within the ACCOs and would be in a position to influence the development of child care policy in a culturally appropriate, child-centred way. They may take on particular out of home care services, if that is needed, at least in the interim. Such a body could be modelled on the Victorian equivalent (VACCA), which appears to be the best practice model in Australia. However, the need for a local focus and starting point is more acute in the Northern Territory, given its geography and demography.

Furthermore, a peak child protection non-governmental body, not involved in service delivery, to represent the interests of all children (in out of home care) should be established and funded to take information from frontline service providers, but be able to contribute to policy without the risk of jeopardising a working relationship with the Department[9] or the proposed statutory authority.

As part of APO NT, NAAJA supports the process that is commencing under the auspices of a steering committee formed by APO NT and SNAICC, designed to lead the development of a strategy of capacity building for the community-controlled sector, operating from regional hubs in the Top End and Central Australia. The initial steps involve consulting with existing community controlled organisations, identifying the capacity that already exists and, within the guiding principles adopted at a recent forum, devise an appropriate process of capacity building for local community-controlled organisations to provide the necessary services to meet the needs of families and achieve the necessary accreditations and skills for providing out of home care supports.[10]

3.1.3 Territory Families reforms

The current Northern Territory Government has committed to outsourcing out of home care services to the NGO sector within seven years.[11] Mr Twyford indicates that Territory Families (TF) will relevantly 'co-design and develop the out of home care service system', 'partner with organisations and other government departments to shape and build sector capacity and capability', conduct audits, consult with the sector and community, research and design, and introduce flexibility into contracts to allow for transition.[12] As part of this, TF has begun liaising with SNAICC and seconded an officer to work with APO NT in development of its strategy.[13]

However, the Northern Territory Government commitment should be refined to clearly prioritise ACCOs within the sector. At present, it is contemplated that the reforms '*may* include … introducing a specific legislated role for aboriginal controlled organisations and a peak aboriginal organisation' (emphasis added).[14] History tells us that even with the existence of the APO NT Partnership Principles, the priority agreed to be afforded to Indigenous organisations has not been honoured in practice,

[9] Oral evidence of Lesley Taylor and Wendy Morton, 30 May 2017, 4118-4121, 4138-4139.
[10] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 12; Exhibit 459.000, Statement of John Burton, 22 May 2017, [62]-[70]; oral evidence of John Burton, 29 May 2017, 4060-4061.
[11] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [26]; oral evidence of Marnie Couch, 31 May 2017, 4189; Exhibit 647.000, Statement of Ken Davies, 30 June 2017, [41]; Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [36], [60].
[12] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [62], [69].
[13] Oral evidence of John Burton, 29 May 2017, 4061; oral evidence of Ken Davies, 30 June 2017, 5050.
[14] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [29].

either by the terms of government contracts or by the NGOs that obtain them.[15] Given the clear evidence that successful reforms in this space must be Aboriginal led and community owned, the government's policy focus should reflect that.

It is also of some concern that the intent is to fully outsource residential and non-home-based care first.[16] While that may be practically easier, it is important to front-end all efforts towards family unity and kinship care in the first instance.

Clearly enough, the process is in its infancy. Recommendations are sought to ensure the process does not flounder but is seen as only the first step towards a more culturally appropriate and effective engagement with Aboriginal communities on the part of government.

Necessary legislative reform

Section 12(1) and (2) of the *Care and Protection of Children Act* (NT) (the Act) acknowledges that 'representative organisations and communities of Aboriginal people … have a major role' in promoting the wellbeing of Aboriginal children and 'should be able to participate in the making of a decision involving the child.'

There is no evidence to suggest that this occurs in practice. To the contrary, there is evidence of a level of distrust and underuse of community groups. The Bunawarra Elders in Maningrida were not contacted to provide local knowledge or to be involved in child protection cases. They have recently done so of their own volition.[17] The CEO of Danila Dilba, Ms Havnen, said that there had been no real partnership with Indigenous health organisations: 'we seem to be completely invisible to them as being seen as a capable partner and a potential resource that might actually work with Territory Families and with those children and vulnerable families.'[18]

The legislation must go further, as it does in other states and the ACT, to ensure the necessary participation of ACCOs in all significant decisions being made for children in care.

NAAJA endorses recommendations 7 and 8 from SNAICC's submission, with some minor wording changes.[19]

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[15] Oral evidence of Olga Havnen, 22 June 2017, 4759, 4761.
[16] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [71].
[17] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [8]-[9], [47], Exhibit 528.000, Bunawarra statement of support to the court; oral evidence of Rosalee Webb, 20 June 2017, 4606.
[18] Oral evidence of Olga Havnen, 22 June 2017, 4761.23-26.
[19] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 13.

Recommendation 18	That support is provided for the re-establishment of regional Aboriginal community controlled child welfare organisations through a long-term plan and resourcing to build capacity. This plan should be based on the current proposal and strategy developed by relevant sector organisations and build on existing capacity in the Aboriginal community-controlled community services and health sectors.
Recommendation 19	That legislation and practice instructions are amended to require and provide protocols for the participation of representative Aboriginal community controlled organisations and/or Aboriginal community entities (such as Law and Justice Groups) in all significant decisions for children in contact with child protection services, and that these requirements are phased in to begin immediately where there is existing capacity, and expanded alongside the development of the ACCO sector in the Northern Territory.

3.2 Key reforms needed to OOHC legislation, policies and procedures

One only needs to hear one personal story of the many in evidence to know that the delivery of child protection services, particularly those relating to children in the care of the Department, has devastated individuals, families and communities. There are significant levels of mistrust towards the Department, something not fully appreciated by the senior bureaucrats who gave evidence.[20] It is at times difficult to reconcile the evidence of those executives with the evidence of children, families and carers. The disconnect may well be between the policy-makers and strategists within the Department and those who work on the ground. That was one concern raised in the Mercer Review of the Department published in April 2017.[21]

3.2.1 Families

Family contact

Witness CJ:

I grabbed the stuff that I'd stashed the night before outside behind the bins, I always give myself a plan B just in case … I think I was half safe with welfare … I think DCF needs to put Aboriginal kids with family, or with Aboriginal people or help them visit family. I feel like I had to make my family for myself, and the kid shouldn't have to do that.[22]

[20] Oral evidence of Marnie Couch, 31 May 2017, 4164–4165.
[21] Exhibit 657.002, Annexure 1 to the Statement of Jeanette Kerr dated 12 May 2017, Mercer Report, 10.
[22] Exhibit 474.000, Statement of CJ, 24 May 2017, [44], [78], [81].

Andrew Dowadi, Bunawarra Elder:

There's kids being taken away, it's like you're taking the loss of his own soul, own souls, own future, own identities, own culture, hunting things, the skills, family, relations ... neighbours, communities. They won't be there. It's just like carving things to these kids' life, it's like completely gone. And that's why we got to bring this culture back to the children to become a mother beside him, father and relation assist this, grandchild ... all these things we have to learn to get ... to be like this, to learn their own – addressing things in their head. And also the ... it's like their own ID to them, to identify them, to be going past, this is away from even other places, countries, like communities ... calling themselves a name as a ... as identify them to go into the other places as ... them to go to using those cultural things to be learning to other – another culture and sharing those things that we've got to have and sharing the information to those kids to live longer and strength.[23]

Legislation and Policy

Section 8(4) of the Act provides that 'as far as possible', consistent with the best interests of the child, contact between children in care and their family 'should be encouraged and supported' and the child should eventually be returned to their family.

Under s 135, if the CEO is given daily care and control of or parental responsibility for a child, the parents must be given information about where the child is living and any arrangement made for the care of the child and the CEO 'must provide opportunity for the child to have contact with the parents and other family members of the child as often as is reasonable and appropriate.'

'Family contact [is] a significant component of care planning.'[24] This reflects Departmental policy that every child in care will have regular contact with their family (including parents, siblings and extended family) unless to do so would expose them to a neglectful or abusive situation, and the child's case plan must document the arrangements.[25]

Experiences

Sometimes contact was completely severed.[26] Otherwise, contact could be very limited (one hour, once a fortnight) and often unable to be proceed even then because of logistical difficulties such as a lack of a caseworker to supervise, transport or limited time due to school and caseworker hours coinciding.[27] Contact was at times not encouraged or facilitated by the Department.[28] In a telling

[23] Oral evidence of Elders panel, 20 June 2017, 4552.23-36.
[24] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [276].
[25] Exhibit 553.073, Annexure 73 to the Statement of Bronwyn Thompson, Family Contact Arrangements Policy.
[26] See, eg, Exhibit 544.000, Statement of DG, 7 June 2017.
[27] Personal story of AH, 29 May 2017, 4; Exhibit 536.000, Statement of DD, 11 June 2017, [46]; oral evidence of AI, 21 June 2017, 20; Exhibit 673.001, Statement of Thomasin Opie, 23 May 2017, [28]-[30]; oral evidence of foster carer panel, 30 May 2017, 5-6.
[28] Exhibit 458.000, Statement of Liza Balmer, 22 May 2017, [22]; Exhibit 466.001, Statement of CG, 8 May 2017, recommendation 2.

example, foster carer witness CD spoke about the Department's desire to take biological family off joint guardianship orders to avoid having to liaise with and inform them of decisions made. [29]

When children are in foster care, contact has been left to the carer's capacity and willingness to facilitate.[30] Foster carers are desirous of greater support to maintain a child's connections with family, particularly with members who could serve as role models.[31]

There have been inconsistent approaches to meeting the expenses of facilitating travel by family from remote areas to see their children.[32] One legal witness indicated that the Department (in Darwin) seemed to expect that parents would pay for more frequent contact.[33]

Territory practices have not complied with legislation or with Standards 9 and 10 of the National Standards for OOHC, that children be supported to safely and appropriately maintain connection with family and know who they are and where they have come from.[34]

This has had a devastating effect on Aboriginal family dynamics, sometimes such as never to be recovered. Parents (and grandparents) are disempowered by the process and less able to perform a parenting role.[35] Witness CO's personal story about his grandson being taken away, of waiting to see him on his way to school, of his attempts to have a more meaningful contact but that not being facilitated, is difficult to forget.[36]

Siblings

Departmental policy is that it is essential siblings are placed together unless there are exceptional circumstances related directly to the needs of the children.[37] However, recognising that this policy has not been followed, there have been recent moves to examine why there have been separations and to take steps to reunify siblings currently in care.[38]

Departmental data on sibling placements and separation was not easily extractable.[39] In practice it is difficult to get carers to take sibling groups, particularly large ones. While attempts to place the

[29] Exhibit 464.000, Statement of CD, 18 May 2017, [34]-[35].
[30] Exhibit 464.000, Statement of CD, 18 May 2017, [16]-[19]; Exhibit 524.000, Statement of DE, 28 April 2017, [21]-[31].
[31] Exhibit 464.000, Statement of CD, 18 May 2017, [57.4].
[32] Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [105], [118]-[123]; oral evidence of Peter Fletcher, 21 June 2017, 4742:25; Exhibit 671.001, Statement of Maxine Carlton, 24 May 2017, [13]-[15].
[33] Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [118]-[123].
[34] Exhibit 476.009, Annexure 9 to the Statement of Marnie Couch, National Standards OOHC, 12.
[35] See, eg, personal story of CV, 22 June 2017.
[36] Personal story of CO, 30 May 2017.
[37] Exhibit 553.075, Territory Families Policy: Sibling groups in care.
[38] Oral evidence of Marnie Couch, 22 June 2017, 4830.
[39] Oral evidence of Leonie Wharburton, 22 June 2017, 4798.15-20.

children together were made, over time siblings would be separated.[40] Separation of children from their siblings is particularly traumatic.[41]

Reform

Contact with families is more than just access. To ensure a child maintains their Aboriginal identity requires meaningful engagement with families, siblings, kin and other Elders – with all those who have responsibility to impart culture and language.[42] That principle should be enshrined in the legislation and meaningful contact ought to be a condition of all placement agreements and orders. Enshrining such a principle in legislation would have an ancillary benefit of encouraging the exhaustive exploration of all kinship and community options when placements are considered, as there would be a significant economic benefit to the government in ensuring placements are as close to family, siblings, kin and community as possible.

To ensure that appropriate contact occurs, sufficient resources should be made available to:

- Meet travel costs for family contact with children located away from their community
- Meet travel costs for children to attend to cultural obligations on country
- Have identified staff or engage other organisations to provide transport and where necessary, supervision both in and out of normal business hours
- Train all carers in the importance of supporting and facilitating meaningful access.

Departmental procedures will also need to be amended to reflect the above, including by establishing a transparent process whereby either the child, their carer or their family can apply for expenses and arrangements to be met by the Department for visits and other contacts in advance.

Recommendation 20	That legislation is amended to emphasise the need for children to have continuing and meaningful contact with family, including parents, siblings and extended family and other elders; to permit the court to order contact; and to provide for the maintenance of such contact as a condition of all placement agreements. Further, that the principle is enshrined that siblings in care ought to be cared for together or at least in close proximity to each other, with contact to be facilitated. And further, that resources are dedicated, and guidelines and training implemented, to facilitate meaningful contact.

[40] Personal story of AH, 29 May 2017, 4; Exhibit 544.000, Statement of DG, 7 June 2017.
[41] Exhibit 537.000, Statement of AI, 16 June 2017, 16; Exhibit 544.000, Statement of DG, 7 June 2017.
[42] Oral evidence of foster carer panel, 30 May 2017, 5.

Family involvement in decision-making

Witness DE:

I feel like I have to take DCF to court to find out what's happening to my kids. Just before court happens they give me a nicely prepared package of everything that has been happening, to cover themselves that they haven't kept me informed for that last period of time.[43]

Ms Havnen, CEO Danila Dilba Health Service:

The NT Act marginalises and disempowers Aboriginal people at every key decision-making juncture of the child protection pathway including notification, assessment, investigation, substantiation of notification, granting of temporary and permanent care orders and placement of children in out of home care. There is no reference to the importance of facilitating engagement or supporting the participation of Aboriginal families in decision making processes regarding their children.[44]

Legislation and policy

As to involvement of the family in decisions about the child's care, s 9(2)(c) of the Act provides that decisions involving a child 'should be made with the informed participation of … the child's family'.

Section 49 permits the CEO to arrange for a mediation conference if:

- Concerns have been raised about the wellbeing of a child
- The CEO reasonably believes the conference may address those concerns, and
- The parents are willing to participate.

And s 74(4) provides that in conducting a review of a care plan, the CEO must have regard to the views of, inter alia, the parents.

The Act has several provisions for the giving of information to parents:

- If contact has been made of their children for the purposes of an investigation – s 37(5)
- If a child has been taken into provision protection – s 51(2)(b)
- A copy of the care plan for the child – s 73
- About the placement arrangement for the child – s 81
- Of a temporary protection order made – s 106(2)
- Of an application for a protection order – s 124(1)
- For children in the daily care and control of, or under parental responsibility of, the CEO, of where the child is residing and care arrangements – s 135(1)
- Of an application for a permanent care order – s 137C(1).

[43] Exhibit 524.000, Statement of DE, 28 April 2017, [43].
[44] Exhibit 548.000, Statement of Olga Havnen, 21 June 2017, [41c].

The Department's Standards of Professional Practice indicate the following:

- That a child's mother, father and other significant individuals 'are given adequate information to understand and participate in decisions about the child.' (Standard 1.7)
- That 'wherever possible, and it is safe to do so', these individuals 'are encouraged to participate in the process of assessing and providing for the safety and wellbeing of the child and DCF clearly communicates what actions each party needs to take.' (Standard 4.3)[45]

Experiences

The abundant evidence from vulnerable witnesses was of a complete breakdown in the relationship between the Department and children's families. The relationships were mired by a lack of information being provided – as to the reasons for removal and what is happening with the children[46] – families being unaware of their rights,[47] only a very rare use of interpreters for contact with families,[48] and an absence of mutual understanding and respect. As to the lack of information, Departmental evidence was somewhat consistent: information provided to parents was largely verbal, with template letters providing information regarding court proceedings.[49]

Aboriginal family-led decision-making

The Act and supporting policies and procedures provide very little real opportunity for families (and communities) to participate in decision-making about their children.[50] Sections 9 and 12 recognise the possibility in an aspirational sense, but there are no operative provisions which require it at any particular point, or give that objective any scope. The Professional Standards provide only 'weak and qualified references to participation'.[51]

Family Group Conferencing (FGC) is a key missing ingredient. It should be a mandatory process invoked prior to actions to remove children or in conjunction with urgent removals.[52]

The *Growing Them Strong, Together* Report recommended a trial of Aboriginal FGC, which proceeded in Alice Springs in 2011–2012, with promising signs, until it was defunded.[53] Apart from that brief period, the evidence before the Commission is that s 49 is not used as a mechanism to engage in family

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[45] Exhibit 469.189, DCF Standards of Professional Practice.
[46] Exhibit 524.000, Statement of DE, 28 April 2017,[11], [73]-[74], [104], [107]; oral evidence of DE , 20 June 2017, 6; oral evidence of CM, 2 June 2017, 20; transcript of lawyers roundtable, 21 June 2017, 5133.
[47] Exhibit 458.001, Statement of Liza Balmer, 22 May 2017, [31].
[48] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [46].
[49] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [111], [125].
[50] Exhibit 459.000, Statement of John Burton, 22 May 2017, [71].
[51] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 9.
[52] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [78]; oral evidence of Dr Howard Bath, 31 May 2017, 4210; Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [40], [42].
[53] Exhibit 662.040, Alice Springs Family Group Conference Review; Exhibit 456.000, Statement of Donna Ah Chee, 22 May 2017, [22]-[23]; oral evidence of Donna Ah Chee, 29 May 2017, 4030; oral evidence of Dr Howard Bath, 31 May 2017, 4210.

conferencing.[54] Other mediation referral mechanisms discussed in the Act and in evidence operate after proceedings are on foot,[55] and are dealt with in section 4.2.1.

There is now sufficient evidence from New Zealand[56] and other states – pithily canvassed in the SNAICC submission and Mr Burton's evidence to this Commission[57] and not repeated here – to show that such a process need not be implemented on a trial basis.[58] We urge that the Commission consider the Victorian model of Aboriginal Family-Led Decision-Making (AFLDM) conferences delivered together with Aboriginal agencies, slightly altered to apply earlier in the child protection process, to be adapted and recommended for use in the NT. The earlier the process is invoked, the less entrenched the parties are, the less disempowered family members feel and the more flexible the consideration of alternative options.

Components of best-practice FGC models include:

- Engagement with immediate family and with extended family and the broader community
- The process is undertaken in partnership between the Department, the family and the community
- Representation and support for the family should be provided where necessary to ensure effective participation and contribution to the ultimate decisions made
- Issues discussed being focused not just on 'placement' but a priority on keeping the child with their family in their community and how that might be achieved through capacity building and/or kin supports
- Facilitated by an independent Aboriginal facilitator together with/from a local ACCO who knows and is known by the community and able to facilitate and handle conflict between the Department and the family and within the family.[59]

Within those broader goals, SNAICC have identified, in exhibit 599.000, some 'best practice' components for any AFLDM process, which NAAJA commends to the Commission. In particular:

- Legislative provision for:
    - AFLDM processes at the earliest stage of child protection intervention and at further key decision-making stages
    - The participation of children, family members and Aboriginal community representatives in *all* significant decisions involving a child from their community prior to a decision being made

[54] Transcript of lawyers roundtable, 21 June 2017, 7-8; oral evidence of Ken Davies, 30 June 2017, 5415.
[55] Section 127 of the Act and a recent Practice Direction.
[56] Oral evidence of Andrew Becroft, 30 June 2017, 5395-5394.
[57] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 9-10; oral evidence of John Burton, 29 May 2017, 4063.
[58] See also Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [40], [42]; Exhibit 471.001, Statement of Lesley Taylor, 20 May 2017, [42]-[43].
[59] Oral evidence of Larissa Behrendt, 29 May 2017, 4005-4006; oral evidence of Andrew Jackomos, 23 June 2017, 4883; Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [24]; Exhibit 458.001, Statement of Liza Balmer, 22 May 2017, [42]; oral evidence of Liza Balmer, 29 May 2017, 4032; oral evidence of Andrew Becroft, 30 June 2017, 5395.

    - Ultimate transition to partnership with ACCOs and other Aboriginal professionals to convene and conduct the meetings
    - Establishment of an organisation or protocol by which existing law and justice community groups can be contacted to advocate for and support family members through the process
    - Review of decisions that have not complied with these processes
    - The admission of Aboriginal community representatives' views in court and tribunal proceedings
- Policies:
    - Developing protocols for consultation and decision-making involving families and community representatives including:
        - Who will be invited and how
        - The setting of roles and responsibilities
        - The numbers of Departmental staff who may be present at the meeting (to ensure the process is not intimidating)
        - The dissemination of information beforehand to ensure those roles are effective
        - To allow for private family deliberations prior to or during the AFLDM meeting
        - Training for Departmental officers in how to work collaboratively and make joint decisions with families and Aboriginal community representatives
- Resources:
    - For ACCOs and other professionals to support children and families understanding and participating in decision-making processes.

NAAJA endorses recommendation 6 of SNAICC's submission, with some additions.[60] It is noted that legislatively embedding FGC is under consideration.[61] NAAJA submits that the Commission is best-placed to provide some guidance as to the form of the legislative model adopted, and the types of policies and procedures required to support it, in line with the matters discussed here.

[60] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 10.
[61] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [32h].

Recommendation 21	That the Northern Territory Government develop and implement a process of Aboriginal Family-Led Decision-Making applied early in the life of a case that comes to the attention of child protection authorities. The model should be delivered by or in partnership with Aboriginal agencies and facilitated by Aboriginal people. Appropriate alternative arrangements should be explored to ensure Aboriginal Family-Led Decision-Making can proceed while the capacity of Aboriginal agencies to lead this process is developed in particular locations. Protocols should be implemented to ensure sufficient and effective family and/or elder participation.

Support

Early intervention and prevention is dealt with in section 2. However, it is noted here that psychological support for parents of children taken away should continue to be implemented by the Department.[62]

Recommendation 22	That a support service for parents of children who are at risk of being taken into care, or who are in care, is instigated as an urgent priority.
Recommendation 23	That such a support service is delivered by Aboriginal Community Controlled Organisations, and is wholly independent of the Department.

3.2.2 Cultural care

Witness CO:

When he came back home he just speaking in English. So we had to speak in English anyway…

Everything that he miss. Country stories, sing stories, versing, there's many things to complete there. He missed out many things. You know right now he's struggling to go hunting and we give him a little bit more and more and we go out to hunt by yourself. So he's trying slowly but he's not fully covered here. Everything is not fully covered yet…

He stayed with me, until he got his language back. Teaching there, with kids play, go bush, go hunting… Very hard, very hard. Once you get the language back and then he start getting going to the men's ceremony. He's trusted in that way, once he got his language back. And I seen him, and I said not yet, learn your language so you can learn the way they will speak you, speak to your elders so you can listen to them, listen to the elders. I told him that in a good way. So stop here until he get his language back and then go to the men's ceremony so he can hear what they are doing and thinking. How that its going to be good for him to listen really hard…

[62] Oral evidence of CM, 2 June 2017, 9.

Going to men's ceremony, he was too young, I told him not to go yet. I waited for him until 18. They took him out there. So we have to organise our families, elders, to be with him on the side all the time. The elders - man and woman elders. So they have to stay beside him all the time. Don't be scared I tell him. That's your place here. [63]

Dr Fejo-King:

Language connects you to land; language connects you to ancestors; language connects you to the rest of the kinship system.[64]

Legislation and policy

The Act is silent on a child's right to maintain their cultural identity, save for the requirement under s 12(3)(d) that if an Aboriginal child is placed with a non-Indigenous person, that person must, in the CEO's opinion, be sensitive to the child's needs and capable of promoting the child's ongoing affiliation with their culture.

Departmental policy includes that a child's care plan 'should promote and maintain their connection to their cultural heritage' and should be developed in consultation with the child's family and extended family, or if that is not possible, with representatives from the child's community.[65] The Department's Standards of Professional Practice require that care plans 'identify how a child's cultural needs will be met', but do not provide guidance on how that will occur.[66]

Under Departmental policy, cultural care is to be planned via use of a cultural care component of a care plan, but there is evidence that these plans often aren't compiled. The Northern Territory Children's Commissioner has concerns about the lack of an individualised approach to cultural care plans; she has seen examples of insufficient information or information identical to another child's.[67]

Ms Schinkel candidly accepted that there has been a lack of information available to the Department as to a child's cultural identity, context, intergenerational trauma and community context matters.[68] Even the most basic need for children to engage with their Elders, particularly before they die, has not been facilitated.[69]

Experiences

There have been many personal accounts given of the loss of language and the loss of culture that occurs when a child is taken from his or her community for an extended period of time.[70] Elders speak

[63] Personal story of CO, 22 June 2017.
[64] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4677:10-20.
[65] Exhibit 553.097, Territory Families Procedure: Culture in Care Planning.
[66] Exhibit 469.189, Department of Children and Families Standards of Professional Practice, 4.
[67] Oral evidence of Colleen Gwynne, 19 June 2017, 4500.
[68] Oral evidence of Kirstin Schinkel, 30 May 2017, 4112.
[69] Oral evidence of Tracey Hancock, 20 June 2017, 4535–4536; Personal story of DZ, 28 June 2017.
[70] See, eg, personal story of DO, 19 June 2017, 5.

of the difficulties the child has reintegrating with their family structures.[71] For example, witness CO's grandson was only returned to his family when he was 18. He had lost his language, except for how to say 'grandfather' and 'hello'. He has struggled in his return, to learn his language, culture, skin identity and clan responsibilities.[72]

Foster and kinship carers are purportedly supported to facilitate cultural connection through training and case planning.[73] However, it is 'extremely difficult, if not impossible' for non-Indigenous families to provide cultural learning, particularly without language. Cultural learning does not happen only occasionally and intermittently. 'It's a matter of being immersed in the culture. Cultural literacy is something that requires ongoing process of socialisation and being embedded within a social structure and framework.'[74]

Resicare placements suffer from even less likelihood of maintaining cultural contact. For example, DG's former caseworker DH believes that none of DG's placements were culturally safe, that attempts to meet her cultural needs were largely tokenistic and the ACCP was not adhered to.[75]

The Mercer review of the Department reported in April 2017 that there is a need to 'better account for the needs of Aboriginal children with culturally responsive programs and practices aligned with Aboriginal conceptualisations of the family', leading to a recommendation to develop a dedicated Aboriginal Coordination and Policy Team.[76]

Cultural incompetency

These failings are reflective of a broader cultural incompetency within the Department. The cross-cultural training provided by the Department is woefully inadequate: two days of training within the first three months of employment and an optional online course.[77] Dr Fejo-King said it would be impossible to gain a base level of knowledge in two days, let alone cultural competency and cultural congruency in practice.[78] It does not include any component on unconscious bias.[79] The online course does not provide any assessment.[80]

For example, Ms Huddleston came from the UK and had six months' work experience in an NGO in Darwin speaking with Aboriginal clients about mental health needs before coming to the Department. She received cultural training for two days at the commencement of her time and has relied heavily on an Aboriginal Community Worker (ACW) attached to her unit. Over two years she has moved into several different positions, ultimately with the Child Sexual Abuse Task Force. Despite this role

[71] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [16]-[19].
[72] Personal story of CO, 30 May 2017.
[73] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [298].
[74] Oral evidence of Petronella Vaarzon-Morel, 30 May 2017, 4079.
[75] Exhibit 547.000, Statement of DH, 15 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017; oral evidence of DG, 22 June 2017, 3, 7; oral evidence of DH, 22 June 2017, 12-15, 17.
[76] Exhibit 657.002, Annexure 1 to the Statement of Jeanette Kerr dated 12 May 2017, Mercer Report, 92, 111.
[77] Exhibit 657.001, Statement of Jeanette Kerr, 12 May 2017, [51]-[52].
[78] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4672.
[79] Oral evidence of Marnie Couch, 22 June 2017, 4195.
[80] Exhibit 575.000, Statement of Toni Eyles, 19 May 2017, [31]-[32]; oral evidence of Toni Eyles, 23 June 2017, 4959.

involving providing sexual safety education and interviewing children victims and perpetrators – very sensitive topics with serious repercussions – she has received no training about cultural appropriateness issues specifically pertaining to these roles. In her experience, there has never been a lawyer present for her conversations. She was not aware of the concept of 'gratuitous concurrence' and when informed of what it was, her response was indicative of a complete lack of understanding of how differences in communication styles might impact upon her work.[81]

The frequent refrain for a number of Departmental witnesses was that ACWs were essential to the provision of culturally appropriate communications and services. Under policy, an ACW must be consulted in all decision-making.[82] Yet that does not always occur in practice. [83] The caseload alone would render this impossible. There are two ACWs located at the Palmerston office. A senior ACW, Ms Boucher, works with 16 caseworkers, in effect covering a total of about 500 cases.[84] In the investigation and assessment team, there is one senior ACW for 412 cases.[85]

Furthermore, despite the centrality of the ACW role, it has been systemically devalued by the Department. Ms Boucher and Ms Eyles are not considered part of the professional stream – their experience on the ground is not considered sufficient to permit them to actually conduct these meetings and assessments. Often their role is underutilised. Ms Eyles speaks of several concerning features of her experience as an ACW with the Department:

- That there is 'a clear disconnect between the Management in Darwin and the education and experience on the ground in Indigenous communities', with insufficient time being allocated to kinship assessment, no consideration of specific cultural issues pertaining to specific communities or sensitive subject matters (such as sexual abuse).[86]
- That 'a number of people' working in the area lack the knowledge, skills and experience to work with Aboriginal communities and people.[87]
- This has led to a lack of communication to parents and families about their children, including reasons for removal.[88]
- Officers not taking an ACW on trips to communities and instead leaving them in the office completing administrative matters.[89]
- A devaluing of the ACW role and replacing it with non-Indigenous professional staff.[90]
- Not valuing the Aboriginal workers that are there: no rewards, not supported to upskill or progress.[91]

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[81] Oral evidence of Sarah Huddleston, 19 June 2017, 4459:15-30, 4460:23-45, 4461, 4462:1-10, 4463:15 – 4464:26, 4465.
[82] Oral evidence of Bronwyn Thompson, 23 June 2017, 4907.
[83] Oral evidence of Toni Eyles, 23 June 2017, 4958-4959.
[84] Exhibit 659.001, Statement of Adrienne Boucher, 10 May 2017, [36], taking into account average case-loads of case workers.
[85] Oral evidence of Joy Simpson, 19 June 2017, 4433.
[86] Exhibit 575.000, Statement of Toni Eyles, 19 May 2017, [25].
[87] Ibid [26].
[88] Ibid [27].
[89] Ibid [29].
[90] Ibid [33].
[91] Ibid [37], [57.5], [57.6].

- There are limited numbers of Aboriginal people in management positions.[92]

Indeed, there are limited numbers of Aboriginal people working for the Department. In March 2017, there were 172 Aboriginal employees out of 787 full-time or 954 head-count employees.[93] Most of those are at a very junior level. There is one senior Aboriginal executive officer out of 14.[94] These ratios would need to invert to reflect the client base.

The Mercer review reported that there were key gaps identified in cultural competence – concerns that many employees have limited understanding of Aboriginal culture and how to interact with families to promote respect, potentially contributing to mistrust and disengagement with the system and that this is also reflected at the senior leadership level – such that there was an urgent requirement to build cultural competence and responsiveness capability.[95]

Similar conclusions to those in evidence before the Commission were reached by Ms Lloyd, who undertook a review on how culture is dealt with by the Department, in May 2015.[96]

The Minister's signing up to the Family Matters campaign, including to such principles as 'ensuring that Aboriginal … people and organisations participated in and have control over decisions that affect their children', 'Protecting Aboriginal … children's right to live in culture' and 'Challenging systemic racism and inequities'[97] is to be commended. These aspirations must, however, be met with operative legislation and policies and increased Aboriginal participation at senior management levels. It is somewhat concerning that no progress had been made on identified immediate steps of employing a senior Aboriginal person to consult with Aboriginal stakeholders or appointment of an Aboriginal reference panel/council in the course of the Commission's hearings.[98]

NAAJA has made submissions about an overarching statutory authority governed by a board of at least three Aboriginal persons. However, the Department will continue, in whichever model is ultimately adopted, in either a streamlined or more functional form. Aboriginal input at the executive level is a must. NAAJA can see the strengths in the First Nations Advisory Board Model set out in Mr Harvey's evidence,[99] particularly given that the Board sources its authority from the local level and determines its own processes of consultation, but ensuring it has executive decision-making authority. NAAJA would support a recommendation that such a framework is considered with adaptations as necessary in the Territory.

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[92] Ibid [24]-[36], [57.4].
[93] Exhibit 657.001, Statement of Jeanette Kerr, 12 May 2017, [7].
[94] Oral evidence of Ken Davies, 30 June 2017, 5409.
[95] Exhibit 657.002, Annexure 1 to the Statement of Jeanette Kerr dated 12 May 2017, Mercer Report, 12, 89.
[96] Exhibit 679.001, Statement of Patricia Lloyd, 9 May 2017, [14].
[97] Exhibit 661.007, Annexure 6 to the Statement of Luke Twyford dated 5 May 2017, Statement of Commitment.
[98] Exhibit 424.003, Annexure 3 to the Statement of Ken Davies, Reform Current Actions; oral evidence of Ken Davies, 30 June 2017, 5411.
[99] Exhibit 639.000, Statement of Sean Harvey, 27 June 2017; oral evidence of Sean Harvey, 29 June 2017, 5315-5317.

Reform

Ms Lloyd, anthropologist, principal advisor at Territory Families:

Good child protection policy and practice promotes careful consideration of the particular circumstances of the child. It avoids cultural cliches and is informed by a respectful and critical understanding and consideration of culture. It encourages child protection workers to reflect on their own potential biases and to critically consider what factors might influence their decisions. And it demands practitioners engage with families at all points of the system. A culture is required within the system, across the government and non-government sectors where all practitioners, case workers, advocates can think and engage in reflective and critical thinking about culture in the context of their practice, the policy and strategic frameworks and in the specific socio-cultural context of the children and families they are working with.[100]

An Aboriginal child's continued connection to family, community and culture is critical to their wellbeing and ought to be nurtured even if they are in OOHC outside of their family or community.[101] In order to truly care for an Aboriginal child, a caseworker must be culturally adroit, must understand the child's family, culture, background and perspectives and tailor the care plan accordingly.[102] Currently, the Department does not maintain sufficient data to monitor the cultural competency of children's care.[103]

Given the myriad of placement and carer scenarios, a thorough and prescriptive cultural care plan for every Aboriginal child in OOHC is absolutely necessary, to provide a central record of the child's cultural needs. Its importance is such that it ought to be enshrined in the legislation.

Further, policies should also be developed to ensure:

- Comprehensive input into cultural care plans from children, families and community representatives.
- The plans are individualised and sufficiently prescriptive for non-Indigenous carers to follow.
- The plans include learning or maintaining language – which is key to the child's reintegration to their community.
- Sufficient resources and logistical supports are provided to ensure that the cultural care needs of the children are able to be met by carers.
- Cultural care training is implemented for both Departmental caseworkers and carers on a regular and repeated basis. Specific experience and learning in respect of relevant communities should form a component of this.
- Departmental culture should shift – through training, activities, discussions and quality assurance measures – to one of regular critical evaluation of cultural knowledge and competence.

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[100] Exhibit 679.001, Statement of Patricia Lloyd, 9 May 2017, [48].
[101] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 13 and the research cited therein.
[102] Exhibit 538.000, Statement of Dr Christine Fejo-King, 22 May 2017, [32]; oral evidence of Colleen Gwynne, 19 June 2017, 4500.
[103] Oral evidence of Marnie Couch, 22 June 2017, 4191.25-40.

- There should be recognition of demonstrated cultural competency built up by experience and relationships built with Aboriginal individuals, organisations and communities.
- Regular qualitative review of the content of cultural care plans and their implementation.
- Data collection on the keeping, content and implementation of cultural care plans.[104]

Once again, SNAICC's suggested recommendation 10 is adopted by NAAJA.[105]

Recommendation 24	That requirements are introduced in legislation and policy for the completion, implementation and review of cultural support plans for all Aboriginal and Torres Strait Islander children in out of home care in the Northern Territory. Where possible, Northern Territory ACCOs should have a resourced role to support the development of cultural support plans and this role should increase over time in line with the development of ACCO capacity across the Northern Territory.

As to the need for increased cultural training for Departmental workers and carers, the analogy put forward by Ms Havnen from Danila Dilba is apt: DFAT trains its staff for 12 months in language, history, culture, protocols and etiquette before posting them overseas. Aboriginal Australia doesn't get more than lipservice.[106] Ms Eyles agreed the training needed to be ongoing and include localised training and that an ACW should have input into the induction process.[107]

The Elders panel relevantly stated that learning about *our* history, families and culture before entering the community is important to improved child protection.[108] There needs to be training in local customs and introductions. The communications should be culturally appropriate and non-threatening, language-accessible and more widely available – to increase the education on both sides.[109]

[104] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 14; Exhibit 538.000, Statement of Dr Christine Fejo-King, 22 May 2017, [25]-[27], Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4672.
[105] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 15.
[106] Oral evidence of Olga Havnen, 22 June 2017, 4768.1-23.
[107] Exhibit 575.000, Statement of Toni Eyles, 19 May 2017, [31]-[32]; oral evidence of Toni Eyles, 23 June 2017, 4959.
[108] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [20].
[109] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [22]-[24].

Recommendation 25	That the Aboriginal Child Placement Principle, and its underpinning values, are the subject of ongoing training alongside cultural competency training, provided to all staff and carers. That cultural competency forms part of accreditation, monitoring and promotion within the Department and in its agreements with carers. Training in cultural issues pertaining to particular localities and communities from which children come should be given.

Ms Boucher has called for many more ACW positions to be created, so that ACWs can attend every meeting with families.[110] That would appear to be an absolute minimum requirement. The reforms proposed by NAAJA and others for community-based facilitators and support persons for such meetings would, it is submitted, be much better.

Ms Eyles calls for Aboriginal persons to fill additional positions at the Department:

- At Central Intake, so Aboriginal people are more likely to call. There ought to also be interpreters available for those calls.
- In managerial positions, to impact upon the culture of the agency. [111]

Recommendation 26	That the Department actively recruit more Aboriginal staff, including to executive positions. That the First Nations Advisory Board model from Queensland is considered for adoption within Territory Families.

3.2.3 Casework

Witness CL:

The DCF workers never talked to me about care plans or counseling or going to school. They just dumped me at Anglicare … I feel like I am reading barefaced lies when I read about them wanting to send me to school and maintain relationships with my family. It sounds like they cared about me but they didn't at the time.[112]

Witness DG:

No matter what colour of their skin, we are all one blood just different colour. Still love them like they are your own kid. Welfare needs to show that, no matter what kid comes in, treat them like your own children, don't treat them different than your own kid. Welfare needs to understand it. Kids have a

[110] Exhibit 659.001, Statement of Adrienne Boucher, 10 May 2017, [36], taking into account average case-loads of case workers.
[111] Exhibit 575.000, Statement of Toni Eyles, 19 May 2017, [57.3], [57.4].
[112] Exhibit 486.000, Statement of CL, 26 May 2017, [34], [68].

brain and heart and feeling, their hearts are soft and can break easy. But in their brain they remember everything. In their brain they are going through a hard life because what you are doing to them. They are trying to find a good track. But welfare take them off the track. If you treat them well they will turn around and have respect back and love you.[113]

Witness AH:

I don't know there was no discipline, there was no just nothing. No-one actually cares about you emotionally. You're a case file, you're just a number. I felt like I wasn't a person in welfare. There's no way to really put it to be honest because, I don't know, they've got these rules and these you know legislations and everything but they've only got to live by it when they're working, we've got to live by their rules until we leave care or leave the house we're at. I don't know. I remember being told continuous by many different carers that they don't get paid enough to look after you and stuff like that and I'm like well shouldn't you be doing this job because you want to help us kids you know?[114]

Standard 11 of the National Standards in OOHC provide that a child ought to have at least one other person who cares about their future, throughout their childhood.[115] If there is not a carer who can take that role, that level of parental care falls to a caseworker, to monitor the child's wellbeing through case management.[116]

However, the experiential evidence suggests that an understanding, caring and connected caseworker is the exception rather than the norm.[117] Common themes to the evidence included:

Limited contact made of children by caseworkers and caseworkers difficult to reach

A key indicator of the wellbeing of children in care being appropriately monitored is face-to-face contact. The policy is that contact should occur at least once every four weeks, but every two months if someone else sees the child.[118] Foster carers speak of caseworkers not seeing the children for months on end.[119] This is consistent with Departmental evidence across all placement types: in 50.4% of cases across the Territory the policy is not being complied with.[120] This rate is as high as 60% in Katherine.[121] In 17.8% of cases, there has not been contact for more than three months.[122] There were

[113] Exhibit 544.000, Statement of DG, 7 June 2017, [263]-[264].
[114] Personal story of AH, 29 May 2017, 2.
[115] Exhibit 476.009, Annexure 9 to the Statement of Marnie Couch, National Standards OOHC, 13.
[116] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [193].
[117] Personal story of AH, 29 May 2017, 3; Exhibit 544.000, Statement of DG, 7 June 2017.
[118] Oral evidence of Bronwyn Thompson, 23 June 2017, 4897-4898.
[119] Exhibit 464.000, Statement of CD, 18 May 2017, [29]; Exhibit 465.001, Statement of CH, 19 May 2017, [50]; oral evidence of foster carer panel, 30 May 2017, 6-7.
[120] Oral evidence of Bronwyn Thompson, 23 June 2017, 4899.
[121] Oral evidence of Peter Fletcher, 21 June 2017, 4744.
[122] Oral evidence of Bronwyn Thompson, 23 June 2017, 4901.

frequent reports of an inability to contact the caseworker, especially, but not exclusively, outside of hours.[123]

Cultural incompetence on the part of caseworkers

This was generally reported, with a particular emphasis on the lack of *local* cultural awareness.[124] One witness attributed this to the inexperience of most caseworkers, having come straight out of university, with a more westernised idealist approach.[125]

Multiple caseworkers

Every child who gave evidence had had multiple caseworkers. This reflects the extremely frequent turnover of staff experienced by the Department.[126]

Multiple placements

Every child who gave evidence had had multiple placements.[127] Along with other factors often present in a child in care, this can have a toxic effect on the developing brain.[128]

Limited information provided to the child and limited input sought from the child

There has been a widespread failure on the part of the Department to inform children what is happening (in terms of removal and placements), why, and what was going to happen in their care arrangements.[129] There is also limited understanding among children about their rights, even if they have been told.[130]

As the evidence recounted immediately below indicates, children also feel that they have had very little input into decisions about their care. A lack of consultation around case planning deprives a child and their family of having any personal ownership or input into their situation and their development.

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[123] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [18], [35]; oral evidence of Tracey Hancock, 20 June 2017, 4533; Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [20].
[124] Oral evidence of foster carer panel, 30 May 2017, 8; Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [21].
[125] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [31]; oral evidence of Tracey Hancock, 20 June 2017, 4523, 4533.
[126] Oral evidence of foster carer panel, 30 May 2017, 7; Exhibit 478.000, Statement of CK, 29 May 2017, [15]; oral evidence of CX, 1 June 2017, 15, 18; Exhibit 537.000, Statement of AI, 16 June 2017, [44]; Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [19].
[127] See, eg, Personal story of DM, 22 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017; Personal story of AH, 29 May 2017, 1-2.
[128] Oral evidence of Professor Sven Silburn, 19 June 2017, 4408:1-8.
[129] Oral evidence of Tracey Hancock, 20 June 2017, 4538.30-45; Personal story of AH, 29 May 2017, 5-6; Personal story of DO, 19 June 2017, 1-2; Exhibit 537.000, Statement of AI, 16 June 2017, [45].
[130] Oral evidence of Tracey Hancock, 20 June 2017, 4538.4 –4539.10.

It also breaches Standard 2 of the National Standards for OOHC, that children and young people participate in decisions that have an impact on their lives.[131]

Inadequate case planning

Section 70 of the Act requires that a written care plan – which identifies the needs of the child, outlines measures to address those needs and sets out decisions about daily care and control of the child including placement and contact with family – be prepared and implemented as soon as practicable after a child is taken into care. Standard 4 of the National Standards for OOHC requires that each child have an individualised plan that deals with health, education and culture.[132] Section 72 requires the Department to have regard to the wishes of the child in developing the plan. Care plans are to be reviewed within the first two months of first being taken into care and then every six months thereafter: s 74(1).

The repeated evidence was of very basic, non-tailored, desktop-generated case plans created without any input from the child, any lawyer, family member or carer.[133] Departmental data records that as at March 2017, 28.9% of children in care across the Territory did not have a current care plan.[134] In Katherine, over a third of children as at April 2017 did not have a current care plan.[135]

A case plan is a key planning document for providing appropriate care of a child.[136] The availability of a care plan is an indicator of whether a department is actually providing supportive protective services. 'Without that, we just don't know what's happening to those children and families.'[137] There can be no consistency or common philosophy underlying the care of the child among caseworkers and caregivers.

Not meeting health needs

Either physical and mental health needs were ignored or provided without much understanding of the real needs or coordination to meet complicated health needs.[138] There is a lack of therapeutic care available. The National Standards for OOHC require that health needs be assessed within six months of a child being taken into Departmental care. That has not been complied with.[139]

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[131] Exhibit 476.009, Annexure 9 to the Statement of Marnie Couch, National Standards OOHC, 8.
[132] Ibid 9.
[133] Oral evidence of Tracey Hancock, 20 June 2017, 4534; oral evidence of Peter Fletcher, 21 June 2017, 4744; Exhibit 464.000, Statement of CD, 18 May 2017, [30]; Personal story of AH, 29 May 2017, 3; Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [113]-[115]; Exhibit 537.000, Statement of AI, 16 June 2017, [45]; oral evidence of DG and DF, 30 June 2017, 21.
[134] Oral evidence of Bronwyn Thompson, 23 June 2017, 4895.
[135] Oral evidence of Peter Fletcher, 21 June 2017, 4743.
[136] Oral evidence of Bronwyn Thompson, 23 June 2017, 4893.
[137] Oral evidence of Dr Howard Bath, 31 May 2017, 4218:7-25.
[138] Personal story of AH, 29 May 2017, 3; Exhibit 466.001, Statement of CG, 8 May 2017, [28]-[33], [39]-[40]; Exhibit 547.000, Statement of DH, 15 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017; oral evidence of DG, 22 June 2017, 3, 7; oral evidence of DH oral evidence, 22 June 2017, 12-15, 17.
[139] Oral evidence of Joseph McDowall and Ann Owen, 23 June 2017, 4935.

Vulnerable to abuse

Some children suffer abuse in care.[140] The Children's Commissioner has a statutory obligation to report on harm or exploitation in care. In 2015/16 there were 81 cases investigated, but Ms Gwynne believes this figure underreports the scale of the problem.[141] Along with the lack of contact with caseworkers, insufficient monitoring of care providers, and lack of effective access to complaints, children in care are especially vulnerable to abuse and to it being unsanctioned. When they do report abuse, it is not necessarily investigated.[142]

Lack of exit planning and support

Section 86(2) obliges the Department to ensure that a young person leaving care is provided appropriate services. Section 86(4) provides that financial assistance *may* be given for education, accommodation and living needs. Additionally, Standard 13 of the National Standards for OOHC requires that each child have an individualised exit transition from care plan, to commence at 15 years.[143] This has been incorporated into Territory Departmental policy.[144]

Problems upon leaving care reported by young people included: being dropped back with biological family without any reintegration supports, limited life skills having been imparted, no access to money, no facilitation of access to necessary mental health services.[145] A sample reviewed by the Children's Commissioner showed 73% did not have a leaving care plan.[146] At times there was an exit plan, but planning did not start early enough.[147]

The support services available in the NT are generally not suitable for young adults and 'opt in' models of service delivery are generally not accessed by young people in this context.[148] Transitioning from the care system is increasingly isolating for children. Without real support at this point, it is very likely that young people fall through the gaps of the system and go on to entrenched poverty, criminal behaviour and underperformance in education, employment and health.[149]

Reform

Professors Bromfield and Arney:

Child protection work is one of the most complex fields, requiring an extensive knowledge and skill base to assess and respond to child abuse and neglect. Caseworkers need greater support to enable

[140] See, eg, Personal story of DM, 22 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017.
[141] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [47]-[49].
[142] Exhibit 544.000, Statement of DG, 7 June 2017.
[143] Exhibit 476.009, Annexure 9 to the Statement of Marnie Couch, National Standards OOHC, 14.
[144] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [302]-[305].
[145] Exhibit 464.000, Statement of CD, 18 May 2017, [49]-[51]; oral evidence of AI oral evidence, 21 June 2017, 19; Exhibit 478.000, Statement of CK, 29 May 2017, [23]; Exhibit 544.000, Statement of DG, 7 June 2017; Exhibit 547.000, Statement of DH, 15 June 2017.
[146] Oral evidence of Bronwyn Thompson, 23 June 2017, 4904.
[147] Oral evidence of AI, 21 June 2017, 19.
[148] Exhibit 572.000, Statement of Joseph McDowall, 25 May 2017, [74], [80].
[149] Ibid [56]-[57], [61]-[66].

them to ask the right questions and accurately interpret information gathered when making assessments. Training and recruitment of caseworkers needs to be revisited to consider the specific skills and knowledge required by caseworkers working in the Northern Territory, and how this can be provided through pre-qualification and in-service training. Given the geography and population of the NT, this may require Territory specific solutions rather than adopting existing approaches.[150]

NAAJA could not agree more. Caseworkers are dangerously overloaded.[151] From the evidence of DH and DG,[152] it can be seen that having a smaller caseload gives caseworkers the opportunity to develop a better rapport with and understanding of their clients. Territory-specific solutions must include an Aboriginal-centric model of care delivered by more Aboriginal caseworkers or otherwise caseworkers with appropriate cross-cultural dexterity.

A 2015 survey of children and young people in care in Alice Springs developed a list of the top eight things they might want from a case manager:

1. Consistency
2. Contactable
3. Good communicator
4. Who listens
5. Who involves them in decision-making
6. Approachable
7. Spends time with them
8. Has a sense of humour, is kind and knows what they are doing.[153]

A 2016 survey of children and young people in care in Alice Springs developed a list of the top five things they wanted from their placements:

1. Family is important; overwhelmingly, kinship care was preferred
2. Make the transition into care as painless as possible by keeping siblings together and maintaining contact with family
3. Consistency of care
4. That carers will listen to them
5. That case managers involve them in the placement decision and other decisions which affect their lives.[154]

Territory Families has foreshadowed reviews of casework and a redesign of care plans, to make them more child and family friendly.[155] That review would benefit from recommendations made by this Commission arising from the discrete experiences of the children and families it has heard from.

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[150] Exhibit 600.000, Précis of evidence Leah Bromfield and Fiona Arney, [5.e].
[151] Oral evidence of Leonie Wharbuton, 22 June 2017, 4774.
[152] Exhibit 547.000, Statement of DH, 15 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017; oral evidence of DG, 22 June 2017, 3, 7; oral evidence of DH, 22 June 2017, 12-15, 17.
[153] Exhibit 662.018, Kids survey CREATE, 12.
[154] Ibid, 16.
[155] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [280].

Exit planning

There has been no such review of the leaving care plans, nor is there sufficient data kept of post-care services.[156] Such data should be recorded, to measure the transition and highlight areas for improvement.[157]

Mr Twyford's statement says that three transition-from-care officer positions have been introduced to enhance exit planning and experiences for older children in care.[158] That is a good first step, but more fundamental reforms should be considered.

The following recommendations draw on the evidence of Ms Owen and Dr McDowell:

- Consideration should be given to extending OOHC until 21 years of age if desired or otherwise appropriate
- There should be mandatory exit planning, an exit interview and support provided to assist in the transition from care
- This should continue up until the age of 25 years, if desired or otherwise appropriate
- The measures should be enshrined in legislation to keep government to account
- The UK personal adviser model would appear to be best practice; the development of a one-on-one personal relationship through this transitional period will increase the likelihood that services will be accessed. [159]

A voice for children

Witness AH:

And I didn't – I didn't know that we could go to welfare and tell them that something is going on. They never told us that if there's anything wrong with your carers or anything, you know, it was take us to this woman's house. We were told to sit in the room while the adults talked and I peeped through the door and had a look what they're doing and all they would do is sign papers, talk for maybe not even 10 minutes and then not even say goodbye. They would just leave, you know.[160]

Ms Hancock:

[S]ome of the children, when they're actually informed and given that information (their rights) … they do say, 'Yes'. I will intervene and I will say 'Do you actually understand what they're actually saying?' It's like, 'No.' 'Well, why did you actually agree?' … 'I don't know what they're talking about'. That's where – a lot of – the translation. Some of these kids, it's like, they don't know, they've only met that person once. They don't know what they're saying. It's like, 'Yeah, I don't want to talk to you anyway.'

[156] Oral evidence of Bronwyn Thompson, 23 June 2017, 4905, 4906.
[157] Oral evidence of Leonie Wharburton, 22 June 2017, 4798:40.
[158] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [91b].
[159] Oral evidence of Joseph McDowall and Ann Owen, 23 June 2017, 4933-4934, 4946, 4948.
[160] Personal story of AH, 29 May 2017, 1.

Or they don't want to intervene with them anyway. So that's the common response that you will find, that some of them have still no understanding. It needs to be in … their level of understanding of what is, not the actual words of a professional.[161]

Section 11 of the Act provides that:

> When a decision involving a child is made:
>
> (a) the child:
> (i) should be given adequate information and explanation in a way that the child can understand; and
> (ii) should be given the opportunity to respond to the proposed decision; and
> (iii) should be given the opportunity to express the child's wishes and views freely; and
> (iv) should be given assistance in expressing those wishes and views; and
> (b) those wishes and views should be taken into account, having regard to the child's maturity and understanding.

Accordingly, the right to 'be listened to and say what you think and feel' contained in the Charter of Rights for Children and Young People in Care in the Northern Territory is statutorily entrenched.[162] Ms Thompson spoke of opportunities existing for children's involvement and input: at interview during the investigation process or in respect of any long-term order being proposed, during case planning, or during face-to-face contact with caseworkers, or house meetings in resicare.[163]

However, as the quote from Ms Hancock's evidence above indicates, the existence of these formal protections are of little benefit if there is not a culture of allowing a child to speak for all significant decisions, without repercussion, listening to them, and where appropriate, vindicating them by enforcing their rights. As set out above, and consistent with experiences around the country,[164] children do not feel they get a say, they are not consulted on the key issues in their lives. A 2014 survey of children and young people in care in Darwin indicated that only four of the twenty young people surveyed remembered that their case manager had spoken to them about their case plan and only one reported that they felt they had helped make the plan.[165]

Children in care are less likely to engage in a climate where they do not feel heard. It is important that the processes that exist for them to have input and greater control of their circumstances, such as the development of care and cultural plans or important decisions about matters such as health, education and cultural connections, are child-friendly and not tokenistic. That is, a child should have some control over these areas and be properly asked for their input.[166]

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[161] Oral evidence of Tracey Hancock, 20 June 2017, 4538:47–4539:10.
[162] Exhibit 553.059, Annexure 59 to the Statement of Bronwyn Thompson, Charter of Rights.
[163] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [225].
[164] Oral evidence of Joseph McDowall, 23 June 2017, 4938.
[165] Exhibit 662.017, Kids survey CREATE, 10.
[166] Oral evidence of Joseph McDowall, 23 June 2017, 4938.

Recommendation 27	That Territory Families review the role of a caseworker to make it more child-friendly, to permit greater time to establish rapport with the child, to ensure the child's full participation in case management decision-making, and ensure that each officer brings the necessary level of cultural sensitivity and awareness to the role.
Recommendation 28	That the Department extend its services, including transitional services, until a child is 25 years old. That transitional planning is required to begin when a child in care is 15 years of age if on permanent care orders, and to be an ongoing essential element of case planning if the child is subject to short term child protection orders.

3.3 Removal of children

Mr Walder, Manager at Tangentyere Council:

[T]he current Child Protect Child Protection system, much like other systems, has a self propagating tendency. This is fed by the current overarching and overly risk adverse stance of the Department. It works against families and the best interests of children by feeding a sequential set of systems assessments and corresponding interventions in response to the situations of families. Each response and intervention engages the system in the next part of the sequence, whilst the specific situations and needs of individual families, who are not empowered to speak up in this process, are overlooked. What this means when coupled with a system that is institutionally overly risk averse is that unless outcomes are challenged by experienced staff, the system itself drives outcomes for children and their families, drawing them further along into the system. One example of this is a systems focus on substantiation rather than the needs of families at investigation stage. Another is a systems focus on building evidence for a court report rather than a focus on supporting families to overcome presenting difficulties.[167]

Witness DS:

I think it would be good if community elders could get together with the families to sit down and talk about things when there are problems which looking after children and to see if they think the child needs to go to a foster carer or if there is another family member who can look after that child. I think that this would help those parents be supported and I think that this could be a way that families could makes sure they talk about the things then need to do to look after their children.[168]

[167] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [66]-[67].
[168] Exhibit 603.000, Statement of DS, 17 June 2017, [48].

3.3.1 Legislation and policy

The power to remove a child from their parents without their agreement or a court order arises when the Department reasonably considers that (s 51):

i. a child is in need of care and protection; and
ii. provisional protection is urgently needed to safeguard the wellbeing of the child.

The removal will be for 72 hours unless a temporary protection order or protection order is obtained or sought within that period. The court's power to make a temporary protection order is in similar terms to the CEO's power under s 51 (s 105).

A child 'is in need of care and protection' if (s 20):

a. the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or
b. the child is abandoned and no family member of the child is willing and able to care for the child; or
c. the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or
d. the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

'Harm' is defined by s 15.

Section 8(3) states however that 'A child may be removed from the child's family only if there is no other reasonable way to safeguard the wellbeing of the child.'

Departmental procedures include in-house consultation between the caseworker and the team leader to plan an investigation after receiving information indicating child protection concerns from Central Intake.[169] The investigation then proceeds, involving requesting information from other agencies, interviewing all relevant parties including the children.

The child protection practitioner will make a safety assessment considering the nature of the harm, parental/caring capacity, family/environmental factors within the home and the child's developmental needs. There is a Structured Decision Making (SDM) system used to support decisions to be made based upon the assessment of risk to the child, whether upon a report received by Central Intake, or upon the evidence obtained through investigation and assessment of child protection concerns. This was a system designed in the United States, but 'contextualised' for the Territory.[170] At the time of giving evidence, Ms Thompson was unaware what exactly that contextualisation involved and to what extent Indigenous organisations or advisors were involved in that.[171] The system was

[169] Exhibit 513.000, Statement of Joy Simpson, 25 May 2017, [10]; Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [76]-[104].
[170] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [16], [24]-[27], [80].
[171] Oral evidence of Bronwyn Thompson, 23 June 2017, 4909-4910.

obtained in 2012, but not validated until 2017. That validation process indicated that it had been frequently misapplied.[172]

The safety assessment leads to three possible outcomes:

a. Unsafe – child in urgent need of safeguarding, leading to action taken under s 51
b. Safe with a plan – where risks have been identified but there is capacity and willingness on the part of parents to mitigate these risks while further investigation occurs
c. Safe – where no risks are identified and no additional planning in required.[173]

If unsafe, Departmental policy requires the caseworker to again consult with the team leader and also the manager to reach agreement that the child is in urgent need of protection and together plan the removal and make a placement request for the child.[174] It was Ms Thompson's evidence that unless the action being taken is urgent (for provisional protection), there will be a process of also consulting the ACW as to whether there are any other family members who could take the child including informal placements with family or possible family intervention options.[175] However, Ms Simpson's oral evidence was that even where provisional protection was being considered, it was not necessarily the case. On occasion, the only attempts to engage extended family would be by consulting with the senior ACW to consider how quickly she can identify family or if she is aware of other family members. It depends upon the situation at hand.[176]

Kinship assessment does not form any part of this process. That only occurs after a court application is put in. The only basis for the child to go with kin before that is if the family says they will do so, and they are supported to do that. But the Department will not place a child with kin unless there is a kinship assessment, that occurs later.[177]

3.3.2 Removal as a last resort

Use of AFLDM processes before removal

As addressed above, it is NAAJA's strong recommendation that the consideration of kin placements occurs too late, and should be prioritised *before* action is taken, in a manner designed to identify those carers, rather than eliminate them as occurs under the current model, if they are considered at all. The process of removal outlined in the evidence is, as Mr Walder stated in the above quote, 'self-propagating'.

The Act has built into it, expressly through s 8(3) and ss 20(b) and (c), the requirement that Departmental staff consider that there is no other way to protect the child, including that there is 'no

[172] Oral evidence of Bronwyn Thompson, 23 June 2017, 4911-4912.
[173] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [80].
[174] Exhibit 553.037, Annexure 37 to the Statement of Bronwyn Thompson, Procedures: Removing a child to ensure their Safety, 3; Exhibit 513.000, Statement of Joy Simpson, 25 May 2017, [10]; Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [76]-[104].
[175] Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [157].
[176] Oral evidence of Joy Simpson, 19 June 2017, 4433-4434, 4437.
[177] Oral evidence of Joy Simpson, 19 June 2017, 4451.

other family member of the child is able and willing to do so.' To consult the ACW, in the hope that she *already knows* some family member, could not amount to reasonable satisfaction of that precondition to removal. It pays mere lip service to the entire notion of avoiding a child's destabilisation and alienation from family and community.

Departmental policies *must* require child protection practitioners to properly ascertain the existent of kin or other community-based carers as part of their assessment of the need for action. The wealth of information about the potential supports that exist in a community, or within extended family networks – including pre-existing responsibilities and cultural knowledge about the wellbeing of children – is not accessed by the current processes.[178] It is a major issue that the knowledge of families and communities is not actually contributing to the decisions that are being made. Without that, decisions to remove a child away from kin are more likely to be made because alternatives are not readily identified.[179]

The best way for this to occur is to have AFLDM processes implemented immediately in the context of less urgent safety assessments. The purposes could be to identify kin carers or to identify supports that might be given to avoid removal, or just to ensure that the family understands Departmental concerns and allows them the opportunity to address them. The evidence is abundant that children have been removed seemingly abruptly and without much information provided as to why.

The evidence of DJ, for example, was that she was not aware that there were concerns about her child before she was taken away. Her daughter and her siblings were removed for neglect reasons after a lengthy period of interaction with the Department. DJ believes that a more formal meeting where the concerns were communicated in a way she understood, with the presence of her extended family and community elders, should have been undertaken, to enable her (and her mother) to be aware of and address the concerns, with appropriate family and community supports before the erasable step of removal from community occurs.[180] Ultimately, DJ's daughter was returned to her three months later.

Each of DD, DE and CV gave evidence that they had contacted the Department to seek help or temporary respite to cope with children who were presenting with particularly complex needs. Instead, the children were removed from them.[181]

Whilst the policy is to refer families to services following an investigation, either by the Strengthening Families Team or to the Family Support panel, [182] this should be identified earlier, through the AFLDM process, *before* removal occurs. The evidence is replete with discrete supports that could have been given which may have served to keep the family together e.g. accommodation[183] or funding to fix a stove or a hot water system.[184]

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[178] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [11]-[13].
[179] Oral evidence of John Burton, 29 May 2017, 4056.
[180] Oral evidence of DJ, 28 June 2017.
[181] Exhibit 536.000, Statement of DD, 11 June 2017, [77]-[79], [84]-[85]; Exhibit 524.000, Statement of DE, 28 April 2017, [11], [107]; Personal story of CV, 22 June 2017.
[182] Exhibit 513.000, Statement of Joy Simpson, 25 May 2017, [10]; Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [76]-[104].
[183] Oral evidence of Tracey Hancock, 20 June 2017, 4526:38–4526:11.
[184] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [63].

AFLDM processes could have been instrumental in keeping all of these families together.

Where more immediate action is considered necessary, there needs to be a contact in each community for the Department to engage emergency carers based in the community, if not kin. That contact should be the local ACCO and in the interim, whilst capacity is still being built up for the development of the ACCO, local elders groups who could easily be identified.

Ms Simpson raised a concern that contact by the Department with extended family cannot occur without parental consent.[185] Assuming Ms Simpson is correct, that there are parents who withhold their consent, this could be worked around, either by informing and educating parents about the purpose of the consent or indirectly through the promotion of ACCOs who have the knowledge about which family members might be approached more sensitively and/or could do so in an appropriate manner. Communities where traditional obligations are honoured would already have in place individuals who could step into the parental role.

Developing local family support services

There is also a need to develop community-based family support services. For example, in Maningrida, the only family support service dealing with parental 'neglect' was dealing with scabies.[186] It is rather breathtaking in this context that Aboriginal-controlled intensive and early intervention family support services such as those provided by Congress, Ngaanyatjarra, Pitjantjatjara, Yankunytjatjara Women's Council and Tangentyere Council Aboriginal Inc were left unfunded, or unused by the Territory government.[187] Aboriginal community controlled organisations should be funded to provide intensive support – this is what has worked elsewhere.[188]

Legislative reform

As the above examples illustrate, despite the protection built into section 8(3), it does not operate as intended. The Act should be amended to make explicitly clear that removal of children community is to be a last resort, and only after:

- In the case of urgent action, ACCOs or in the short-term, local elders groups, have been contacted by the Department to identify kin or community-based carers for emergency care. It is so important that these children stay with their own community.
- In the case of any other situation:
    - AFLDM processes have been held to communicate concerns, obtain responses, and develop a plan to keep the child safe, at home or elsewhere in the community.
    - Family support services have been engaged.

[185] Exhibit 513.000, Statement of Joy Simpson, 25 May 2017, [16]; Oral evidence of Joy Simpson, 19 June 2017, 4441-4442.
[186] Oral evidence of Rosalee Webb, 20 June 2017, 4615:1-30.
[187] Oral evidence of Andrew Walder, 29 May 2017.
[188] Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [43].

Only where reasonable grounds for concern outweigh harm of removal

Abuse for Aboriginal children in the Territory is, according to Professor Silburn, fundamentally different and more complex than elsewhere. The most common substantiated harm is neglect.[189] In the younger ages, 0-3 years old, this has taken the form of health concerns, failure to thrive issues notified by health services and by age 11 and older, it becomes more about the children being unsupervised and running around on the streets at night.[190] This means not only that the majority of harm or risk thereof is directly related to social determinants (poverty, substance abuse, mental health, overcrowded housing, cognitive issues),[191] but it makes it more difficult to assess risk in an objectively applied, but subjectively and culturally sensitive, way. There is greater room for error.

NAAJA is not privy to all the tender bundles for each witness and is unable to make submissions as to findings that might be made. However, there is a significant body of evidence given by children and families which suggests that some removals may have occurred prematurely at the least:

- On the basis of the behaviour of other family members who live in the family home.[192]
- Where one act of physical discipline led to a child's removal when the family was very strong and the parents were capable, loving parents – the case of CL[193] and CM.[194]
- Because of the child's complex behaviours.[195]
- For failure to thrive where there was contrary medical opinion explaining weight issues.[196]
- Family visitors to the house led to too 'chaotic' a family life, preventing a 'routine' being developed[197]
- Because of parents' substance use without recognising promising rehabilitative steps and the presence of a caregiving grandparent[198]
- Because of a failure to recognise that a grandmother has parental responsibility but will delegate the day-to-day care for a child, under the kinship system, to her 15 year old granddaughter.[199]

The issue of neglect can often be a judgment about poverty or indeed, involve a cultural assumption, or 'unconscious bias', a westernised, judgmental gaze rather than one that is looking at a strengths-based approach. The assessment must instead be undertaken in the context of a fuller picture, informed by other members of the community, other members of the family, and improving Departmental workers' cultural competency so as to read the situation more accurately to ensure the

[189] Exhibit 459.000, Statement of John Burton, 22 May 2017, [32] citing research from 2015-2016; Exhibit 014.001, *Growing them Strong, Together* Report – Volume 1, 177; Oral evidence of Colleen Gwynne, 19 June 2017, 4478.
[190] Oral evidence of Professor Sven Silburn, 19 June 2017, 4392.
[191] Oral evidence of Colleen Gwynne, 19 June 2017, 4478.
[192] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [28].
[193] Exhibit 486.000, Statement of CL, 26 May 2017.
[194] Exhibit 485.000, Statement of CM, 26 May 2017.
[195] Exhibit 536.000, Statement of DD, 11 June 2017; Exhibit 524.000, Statement of DE, 28 April 2017; Personal story of CV, 22 June 2017.
[196] Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [24].
[197] Ibid [25].
[198] Personal story of DT, 21 June 2017; Personal stories of EA and EB, 27 June 2017.
[199] Exhibit 458.001, Statement of Liza Balmer, 22 May 2017, [27].

decision is not being made in a situation where other steps could be taken other than removal of the child, to better protect the child.[200] For example, where one person culturally has authority to make decisions about a child but another person provides the daily care, delegated to a niece, aunty or big sister. This often clashes with Departmental views about parental responsibility.[201]

NAAJA supports a review of the risk assessment process, and the development of an holistic assessment like the Tuittuia assessment framework suggested by Danila Dilba, but one which takes into account the particular cultural factors in place in the Territory.[202]

That assessment needs to include a weighing up of the harm associated with the removal.[203] There should be a factor for gauging how the child's wellbeing will be negatively affected by taking him or her not only from family, but from community and alienating them from their cultural identity and obligations.

Recommendation 29	That legislation be amended to make explicitly clear that removal of children from their community is to be a last resort and only after, in urgent cases, there has been contact to ACCOs or in the short term, local elders groups to identify kin or community based care or in other situations (a) AFLDM processes have been held to communicate concerns, obtain response, and develop a plan to keep the child safe at home or elsewhere in the community and (b) family support services have been engaged.
Recommendation 30	That the Department review the cultural appropriateness of the structured risk assessment tool currently employed and if necessary, develop a new holistic risk assessment process which will take in account relevant cultural factors.

3.3.3 Method of removal

Evidence-gathering

Ms Simpson's evidence was that Departmental processes for assessing harm require the interviewing of children.[204] She told the Commission in oral evidence that the children are always provided with the opportunity to have a support person present and the interview will not go ahead if the child wants a support person and one is not available.[205] Further, that child protection practitioners are 'highly trained to adapt their tools and way of interviewing to meet the child's developmental

[200] Oral evidence of Larissa Behrendt, 29 May 2017, 4001.39–4002.40.
[201] Oral evidence of Liza Balmer, 29 May 2017, 4051:44–4052:6.
[202] Exhibit 549.000, The Tuituia assessment framework guidelines; Exhibit 549.001, Tuituia Assessment - Scale Descriptors; Exhibit 549.002, Oranga Tamariki - Assessment and decision making policy; Oral evidence of Olga Havnen, 22 June 2017, 4764.
[203] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [14].
[204] Exhibit 513.000, Statement of Joy Simpson, 25 May 2017, [10.4].
[205] Oral evidence of Joy Simpson, 19 June 2017, 4416-17.

needs'[206] and 'the outcomes for the children through the process that we use is very, very empowering and positive…'[207]

DJ gave evidence that her daughter and younger siblings were interviewed by Territory Families staff as part of their investigations process.[208] Annexed to DJ's statement are two progress notes from TF detailing those interviews.[209] The details contained in those file notes stand in stark contrast to the picture of child forensic interviews painted by Ms Simpson:

- there was no support person
- no interpreter (when that was necessary)
- they were rushed
- the contents of the interviews reveal that the children were not at all comfortable with the process.

The Elders panel spoke about the need for interpreters. There was some revealing evidence of a Remote Family Support Services Worker who considered she did not need an interpreter, and because of the difficulties to obtain one did not use an interpreter even for a psychological assessment of parenting capacity. However, even she was ultimately prepared to accept that she was a little overconfident in her assessment of people's capacity to communicate in English.[210] There is no data currently kept by the Department on the use of interpreters.[211] Dr Fejo-King agreed interpreters are essential when talking about the complexities of child protection.[212] It may be that requirements for registration as an interpreter should be relaxed to allow for all the interpreters necessary in the communities.[213] However, it is also important that the interpreter receives training in being able to translate legal language and concepts.[214]

DJ also spoke to how she felt 'spied' on by welfare – that she was asked personally intrusive questions off the cuff when she bumped into remote family services support workers in the community or when case managers called her about the children in her care.[215] There is a need for monitoring and evidence-gathering to occur in a more respectful way.

The use of culturally sensitive processes, using support people and interpreters, are necessary to ensure the reliability of the evidence that is gathered.

[206] Oral evidence of Joy Simpson, 19 June 2017, 4416.
[207] Oral evidence of Joy Simpson, 19 June 2017, 4417.
[208] Exhibit 623.000, Statement of DJ, 15 June 2017, [97].
[209] Exhibit 623.000, Statement of DJ, 15 June 2017, Annexures C and D also tendered at DCF.0008.0062.6251 and DCF.0008.0062.6276.
[210] Oral evidence of Rosalee Webb, 20 June 2017, 4608.8-40, 4611.24-45.
[211] Oral evidence of Marnie Couch, 22 June 2017, 4196.
[212] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4675.27-30.
[213] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4675.40-47.
[214] Exhibit 671.001, Statement of Maxine Carlton, 24 May 2017, [24]-[25].
[215] Exhibit 623.000, Statement of DJ, 15 June 2017, [97].

NAAJA adopt the submissions of DJ at [9] and [68], in particular, that there is a need for some transparency in the training and guidelines for such interviews, that require the presence of a support person to be organised and the use of interpreters considered.

Use of force

The use of police to effect removals is permitted under Departmental policy without any guidance as to when it should occur, except to say that police should be used rather than staff having to use physical force.[216] This has resulted in threats being made, large numbers of police attending and of itself causes trauma.[217] It shows disrespect and further entrenches distrust, treating people like criminals.[218]

The removal process can be especially damaging where done at school in front of friends and staff, undermining the relationship between the school community and the Aboriginal community.[219]

NAAJA submits for the development of an MOU between the Department and community-based organisations as to the processes for removal of children, which permits a process by consent to be first attempted.

Subterfuge

Older children have given evidence of being taken into the care of the Department by being told they were only being taken to a fast food place.[220] This type of practice is reminiscent of the removal of Aboriginal children of the stolen generation 'of going for a ride in a motor car' and should not be sanctioned, as it only engenders the perpetuation of distrust of the Department. Children should also be treated with respect and provided sufficient information to enable them to process the situation.

Reasons

It has been dealt with above but requires reiteration in this context. More than a 'template letter' and information kit needs to be given when one's children are removed. Too often these things are not received or not understood.[221] There should be a meeting with supports or extended family members present whereby information can be provided in a sensitive way where it is understood.

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[216] Exhibit 553.037, Annexure 37 to the Statement of Bronwyn Thompson, Removing Child Procedure, 4.
[217] Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [24], [29]; oral evidence of Larissa Behrendt, 20 May 2017, 4007; Exhibit 524.000, Statement of DE, 28 April 2017, [14]; Exhibit 623.000, Statement of DJ, 15 June 2017.
[218] Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [11].
[219] Oral evidence of Larissa Behrendt, 20 May 2017, 4007.
[220] Exhibit 537.000, Statement of AI, 16 June 2017; Personal story of AH, 29 May 2017.
[221] Transcript of lawyers roundtable, 21 June 2017, 5 l33.

Recommendation 31	That the Department review its processes for interviewing children and their families to ensure that they comply with best practice in terms of cultural appropriateness and fairness. In particular, to ensure support persons are available for persons interviewed and interpreters are used where appropriate.
Recommendation 32	That the Department review is processes of removal in particular, to provide guidance about the limited circumstances in which police should be used, to ensure that families and children are informed in a timely way of what has occurred and why, and to prohibit the deception of children being taken into care.

3.4 Reunification with families

Mr Burton, SNAICC:

In an NT child protection system where families are so evidently not supported to stay together or reunify, and the Aboriginal and Torres Strait Islander Child Placement Principle is scarcely implemented, the dangers of making poor child protection decisions final and permanent decisions are enormous. Further, the NT legislative regime for permanent care contains none of the safeguards typically included in other states to ensure permanent decisions are in the best interests of children.[222]

Despite reunification being a key principle underlying the objectives of the Act, it has been identified as an area of child protection that is significantly lacking in data.[223] Whilst the rate at which Aboriginal children are reunified with their families is not known, it is clear from the evidence before this Commission that Aboriginal families are not adequately or appropriately supported to reunify, as suggested by Mr Burton.

Official policy and practice regarding reunification in the Northern Territory is set out in the Territory Families Care and Protection Policy and Procedures Manual which states: 'When a child enters care, prompt assessments are made to determine the appropriateness of reunification.'[224] Even if it is the case that prompt and appropriate assessments take place when a child enters into care (which is highly questionable given the evidence in relation to the lack of appropriate kinship care assessments and involvement of family during the investigation of child protection concerns), adherence to the Aboriginal Child Placement Principle requires *ongoing* assessment of appropriate family placements.

[222] Exhibit 459.000, Statement of John Burton, 22 May 2017, [103].

[223] National Voice for Our Children, *The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal,* 7; Steering Committee for the Review of Government Service Provision (2017), 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.

[224] See Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 15, citing the Manual as quoted in the Standards of Professional Practice.

Ms Hancock noted that she did not regularly see case managers visit children in the Safe Pathways facility to discuss and update care plans.[225]

High caseloads significantly impact upon the ability of caseworkers to conduct prompt and regular assessments to changing situations. Ms Schinkel gave evidence to the Commission about the impact of high caseloads on caseworkers, stating;

> [T]he biggest thing would be that perhaps we're not meeting with the families as much as would be an ideal situation. So it may be that instead of getting those weekly, fortnightly interactions, they are only getting a monthly interaction which may not be well suited for some particular families, particularly those complex matters.[226]

The lack of service availability and delay in access to family support services is another factor that can impact the timely reunification of families. Housing, for example, remains a significant barrier and there is currently a complete lack of specifically funded services to assist homeless people in remote Northern Territory.

3.4.1 Reunification plans

Ms Schinkel provided evidence to the Commission that reunification plans are not a standalone plan but rather encased within the child's care plan.[227]

Whilst it is important that the reunification plan is included within the child's records, it is NAAJA's position that along with the implementation of an independent parent/family support service, a comprehensive reunification plan must be a stand-alone document that is devised in consultation with parents, and family members where appropriate, and is a working document that is revisited and updated on a regular basis, utilising Aboriginal family-led decision making processes and culturally competent case planning approaches as detailed in this chapter.

3.4.2 Permanency planning

Reunification is often compromised by the policy directive for permanency planning. NAAJA supports policies, procedures and practices that aim to provide stability in a child's living arrangements. However, any such measures *must* be culturally competent (see commentary below), and where parents have made efforts to address risk factors and issues of concern, there must be scope to revisit reunification.[228]

[225] Oral evidence of Tracey Hancock, 20 June 2017, 4527:13-20.
[226] Oral evidence of Kirstin Schinkel, 30 May 2017, 4098: 8-13.
[227] Oral evidence of Kirstin Schinkel, 30 May 2017, 4094: 19-32.
[228] Oral evidence of Andrew Walder, 29 May 2017, 4049:35.

The effect of permanency planning on reunification is a concern shared by Mr Burton from SNAICC, who observed:

> [T]here is a concern that, as a system increasingly takes its eyes and its efforts towards putting children into permanent arrangements, that there may be less attention given to the kind of resources and supports that need to go into addressing the needs for a family.[229]

3.4.3 Disregard for the Aboriginal concept of family and child rearing

NAAJA contends that a Western perspective of a family often supersedes an Aboriginal concept of family structure and child rearing. The effect of this on the reunification process is that immediate family members, extended family and kin are often not considered as options for reunification.

Judge Oliver articulated this issue in *CEO of the Department of Children and Families v LF* [2016] NTLC 11 at [16]–[24], most particularly at [16]–[17]:

> In my view the applicant's focus on reunification with the parents is based on a model of family constituted by a parent or parents and a child or children which is common in Western society rather than the broader model of child raising more common in Aboriginal society. In Western societal terms it might be expected that the primary goal with respect to a child removed from the care of his or her parents is to have the parents address the care concerns with a view to reunifying the child with his or her parents once the concerns have been addressed. This would ordinarily be considered to be in the child's best interests, that is, return to parents as opposed to placement with some other family member.
>
> The question is whether primacy of placement with the parents is one that is to be applied to aboriginal children as being in his or her best interests.

By reunifying a child with an appropriate family member through the kinship system, the child is reunified with the family, their culture and community.

Ms Schinkel acknowledged in her evidence to the Commission that the primary point for reunification is with whoever the child was removed from, and mostly the removal is from the parents.[230] It highlights the lack of appreciation for Aboriginal child rearing structures and the ability to reunify children with the family through reunification with other family members. Ms Schinkel accepted that reunification with biological parents, solely, was too narrow a prism to consider reunification for an Aboriginal child.[231]

3.4.4 Unconscious bias

At present, Territory Families is responsible for a number of roles relating to a child. The same caseworker who must act in the best interests of the child is also responsible for the support and

[229] Oral evidence of John Burton, 29 May 2017, 4056: 42-47.
[230] Oral evidence of Kirsten Schinkel, 30 May 2017, 4112:14-18.
[231] Oral evidence of Kirsten Schinkel, 30 May 2017, 4112:27-28.

facilitation of families with the aim of reunification. It is NAAJA's experience that this impacts upon the reunification process significantly, predominantly arising from an unconscious bias towards NAAJA's clients.

This unconscious bias towards Aboriginal people is of the highest concern to NAAJA and is reflected in comments that our often made by case workers to clients. NAAJA lawyer Brianna Bell provides the following examples in her statement to the Royal Commission:

> 'There is no dining table'[232]

This comment was made by a case worker as a justification for delaying reunification. It shows a lack of cultural competency and an inability on the part of the caseworker to differentiate between their own cultural norms and actual protective concerns. Clearly the absence of a dining table is not a protective concern and not a reason to delay reunification of a child with its family.

> 'The parents need to show commitment' and 'they knew the buses would stop running when they decided to go back.'[233]

These comments were made in the context of parents not having appropriate accommodation and not being in the same community that their child was. The parents' perceived inability to remain in the same community as their child was inappropriately and incorrectly construed by the caseworker as a lack of commitment by the parents.

As illustrated throughout the evidence heard by this Commission, reunification is impacted by the enormous case load of case workers.[234] Parents and families may be experiencing a multitude of emotional and mental difficulties with the experience of having a child removed from the family and their own past or present trauma. Families must be afforded the time and opportunity to make the personal and familial changes necessary to have their child returned to them. This requires an understanding by the child protection agency that change may not occur in a short amount of time, and therefore reunification must be an ongoing consideration and timeframes, especially short and unrealistic ones and particularly in the absence of appropriate support and mentoring services in remote regions, does not assist the reunification process and do not assist families to achieve change.

Having an independent service focused on reunification and ultimately, supporting the needs of the family, will also allow for the throughcare required for families. It is important that for a period after reunification that support is given to families with a staggered approach to the family not requiring assistance from the child care agency. This continuum of services across the three stages of child protection is essential.

3.4.5 Lack of support services in remote communities

It has been expressed throughout this submission that support services are lacking in remote communities for relationship counselling, domestic violence education, living skills, child nutrition and

[232] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [45].
[233] Ibid.
[234] See, eg, Oral evidence of Leonie Wharbuton, 22 June 2017, 4774.

safety, substance abuse, disability and health concerns. As a result, families from remote communities are at a significant disadvantage and placed often in placed in impossible positions to address protective concerns in the absence of support and assistance achieve reunification. Investment must be made in providing support services in communities, these services can and should be linked with the services providing early intervention support.

NAAJA supports recommendations 11 and 12 concerning reunification from SNAICC's submission to the Royal Commission.

Recommendation 33	That there is an emphasis on stronger and more transparent processes for reunification, better resourcing, accessible, culturally safe, confidential and independent family support services that help address the circumstances of removal.
Recommendation 34	That legislative definitions, policies and procedures relating to reunification be urgently amended to reflect the Aboriginal concept of family, and allow for reunification to be considered in that context and not narrowly construed as only encompassing biological parents of the child.
Recommendation 35	That the legislation, policies and procedures relating to permanency planning be amended to reflect the Aboriginal concept of family and to encourage permanency planning in the context of the child's immediate family, extended family, kin and community.

3.5 Aboriginal Child Placement Principle

Grandmother DZ personal story:

We have just been able to get access after six years … And DCF tell me yesterday I'm being uncooperative because they want to lock me in to one day a month … My husband works, it's pretty hard to lock in a day. I work. They've arranged for us to have weekend visits with some of them, but when you travel 1600 kilometres return trip for a two hour visit. They're paying, fair enough, but, you know, that's an awful lot to ask … And I've said with the psychological assessment if we pass, could we have a foster care assessment and be able to have the children in school holidays for certain days, and I thought that was a reasonable request. These kids … could've had a happy life with us … One Facebooked my grandson and said, 'Can you ask nan to come and get me.' … they're old enough probably to make their own decisions … I rang welfare for both of them … I went and picked her up. There was no problems there. I think she was about 14 at the time. I had her for several weeks. Well, I got into all sorts of trouble over that … The police were called. They just traumatised her really badly … My mum died. So I asked them could I take the children with me for the funeral. No. They've got to go to school…[235]

[235] Personal story of DZ, 28 June 2017, 1-4.

Former foster child CJ:

I do thank them [Welfare] for their support … if it wasn't for them … I would not have met [positive Aboriginal foster carer who made a difference in his life] … but with their support, they could have led me to … family members … amongst a better family … my own family … and that could have probably made a big difference.[236]

Dr Fejo-King:

You must have culturally congruent practices … at least know the people that you're working with. Know something about the culture. Know something about the kinship system. And if you can't find some kin, no, there are people with the same totems, who have been through the same ceremonies, and others who have an interest in this child. Broaden your view.[237]

3.5.1 What is it?

The Aboriginal Child Placement Principle (the Principle) was developed to reflect and apply the framework of Aboriginal kinship relationships and obligations and guide child protection services to strengthen Aboriginal children's connections with their family, community and cultural identity.[238] The Principle has five elements:[239]

- **Prevention**, recognising the rights of Aboriginal children to be brought up within family and community;
- **Partnership** with Aboriginal community representatives, including their participation in all decision-making including:
    - individual case decisions at intake, assessment, intervention, placement and care, and judicial decision-making processes; and
    - the design and delivery of child and family services;
- **Placement** of Aboriginal children in out-of-home care (if necessary) prioritised in the following order:
    - Aboriginal relatives or extended family members or other relatives or extended family members
    - Aboriginal members of the child's community
    - Aboriginal family-based carers
    - If not, then as a last resort:
        - A non-indigenous carer or in a residential setting
    - If not with Aboriginal relatives or extended family, must be within close geographic proximity to the child's family.

[236] Exhibit 474.000, Statement of CJ, 24 May 2017, [28], [29], [35], [49]-[50], [81]; oral evidence of CJ, 31 May 2017, 6-7, 15.
[237] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4664.33-41.
[238] Exhibit 538.000, Statement of Dr Christine Fejo-King, 22 May 2017, [13]-[24].
[239] Exhibit 661.008, Annexure 8 to the Statement of Luke Twyford dated 5 May 2017, SNAICC Best Practice for the Implementation of the ACPP, 4.

- **Participation** of Aboriginal families in decision-making about their children including regarding intervention, placement and care, included judicial decisions; and
- **Connection,** Aboriginal children in out-of-home care are supported to maintain connections with family, community, culture and country, especially children placed with non-indigenous carers.

Whilst 'partnership' and 'participation' elements relate to participation of families and ACCOs in processes and decision-making, Aboriginal-led approaches driven by ACCOs are essential across all elements – the empowerment of families and communities is critical to effective prevention efforts, to quality placement decisions that are aligned with the Principle and to support long-term cultural connections for children in OOHC.[240]

3.5.2 Legislation and policy

Only the Placement aspect of the Principle is recognised and enshrined in section 12(3) of the Act. That provides that an Aboriginal child 'should, as far as practicable' be placed with a person in the following order of priority:

a. a family member
b. an Aboriginal person within the child's community
c. any other Aboriginal person
d. a person who, in the CEO's opinion 'is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).'

Additionally, section 12(4) states that an Aboriginal child 'should, as far as practicable, be placed in close proximity to the child's family and community.'

Departmental policies require application of section 12 for Aboriginal children and provide guidance as to how to do so.[241] The most directly applicable, the ACPP Practice Guide, was implemented after the *Growing Them Stronger, Together* report.[242]

Some points that can be made about the body of policies and procedures produced and Ms Couch's evidence[243] about them:

- The ACPP is solely considered as a placement priority list and not as an underlying philosophy designed to inform a number of aspects of child protection policy designed to ensure continuing connection for the child with his or her family, community and culture.

[240] Ibid, 5.
[241] The primary ones being Exhibit 476.013, Annexure 13 to the Statement of Marnie Couch, ACPP Practice Guide; Exhibit 476.014, Annexure 14 to the Statement of Marnie Couch, Placements Policy; Exhibit 476.015, Annexure 15 to the Statement of Marnie Couch, Placement sourcing Procedure and Exhibit 476.012, Annexure 12 to the Statement of Marnie Couch, Finding Kinship Care Model.
[242] Exhibit 672.001, Statement of Luke Twyford, 23 May 2017, [17].
[243] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [81]-[105].

- The responsibility for taking steps to comply with it is split between Central Intake (obtain family member details), Child Protection caseworkers (explore kinship options), Carer Assessment and Support Team (authorisation assessment), the Placement Unit (searching for authorised kinship carers upon a placement request) and general caseworkers (continuing to identify kin throughout a placement), all consulting with ACWs. Whilst there is a need for a continual reconsideration of a higher priority placement, this would more appropriately be co-ordinated by one central office responsible for kinship and community-based care, who can be staffed by Aboriginal people and develop lines of communication with ACCOs in the communities or other elder groups. It is difficult to see how there can be effective relationships, leading to a free flow of information, when there is the possibility of so many people being involved and making inquiries. It is also foreseeable that when there are so many people known to be conducting kinship inquiries, there may be unwitting gaps in those inquiries.

- The policy is not clear on how the application of the ACPP might occur in urgent circumstances. From the evidence of Ms Simpson, Ms Thompson and Ms Couch,[244] this often results in no attempts to source kinship or community carers. If the process was streamlined to one particular unit, and relationships existed with the communities, those persons may be able to be identified swiftly.

- Dr Fejo-King's evidence is that the genogramming tool utilised by the Department is inappropriate because it conveys a westernised concept of a family tree which does not capture the complexity of the Aboriginal kinship system, going through skin names, bloodlines, totems, ceremonial links and mission connections, leading to some important members of the child's extended family and cultural relationships being omitted in the net of potential carers.[245]

  The Commission heard from a panel in Central Australia about the complexities of kinship relations.[246] They operate from the individual outwards and include that person's extended family, with varying personal connections and responsibilities. They include biological but also co-residents. There are different kinship systems that operate in the NT. Whilst they have common elements, there are also variations in respect of, lines of descent, nomenclature and principles of marriageable kin types.

  The Arrente system can be contrasted with the Pitjjantjatjara or Western Desert system and there is a distinct system used by the Warumungu, Barada and even more distinct systems used by other Aboriginal groups. Some kinship systems have subsection systems (in Warlpiri its eight skin subsections), others do not. Others have moieties and semi-moieties. Those distinctions relate to patterns of descent, ownership of land and different ritual responsibilities. The child's identity comes from his or her family group, clan group, relationship with country and dreamings; it is not an individual identity and it may change in

[244] Oral evidence of Marnie Couch, 22 June 2017, 4814; Exhibit 553.000, Statement of Bronwyn Thompson, 9 June 2017, [229].
[245] Exhibit 538.000, Statement of Dr Christine Fejo-King, 22 May 2017, [13]-[24].
[246] Oral evidence of Margaret Turner, Kumalie Riley and Petronella Vaarzon-Morel, 30 May 2017, 4074, 4078, 4080; Exhibit 462.000, Statement of Petronella Vaarzon-Morel, 25 May 2017, [18]-[25], [31].

different stages of the life cycle. This is why it is extremely hard for a person to return to communities after being away for their childhood.

- Caseworkers are required to record on CCIS the ACPP placement type chosen, the process of consultation undertaken, and the reasons for choosing that particular placement. This does not go so far as recording the outcomes of deliberations for each step taken. It should do so. The child's file should of course contain details of all kinship carers proposed and any reasons for their rejection/disqualification.

- There is a risk that the process becomes one of elimination rather than facilitation of kinship care.

- The people nominated for 'consultation' broaden the lower the priority option.

It should be noted that reforms currently under contemplation by the Territory government include those advanced by SNAICC's best practice guide to implementation of the full intent of the ACPP.[247]

3.5.3 Application

There is no published data from which a proper examination of the application of the ACPP in the Territory can be made.[248] The only reference to Aboriginal status in the Monthly Performance Reports is the number of Aboriginal children in care and the percentage with Aboriginal carers[249] This is the data pointed to by Ms Wharburton as indicating the application of the ACPP.[250] There is little, if any, ability to monitor how well staff understand and implement the ACPP. There would be the training, have to watch their interactions, and then the results.[251] What practitioners struggle with is not the legislative priority to place Aboriginal children with Aboriginal families, but the requirements to liaise with the family and work out who the strong family members are who could be suitable kinship carers, bringing parties together, interpreters etc. Difficult to implement when there is a workforce who does not have a deep understanding of the kinship connections in Aboriginal culture.[252]

Anecdotally, Mr Walder and Ms Morton indicate that their experience is that the Principle is not applied as a priority.[253] Ms Hancock also saw that kinship care was not being used enough. She attributed that to a lack of understanding of the depth and extent of kinship relationships in Aboriginal society. Also, she has seen many kids self-place back with family in circumstances where the

[247] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [26f].
[248] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [75]-[76]; Exhibit 459.000, Statement of John Burton, 22 May 2017, [74].
[249] Exhibit 492.002, Annexure 2 to the Statement of Leonie Wharburton, Monthly Performance Report template.
[250] Oral evidence of Leonie Wharburton, 22 June 2017, 4794:30-35.
[251] Oral evidence of Leonie Wharburton, 22 June 2017, 4794:45 – 4795:45.
[252] Oral evidence of Leonie Wharburton, 22 June 2017, 4795.
[253] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [55]; oral evidence of Andrew Walder, 29 May 2017, 4044; Exhibit 470.000, Statement of Wendy Morton, 22 May 2017, [56]. See also Exhibit 453.000, Statement of Larissa Behrendt, 27 May 2017, [24].

Department does not then seek to reclaim them. To her, this raises questions about the basis for their removal from family in the first place.[254]

Ms Hey said that once a child is placed, the system appears to prioritise stability of placement over the continued application of the ACPP, leading to children remaining in placements outside of their communities.[255] The reality on the ground is also that overwork in caseworkers leads to less time being spent on the more complex and less timeframe-oriented tasks, such as continued kinship assessments.[256] The same factor leads to a lack of thoroughness in kinship assessments, a reliance upon the family to identify kin to the exclusion of efforts by the Department. In Mr Carlton's experience, there are rarely properly undertaken investigations kinship carers in communities.[257]

The witness DN spoke of her daughter being taken when she was 4 years old, without being told why. She has siblings who work in the community who could be kinship carers, but her daughter was not placed with them. Her daughter has been in the system for 10 years now, flown back for 2 hourly visits from time to time.[258]

Another gap in the data is as to how far away from family Aboriginal children are placed.[259] Often placements are made very far away from family.[260]

The figures to some extent speak for themselves. 90 per cent of all children in out-of-home care in the Northern Territory are Aboriginal. Yet only 25% of them are in kinship care, with a total of 36.2% of the Aboriginal children in out of home care in either family, kin and other Aboriginal carers' care. This is only just over half the national average of 65.6%.[261] This is a significant failing. NAAJA considers, as Mr Burton indicated in his evidence,[262] that whilst numbers of authorised kinship carers are insufficient to meet demand, the grossly low rate is also reflective of widespread lack of knowledge, understanding, and adequate processes for and commitment to, the implementation of the Principle.

[254] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [26]-[27]; oral evidence of Tracey Hancock, 20 June 2017, 4527.
[255] Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [103]-[104].
[256] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [30]; Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [50]; Exhibit 470.000, Statement of Wendy Morton, 22 May 2017, [56]-[57].
[257] Exhibit 671.001, Statement of Maxine Carlton, 24 May 2017, [19].
[258] Personal story of DN, 20 June 2017.
[259] Oral evidence of Professor Sven Silburn, 19 June 2017, 4110:20-35.
[260] Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [30.2]; Personal story of DO, 19 June 2017.
[261] Exhibit 459.000, Statement of John Burton, 22 May 2017, [29]-[30] and Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 4 citing statistics from the Productivity Commission (2017); Oral evidence of Marnie Couch, 22 June 2017, 4149.
[262] Exhibit 459.000, Statement of John Burton, 22 May 2017, [72]-[73].

3.5.4 Kinship identification

Dr Fejo-King indicated that best practice would be to map kinship comprehensively when the family first engages with the system. This requires caseworkers to have sufficient understanding and awareness to ask the right questions of the right people.[263]

This will be different for different communities. Thus, there is a real need for cultural training specific to each community, and relationships developed at the community level to streamline processes of obtaining that information. Ultimately, it should be the community who does the mapping, they have the background knowledge and will be able to make more thorough identifications, and be able to engage all the relevant sources of information – the child, the family, extended family members, relevant kin, elders and traditional owners.[264]

NAAJA adopts the submission by APO NT that a 'kinship care worker' position be developed to perform kin identification and recruitment role as well as a more holistic role, to ensure the stability of kin placements by supporting kin and extended family members who are caring for children. But notes that this program should be transferred over time, depending upon capacity development, to be delivered by ACCOs.

3.5.5 Recruitment, eligibility and authorisation of kinship carers

Professor Arney prepared a joint paper looking at the research which exists into effective recruitment for Aboriginal foster and kinship carers.[265] From the little research that existed, the following conclusions were made:

- There was a deep mistrust of government preventing people from becoming involved as carers
- To bridge that gap, using experienced Aboriginal carers were most effective in connecting with families of similar backgrounds. Successful recruitment strategies have often involved self-referrals from people who hear about the programs through 'word of mouth'. The use of those carers in recruitment materials, fielding inquiries and providing training was important
- Recruitment materials and training was also more effective if translated into community languages and delivered by Aboriginal people with knowledge of the local kinship and social structures in a low key, non-intrusive way
- Community events around families and recruitment (with family and cultural activities) were a positive strategy to build solidarity around the community's shared responsibility to keep children safe and in the community, to keep the culture strong
- Developing relationships and connections with potential carers assisted, as there may be reluctance to discuss difficult family dynamics and issues with strangers

[263] Exhibit 538.000, Statement of Dr Christine Fejo-King, 22 May 2017, [34]-[37]; Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4669, 4671.
[264] Oral evidence of Dr Christine Fejo-King, 21 June 2017, 4666, 4672-4673.
[265] Exhibit 662.035, Annexure 35 to the Statement of Luke Twyford dated 10 May 2017, *Foster and Kinship care recruitment campaign – Literature review,* Menzies School of Research, particularly at 34-36.

- Foster and kinship care assessments were perceived as alienating and more flexibility in eligibility criteria was needed
- A consistent theme emerged, with the suggestion that Aboriginal community-based organisations should be funded to work with and support kin carers through all processes – recruitment, assessment, training and support – as intermediary organisations in the out of home care system
- There are alternative, more culturally appropriate, assessment and training tools specifically for kinship and Aboriginal foster carers that have been developed by Yorganop Child Care Aboriginal Corporation in WA and the Australian Association of Children's Welfare agencies in collaboration with the NSW Department of Community Services in NSW. The latter specifically assess ability to raise an Aboriginal child, and maintain connection with culture, and use a communication style of trust building and 'yarning' that is more appropriate in the Aboriginal context. (Another example mentioned in the SNAICC submission is the Winangay Aboriginal Kinship Assessment Tool, an ACCO-developed strengths based kinship care assessment approach.[266])

As to recruitment, there have been recruitment campaigns (at shows, talking posters) and discussions at an individual and operational level, but not at a systemic level of coordinating with local Aboriginal representative bodies to address the issue of needing more kinship carers. Both Mr Davies and Ms Couch agreed more work could be done, to improve partnerships and relationships and begin recruiting at the local level.[267] The recruitment strategies highlighted in the above list should be considered.

The evidence heard in this Commission is consistent with the points made in the above list about lack of trust and the significant hurdle presented by the current framework is unwieldy which treats all foster carers and kinship carers, indigenous and non-indigenous the same.[268] Ms Gwynne called it 'not well adapted to the way of life in some communities.'[269] That evidence has included, mainly from legal practitioners working in the sector:

- The personal, property and security checks are extensive and for some, intimidating. They include complicated documentary requirements that are in English. They involve all adult members of a household, including those who are not always there, but when they are, are there for a reasonably lengthy period of time. In remote communities, the paperwork is sometimes unavailable.[270]
- There are extensive delays in the process, often because the process was not started immediately upon identification of the person. Best case scenario is 12 weeks but it is not

[266] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, citing the Queensland Child Protection Commission of Inquiry Report (2013), 368.
[267] Oral evidence of Marnie Couch, 22 June 2017, 4170; oral evidence of Ken Davies, 30 June 2017, 5433.
[268] *Care and Protection of Children (Screening) Regulations* do not differentiate: Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [51]. Neither do the policies and procedures: ibid, at [81].
[269] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [69]-[71].
[270] Oral evidence of Liza Balmer, 29 May 2017, 4043–4044; Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [100]; Oral evidence of Marnie Couch, 22 June 2017, 4158-4159, 4168; Exhibit 531.000, Lajamanu Kurdiji Group submission, 1 March 2017.

uncommon for the process to take 6 months and there have been reports of it taking up to 18 months.[271]

- The process is too risk-adverse. Kinship carers are often rejected because of issues which could either be remedied with changes/support or should not otherwise disturb the placement: overcrowding, historical domestic violence, a problem with one person who stays at the house, food insecurity (because of others taking food away from the child).[272]

It is of course appreciated that some Departmental workers have the experience and skills to, for example, conduct home assessments in a way that is flexible enough to meet the housing conditions in communities.[273] But that does not address the community perceptions and neither is it a guarantee that the processes and procedures will not be applied in a subjective, inconsistent or discriminatory and culturally biased way.

Departmental policy provides for culturally safe support to be provided for the assessment procedure, and for internal review for some, but not all, bases for rejection.[274]

The impact of the delays in the current processes lead to children being held in non-indigenous care away from community for extended periods of time. Sometimes this time is long enough for the child to become more attached to a carer, if in a stable home, than to his or her family.[275]

NAAJA submits that a more flexible eligibility criteria and a streamlined, culturally appropriate authorisation process is needed to remove that as a barrier to people agreeing to take on kinship and Aboriginal foster care. The studies in other States show that children's safety and wellbeing can still be prioritised by alternative, less standardised approaches. They should be considered and adapted for the different localities in the Territory, to be delivered by local ACCOs. The delays in police checks ought to be resolved by way of inter-Departmental agreements about the urgency of providing them in the kinship assessment process.

[271] Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [98]; Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [53]; Oral evidence of Marnie Couch, 22 June 2017, 4163; Exhibit 458.001, Statement of Liza Balmer, 22 May 2017, [23]; Exhibit 667.001, Statement of Matthew Fawkner, 11 Ma 2017, [12]; oral evidence of Andrew Walder, 29 May 2017, 4044.
[272] Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [17]-[18]; Exhibit 671.001, Statement of Maxine Carlton, 24 May 2017, [11], [18]; Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [102]; Oral evidence of Marnie Couch, 22 June 2017, 4160-4161; Oral evidence of Tracey Hancock, 20 June 2017, 4528–4529, Personal story of DT, 21 June 2017; Oral evidence of Andrew Walder, 29 May 2017, 4044.
[273] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [82].
[274] Exhibit 476.006, Annexure 6 to the Statement of Marnie Couch, Authorised Carer Nomination Procedure; Exhibit 476.007, Annexure 7 to the Statement of Marnie Couch, Authorised Carer Assessment Procedure; Exhibit 476.008, Annexure 8 to the Statement of Marnie Couch, Authorised Carer Approval Procedure.
[275] Oral evidence of Liza Balmer and Andrew Walder, 29 May 2017, 4049.

3.5.6 Support for kinship carers or families caring for children

Statement of Ms Couch:

Relative and kinship carer support – there are no services funded in this grouping.[276]

As the quote above indicates, there are no government funded service providers specifically supporting relative and kinship carers.

The Foster Care Association NT, whilst it includes kinship carers within its remit, are not presently providing that support in any real sense: only 9% of its membership is Aboriginal and they do not generally approach the organisation for training.[277] Whilst there are two Aboriginal board members, there are no Aboriginal staff.[278] The organisation does not appear to be the most suitable to providing support to Aboriginal kinship and foster carers. Even Territory Families has encouraged it to be more inclusive by emphasising kinship carers within its activities.[279]

Furthermore, whilst the evidence is clear that foster carers and kinship carers receive the same allowance, there are many informal kinship carers who have no such support. Those individuals are holding families together, but are not recompensed in any real way. They do not have any training opportunities etc.[280] They do not receive respite, but can only place the children elsewhere under a temporary placement arrangement.[281]

One such kinship carer was witness CQ who gave her personal story. She said she would get contacted by Welfare, intrusively examining her after several years as a responsible carer, with her not knowing whether there is an open or closed case for her own daughter and another little girl she cares for. She obtained support from her mother and sister-in-law.[282]

Respite arrangements with family members face particular administrative difficulties. For example, a grandmother taking a child from a foster family for respite care or long-term visits has had difficulty receiving the appropriate allowance.[283] And there is evidence that a family carer with shared parental responsibility for a child with high needs is not being given respite when it is sought for only a few days. [284]

[276] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [23].
[277] Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [35].
[278] Ibid [40].
[279] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [92].
[280] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [53]-[55]; oral evidence of Andrew Walder, 29 May 2017, 4044; Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [42]-[43].
[281] Oral evidence of Marnie Couch, 22 June 2017, 4852.
[282] Personal story of CQ, 31 May 2017, 1.
[283] Exhibit 464.000, Statement of CD, 18 May 2017, [20]-[22].
[284] Exhibit 536.000, Statement of DD, 11 June 2017, [133].

3.5.7 Reform

The ACPP is about more than placement; it is about recognising the need for Aboriginal children who are taken from their parents to have a continuing connection to their family, community and culture, and putting into place mechanisms designed to achieve that. The placement principle is one important aspect of that. Other aspects are canvassed in other parts to this submission. Most relevantly for the purposes of this chapter, they include the real participation of families and communities in decisions about the child, enlisting supports from the communities to give family support and identify kin or other Aboriginal carers, and if the child is placed outside his or her community, ensuring that either the carer or the Department will take on the responsibility of maintaining, as far as possible, the child's cultural identity, language and connections. The interconnectedness of these discrete features is recognised by the National Standards in Out of Home Care in that the proportion of placements under the ACPP is the measure for compliance with Standard 3, requiring participation by ATSI communities in decisions.[285]

The Act and supporting policies and procedures contain much aspirational content, but do not go far enough to implement the full extent of the ACPP. NAAJA commends to the Commission the best practice elements of the Principle set out in Ex 599.000 attached to the statement of Mr Burton. Pages 9-16 contain a table of legislative, policy, resource and accountability measures to achieve compliance with the full intent of the Principle. There has also been some significant work done in Victoria on implementing the Principle by the Aboriginal Children's Commissioner,[286] including the publication of the report *In the Child's Best Interests.*[287]

NAAJA would like to specifically note, and embrace, the following ideas for reform, drawing from those reports, but adapting and adding to them in ways that might more fulsomely reflect Territory children's needs, relevant to out of home care:

- The Department, in partnership with ACCOs, defines the full intent of the ACPP in the Territory and then promotes it to its workforce and community sector stakeholders
- Legislative provision for:
    - Regularly reviewing low priority placement decisions
    - Streamlining authorisation processes and reducing eligibility requirements for kinship carers
    - Assessing non-Indigenous carers' willingness and capacity to maintain and support child's cultural identity and contact between the child and his or her family and community prior to placement
- Policies:
    - Recording evidence why placement was not made at each higher level of the ACPP placement hierarchy (not just the ultimate placement decision)
    - Establishing, implementing and reporting on effective and timely measures to locate and identify kin

[285] Exhibit 476.009, Annexure 9 to the Statement of Marnie Couch, National Standards OOHC, 9.
[286] Exhibit 558.000, Statement of Andrew Jackomos, 13 June 2017, [29.2]; Oral evidence of Andrew Jackomos, 23 June 2017, 4882-4886, 4868-4869.
[287] Exhibit 560.000, *In the Child's Best Interests,* Report of the Victorian Commissioner for Children and Young People, 2015.

    - Public and consistent reporting on valid and meaningful performance indicators on compliance with placement preferences
    - Training for Departmental officers about the ACPP, legal requirements and practice tips on how to best implement it in service provision and legal settings
    - Partnering with ACCOs for concerted recruitment efforts – for kinship and Aboriginal community-based foster carers
- Resources:
    - For ACCOs to identify, assess, training, approve and support kinship and Aboriginal community-based foster carers
    - For ACCOs to manage placements and support carers for Aboriginal children in non-Indigenous care.

Ultimately, NAAJA adopts Recommendations 4, 5 and 9 put up by SNAICC in its submission[288] with its own additions.

Recommendation 36	That the Aboriginal Children's Commissioner, Northern Territory conduct an initial and then periodic review into the Northern Territory child protection system's legislative, policy, and practice compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, with reference to the aims and elements of the Principle as described in this submission and reflected in the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.
Recommendation 37	That the Northern Territory Government develop and implement a detailed practice guidance and training program for child protection practitioners on full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, drawing on the expertise of Aboriginal and Torres Strait Islander community controlled organisations and community members to inform content and delivery.
Recommendation 38	That the Northern Territory Government develop a program of culturally appropriate kinship carer identification, recruitment, assessment and financially supported. Where possible this program should be delivered by ACCOs or transferred over time in line with their capacity development. In particular, the program should also seek to drive increased use of kinship care through processes of family-led decision making.

[288] Exhibit 459.001, Annexure 1 to the Statement of John Burton, SNAICC submission to the Royal Commission, 8 and 14.

3.6 Foster care

Children's Commissioner, Ms Gwynne:

There is a very high rate of turnover of foster carers. Far too many are lost due to a lack of management and support by the government. Every foster carer I have spoken to says that they feel government treats them poorly. They don't feel supported or respected, as more than one carer has stated they are seen as part-time baby sitters. There needs to be a complete cultural shift in the way that foster carers are treated. An important element of this will be relieving the overburdened Territory Families staff to ensure they are able to provide adequate support to carers.[289]

CF, a foster carer:

Every child needs at least one person who is irrationally crazy about him or her.[290]

There are many positive stories about foster carers who have made a difference in their children's lives.[291] The foster carers who gave evidence before the Commission showed a high level of insight and care for the children they had interacted with. The following submissions flesh out the issues succinctly put by Ms Gwynne in the above quote.

3.6.1 Resources

There is a need for more foster carers, and particularly, for more Aboriginal foster carers. Recruitment drives, as discussed previously, should be undertaken.

3.6.2 Respectful engagement and information sharing

As indicated in the quote from Ms Gwynne, a number of foster carers have given evidence of a disrespectful, non-communicative, non-consultative, inflexible and often defensive and vindictive approach from the caseworkers with whom they are required to liaise. [292] This approach was often deleterious to the child's care and was indicative of only a cursory regard for the child's more time-consuming needs (for family contact, particular health supports etc.).

Routinely, insufficient information is provided to foster carers about the child's history, including delayed provision of the 'Essential Information Record' and only sometimes receiving a case plan. Input into that latter document is not often sought.[293] It is hoped that the development, in May 2017, of the Charter of Rights for Foster and Kinship carers will assist with some of these issues. However, it

[289] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [72]-[73].
[290] Exhibit 380.001, Statement of CF, 2 May 2017, [54]. This was a quote from a training program that particularly struck him.
[291] See, eg, Exhibit 537.000, Statement of AI, 16 June 2017; Personal story of AH, 29 May 2017.
[292] Exhibit 464.000, Statement of CD, 18 May 2017, [27]-[28], [30]-[31]; Exhibit 466.001, Statement of CG, 8 May 2017, [29]-[30], [43], [49]-[52]; Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [66], [69], [94], [104].
[293] Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [64]-[65]; Exhibit 466.001, Statement of CG, 8 May 2017, [35]; Oral evidence of foster carer panel, 30 May 2017, 9-10.

should be noted that there is nothing in that list of eight principles, which specifically addresses kinship carers or the cultural needs of children.

A number of carers gave evidence of inadequate care by caseworkers, which has been incorporated in the evidence referred to under Part II above.

3.6.3 Training

The Foster Carers Association NT provides training, resources, advice and support to foster carers.[294] That organisation seek professional development training to be mandatory requirement for registration for carers in particular on children with complex needs, be it mental health, exposure to trauma or challenging behaviour.[295] Some foster carers acknowledged that this training is necessary.[296] Ms Couch accepts that this should occur.[297] There are also gaps in the training available to those living in remote locations.[298]

3.6.4 Cultural competency

As accepted by Ms Owen in her evidence, there are great challenges for foster carers despite their best efforts, to maintain cultural connections for Aboriginal children in care. There is an initiative the Foster Carers Association is looking at setting up for programs for carers to learn language with the children.[299] That initiative should be resourced and properly supported, given the centrality of language to a person's – particularly an Aboriginal person's – identity.

Government should work with carers and 'bend over backwards' to support young children to maintain connection to culture.[300]However, the evidence from carers is that it is largely left up to their own capacity and willingness to facilitate contact with family and the meeting of cultural obligations.[301]

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[294] Exhibit 571.000, Statement of Ann Owen, 23 May 2017.
[295] Oral evidence of Ann Owen, 23 June 2017, 4955; Exhibit 572.000, Statement of Joseph McDowall, 25 May 2017, [36], [92].
[296] Exhibit 465.001, Statement of CH, 19 May 2017, [11]; Exhibit 464.000, Statement of CD, 18 May 2017, [8]-[9]; Oral evidence of foster carer panel, 30 May 2017, 11-12. See also Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [107].
[297] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [56]-[59].
[298] Ibid, [60].
[299] Oral evidence of Ann Owen, 23 June 2017, 4950.
[300] Oral evidence of Joseph McDowall, 23 June 2017, 4951.
[301] Exhibit 464.000, Statement of CD, 18 May 2017, [16]-[19], Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [106]-[107].

3.6.5 Other support

There are other supports sought by foster carers in their evidence to the Commission, which should of course be available:

- Respite care is either not available or not organised until the last minute causing much disruption to the child.[302] Regular and planned respite provides greater sustainability [303]
- There have been difficulties getting through to case managers in emergency situations and a lack of support for dealing with complex behaviours.[304]
- Therapeutic support for children and family should be a given, not requiring approval.[305]

Recommendation 39	That there be mandatory training provided to all carers, including foster carers, in trauma-informed practice to assist in caring for children exhibiting troubling behaviours.

Further, as indicated above, NAAJA is of the view that non-Indigenous foster carers ought not be authorised to accept Aboriginal children unless they have been assessed as culturally competent and willing and able to facilitate the child's connection to family, community and country.

3.7 Resicare

Out of Home Care manager, Ms Couch:

Not all children are suitable for foster or home-based care. Children with highly complex needs that are not suitable for foster or home-based care are often placed in a residential placement.[306]

Children's Commissioner, Ms Gwynne:

Until recently there has been a lack of appropriate placement options for children under protection orders who leave a detention centre … Those who leave detention often end up in residential placements for which they are ill-suited. Residential placements work well with certain types of children, particularly those who are relatively self-disciplined. They are rarely suitable for the children who are coming out of detention, who almost invariably need high levels of support, structure and intensive management. This is exacerbated by a lack of thought being put into the combinations of

[302] Exhibit 465.001, Statement of CH, 19 May 2017, [43].
[303] Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [103].
[304] Exhibit 464.000, Statement of CD, 18 May 2017, [44]-[48].
[305] Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [102].
[306] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [106].

children put into residential care, which results in younger kids being placed with older children with more complex issues.[307]

3.7.1 Resicare as a 'placement option'

As implied in the quote from Ms Couch's statement above, resicare options are something of a catch-all when there is not another placement available, either because of a shortage of foster carers, or because the child has a behavioural history which has led to home-based carers declining to take them, or because of bad-planning on the part of caseworkers.[308] Placements at resicare facilities are often motivated by the need for a placement rather than the child's best interests.[309] They are the last preference in the continuum of OOHM.

Yet, desperation and commercialisation on the part of some centres can lead to conflict of interest – wanting to build business, take more kids, and be available and accept placements beyond capacity.[310]

Because the placements are often urgent, there is at times a dearth of information provided to the residential facility in respect of the child being placed there. Only sometimes a care plan was provided, and if so, usually it would be a basic cut and paste job.[311]

3.7.2 Staff, training and conditions

There is a high turnover of staff.[312] The Children's Commissioner has found that the centres are often dirty and poorly maintained, managed by staff who do not receive sufficient training or support.[313] Ms Wharbutron called it a 'non-professional' and 'non-skilled' workforce, some of whom have had no experience working with Aboriginal children.[314]

The evidence from Ms Couch is that at least the government-run resicare facilities do receive therapeutic crisis intervention training, albeit she is unsure if there is a component specific to Aboriginal people.[315]

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[307] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [62]-[63].
[308] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [12]; Exhibit 667.001, Statement of Matthew Fawkner, 11 May 2017, [13]-[15]; Exhibit 673.001, Statement of Thomasin Opie, 23 May 2017, [16]-[20]; Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [56].
[309] Oral evidence of Tracey Hancock, 20 June 2017, 4523–4524.
[310] Oral evidence of Tracey Hancock, 20 June 2017, 4531:26 – 4532:5.
[311] Oral evidence of Tracey Hancock, 20 June 2017, 4522, 4534; Oral evidence of Marnie Couch, 22 June 2017, 4840.
[312] Oral evidence of foster carer panel, 30 May 2017, 12-13.
[313] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [74].
[314] Oral evidence of Leonie Wharbuton, 22 June 2017, 4790, 4794; Exhibit 544.000, Statement of DG, 7 June 2017, [87].
[315] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017,[43]-[47], [106]; Oral evidence of Marnie Couch, 22 June 2017, 4849.

A number of witnesses to the Commission have spoken of the negative of being placed in resicare including:[316]

- increased criminal and anti-social behaviours
- bullying/intimidation from other children
- lacking in warmth and caring environment
- lack of boundaries
- variable quality of carers
- inconsistent approaches by carers
- basic life skills not taught
- boredom.

Take the example of DG.[317] She had significant mental health issues. She was placed in resicare with largely unskilled staff, having received basic, tokenistic training, none with any training in providing therapeutic care. It was also an unsuitable location, there were changes in the role provided by the staff at resicare and the applicable rules, charges of property damage were brought against DG by the Department, and at one point she was placed in such a facility with a known sex offender, despite DG's particular vulnerabilities and her caseworker's concerns being raised about this internally. She entered a sexual relationship with him and fell pregnant (to someone else) whilst in resicare.

It is hoped that some of the strategies put into place following the Downman Inquest in 2016 will make a difference for these children.[318] But some of the reforms are limited to Territory Families-run centres.

Further, the resicare model is not suitable for most children.[319] Every child witness who has given evidence about their time in residential care had negative experiences. Most reportable incidents in care occur there.[320] It is particularly unsuitable to younger children, however Departmental records indicate that 37 of 110 kids in residential care are 12 years or less.[321]

Despite what may be good intentions on the part of some or most workers, the residential care model is flawed.[322] Because of its inability to provide a realistic family environment, it ought not be used at all.

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[316] Exhibit 465.001, Statement of CH, 19 May 2017, [13], [17]-[18], [21]-[22], [27]-[35]; Exhibit 478.000, Statement of CK, 29 May 2017, Oral evidence of CX, 1 June 2017, 13; Oral evidence of CL, 2 June 2017, 12; Exhibit 667.001, Statement of Matthew Fawkner, 11 May 2017, [13]-[15], Exhibit 673.001, Statement of Thomasin Opie, 23 May 2017, [16]-[20], Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [108]-[109], Exhibit 653.000, Statement of DF, 21 June 2017, [27]-[48], [54].

[317] Exhibit 547.000, Statement of DH, 15 June 2017; Exhibit 544.000, Statement of DG, 7 June 2017; Oral evidence of DG, 22 June 2017, 3, 7; Oral evidence of DH, 22 June 2017, 12-15, 17.

[318] Exhibit 672.001, Statement of Luke Twyford, 23 May 2017, [74].

[319] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [74].

[320] Oral evidence of Marnie Couch, 22 June 2017, 4837.

[321] Oral evidence of Marnie Couch, 22 June 2017, 4839.

[322] Oral evidence of foster carer panel, 30 May 2017, 12-13.

3.7.3 Dealing with behavioural issues in care

Typically, children presenting at residential facilities have experienced multiple and/or traumatic placement disruptions, abuse and present with challenging behaviours and attitudes or social/emotional difficulties.[323]

There is evidence that misbehaviour in care is more likely to result in police involvement – even for very trivial behaviour e.g. destruction of property or acting out – than would be the case if it occurred within a family setting.[324]

There needs to be an alternative non-punitive approach taken in such circumstances. First, a therapeutic, trauma-informed care approach is absolutely necessary.[325] Ms Kerr's statement is to the effect that such a model is currently being implemented through training of resicare staff in Territory Families operated facilities.[326] Second, if there are supportive parents or extended family members or past carers who can support the child to try to improve behaviours, that contact should be facilitated and not rejected.[327] Third, there ought to be, built into the residential care agreement, some discretion about whether to call police for minor criminal conduct. This could be done in tandem with the MOU or prosecution guideline which would permit police to, even if called, decline to issue minor charges.

NAAJA has recommended in its Submissions on Youth Detention for the immediate adoption of Protocols for the de-criminalisation of residential care for trivial offences.

3.7.4 Self-placing

Rising numbers (in April 2017, 46 out of 1045 children) of children are 'self-placing'; leaving a residential care centre and returning home or to extended family or friends. Resicare workers advise the Department, and there has been abundant evidence that the Department does very little about it.[328] Ms Gwynne indicated that the consequence of self-placing was limited engagement with the Department, including limited support and limited risk and safety assessments.[329]

Ms Couch accepted that the self-placement may be indicative of there being no need for protection orders and the matters should be re-evaluated.[330] Alternatively, there may be a real safety risk for some children which is not currently being monitored.

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[323] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [7]-[8].
[324] Oral evidence of Leonie Wharbuton, 22 June 2017, 4789; Oral evidence of Larissa Behrendt, 29 May 2017, 4007; Exhibit 544.000, Statement of DG, 7 June 2017, [189]-[211].
[325] Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [8].
[326] Exhibit 033.001, Statement of Jeanette Kerr, 2 December 2016, [16]-[21].
[327] Exhibit 536.000, Statement of DD statement, 11 June 2017, [105]-[107].
[328] Exhibit 457.000, Statement of Andrew Walder, 26 May 2017, [52]; Exhibit 464.000, Statement of CD, 18 May 2017, [36]-[39]; Personal story of AH, 29 May 2017, 4; Exhibit 478.000, Statement of CK, 29 May 2017, [24]; Oral evidence of CL, 2 June 2017, 14; Exhibit 524.000, Statement of DE, 28 April 2017.
[329] Exhibit 520.000, Statement of Colleen Gwynne, 29 May 2017, [13]-[14].
[330] Oral evidence of Marnie Couch, 22 June 2017, 4150-4152.

3.7.5 An alternative?

Several witnesses have raised the possibility of instead of being relegated to resicare in the centres, of small group homes being established in the child's community of origin, staffed by local people, where they can retain language and keep in regular contact with their families so as to not to fracture their identity and belonging. The possibility of young mothers living there in a supported environment was also raised, the idea being to keep it small and home-like.[331] There is currently only one Aboriginal residential care home; most are incapable of ensuring there is such a continuing connection.

Such a proposal should be left to individual communities to design as they see fit. Keeping a child in the community would be vastly preferable to being placed at a residential care home in town. But there would likely still be a need to still prioritise kin and home placements.

Recommendation 40	That residential care outside of individual community groups homes be phased out as an OOHC options.

3.8 Purchased care

A very high number of children are being placed in 'purchased care' scenarios; families who otherwise would operate family day care being paid through an agency to undertake what is in effect foster care. Some children remain in those placements for years and form attachments with the family.

Apart from the cost (approximately five times what foster carers are paid), this is an inappropriate arrangement:[332]

- There is no Departmental screening for the carers. They do not go through the lengthy authorisation process that foster carers and kinship carers do.
- There is no training by the Department, nor oversight of training.
- Instead the standards of long-day child-care providers apply, a Certificate III in day care. But there is no real oversight of whether even that qualification is obtained
- Regulation and oversight only occurs by consent
- Rely on agencies to deliver training, quality control over these providers, and also until very recently complete home visits to oversee safety
- No special accreditation or additional skill sets required for care for children with high needs.
- No cultural training component, in circumstances where there are no records whether there are any Aboriginal carers.

[331] Oral evidence of foster carer panel, 30 May 2017, 15; Exhibit 526.000, Statement of the Bunawarra Elders, Maningrida, 15 June 2017, [30]-[33].
[332] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [45]; Oral evidence of Marnie Couch, 22 June 2017, 4176, 4178,-4179, 4182, 4190, 4811-4813, 4823-4824, 4833; Oral evidence of Clare Gardiner-Barnes, 21 June 2017, 4709–4710.

Recommendation 41	That purchased care arrangements be phased out unless they are able to be incorporated into a standardised training, accreditation and monitoring framework alongside other care providers.

3.9 Crossover issues

3.9.1 The link between care and detention

The correlation between a young person's engagement with the child protection system, out of home care and engagement with youth justice is undeniable, and supported by evidence locally, nationally and internationally.[333]

Professor Silburn observed:

> Recent advances in neuroscience, genetics, epigenetics, developmental psychology, epidemiology and economics have profoundly changed scientific understanding of the extent to which early life (pre- and post-natal) environmental factors influence the normal processes brain development and can have very significant life-long effects on children's health, learning and behaviour.[334] …
>
> There are two aspects of early life neuro-direct relevance to children's increased future risk of offending and youth detention. First, each of the early life adversities described above can profoundly affect children's cognitive development and their capacity for adaptive problem solving. Second, they typically also impact on the way in which the neural circuits connecting the mid-brain with the frontal cortical regions develop. These circuits are responsible for what is termed 'executive function' and the capacity for self-regulation of attention, behaviour and emotions.[335]

In our Submissions on Youth Detention, we discussed the cross-over and linkages between children in detention and children in care and made recommendations for specialised case workers within Territory Families to work with these clients.[336] We also emphasised the importance of continuity of care throughout a young person's experiences with child protection, youth justice and detention and the need for a protocol for justice practices relating to children in care[337] due to the over-policing of

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[333] Oral evidence of Professor Silburn, 19 June 2017, 4394. See also; oral evidence of Dr McFarlane, 2 June 2017, 4324 and oral evidence of Karen Broadfoot, 2 June 2017, 4327. For detailed discussion at statistics see Exhibit 491.014, Annexure KB 14 to the statement of Karen Broadfoot, *The link between child maltreatment and adolescent offending - Systems neglect of adolescents* by Judy Cashmore published in Australian Institute of Family Studies, Family Matters, No. 89, 2011 and Exhibit 491.015, Annexure KB 15 to the statement of Karen Broadfoot*, An analysis of the association between criminal behaviour and experience of maltreatment as a child in the Northern Territory* by Joe Yick, published by the Northern Territory Government, May 2016.
[334] Exhibit 511.000, Statement of Sven Silburn, 18 May 2017, [8].
[335] Ibid, [11].
[336] NAAJA Submissions on Youth Detention, July 2017 at sections 5.4.9 and 8.3.10.
[337] NAAJA Submissions on Youth Detention, July 2017, Introduction and Chapter 5.

children in out of home care and the criminalisation of conduct which would not normally warrant a police response in a family setting.

Territory Families have recognised the complexity and intensity of service provision required for clients of both the child protection and youth justice systems and the need for review and reform in the way that the Department caters for this client group, moving towards 'a more holistic approach to service delivery'.[338] This aligns with NAAJA's call for an emphasis on continuity of care, although NAAJA expresses caution at the overreliance on the newly created Youth Outreach and Re-Engagement Teams (YORETs) to perform a diverse set of roles spanning detention, youth justice and child protection.[339] Further discussion regarding YORETs and their proposed role(s) can be found in chapter 10 of our Submissions on Pre- and Post-Detention.

Of significant importance regarding the current child protection system, is the contention that placement in out of home care *in and of itself*, cannot be assumed to be a protective factor.[340] The importance of the Aboriginal Child Placement Principle, cultural care and kinship are discussed throughout these submissions, and NAAJA contends that it is the appropriate focus on these elements which will lead to placement in out of home care being protective.

3.9.2 Care related offending

Witness BV:

Resicare made me fall down all the time. By this, I mean that it felt like I could not do the right thing even when I was trying. It felt like I never knew what the rules were so I was always breaking them. I did not understand what I was supposed to be doing or when I was supposed to be doing it… When I broke the rules, the carers would call the police and I would get locked up.[341]

Witness BL:

They [DCF] dropped me off at a Lifestyle Solutions group house. They didn't let me choose where I was going to stay. I had a curfew so I couldn't see my mum or do anything. They wouldn't let me use the phone to call my mum. I ran away and didn't go back, I was staying with family and friends. It makes me upset and angry to think about it again.[342]

The experiences of BV and BL highlight the importance of an age and ability appropriate, therapeutic, trauma informed and problem solving approach to addressing the behaviour of children in out of home care.

In the Introduction to our Submissions on Youth Detention we called for:

[338] Exhibit 491.000, Statement of Karen Broadfoot, 20 June 2017, 2-3.
[339] See for example, oral evidence of Karen Broadfoot, 2 June 2017, 4325-4330.
[340] Oral evidence of Dr Katherine McFarlane, 2 June 2017, 4325-4326; Exhibit 489.00, Statement of Katherine McFarlane, 26 May 2017.
[341] Exhibit 241.001, Statement of BV, 19 February 2017, 2 [12]-[13].
[342] Exhibit 272.001, Statement of BL, 1 March 2017, 10 [107]-[109].

> World best practice follows models that are non-punitive, non-adversarial and decrease the likelihood of conflict.[343] Instead of labelling young people and 'managing' challenging behaviour, the focus should be on understanding that some young people lack the skills to handle certain demands and expectations.[344]

A detailed analysis of the response of out of home carers, Territory Families and police to the behaviour of, and offences committed by, children in out of home care was detailed in those submissions and recommendation made for a protocol for justice practices relating to children in care.[345] Such a protocol is recognised as a necessary step both by experts appearing before the Commission[346] and by the Northern Territory Government.[347] NAAJA calls for the negotiation and implementation of this protocol to be prioritised.

3.9.3 Role of Territory Families and carers for children in care who enter detention

This is addressed in detail at chapter 8 of NAAJA's Submissions on Pre- and Post-Detention. NAAJA reiterates the recommendations and findings sought in these submissions, in relation to bail, case planning, care planning and placements for children leaving detention.

3.9.4 Territory Families decision-making about care planning and availability of placements for children leaving detention

Ms Broadfoot provided evidence that the placement of a child may be discontinued where a young person in out of home care is placed in detention for an extended period, so that his or her placement can be used for another young person. However, she also recognised that changes to placements can be disruptive for young people and advised that the case manager can advocate for the placement to remain open. Further, Ms Broadfoot asserted that wherever possible a young person's placement should not change as a result of a period in detention.[348]

The Commission has heard evidence of the value in ensuring a 'continuum of care' is maintained for children, and especially for those children in out of home care. Professor Oberklaid remarked:

> So that attachment in those young [people] in the early years of a life it's really about developing that trusting relationship between a young child and caregivers, and when that's terminated for one reason or another, then that does create a confusing and often very stressful situation for young children.[349]

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[343] See Dr Ross Greene's Collaborative and Proactive Solutions model: <http://www.livesinthebalance.org/about-cps>

[344] NAAJA Submissions on Youth Detention, July 2017, 10.

[345] Ibid at 99-100, and 118-19. See specifically recommendation 51 and discussion more generally.

[346] Oral evidence of Dr Katherine McFarlane, 2 June 2017; 4325-4330.

[347] Oral evidence of Karen Broadfoot, 2 June 2017, 4325-4330.

[348] Exhibit 491.000, Statement of Karen Broadfoot, 20 June 2017, 10.

[349] Oral evidence of Professor Oberklaid, 29 May 2017, 4022.

It is the experience of NAAJA clients that periods spent in youth detention would usually result in a change to their placement.

Witness BV:

When I broke the rules, the carers would call the Police and I would get locked up. When I got out, I would often be sent to a different placement. It felt like I was moving around all the time. This meant I did not get to know the carers or the other kids in the placement.[350]

Witness DB:

Often when I would get arrested for breach of bail I would lose my placement. I remember heaps of times being in court and the Magistrate/Judge would ask the DCF worker if there was a placement available and they would just say no.[351]

NAAJA is concerned that the current 'placement considerations' a case manager must turn their mind to when a child enters youth detention do not adequately emphasise the views and wishes of the child in this process, and do not go far enough to ensure continuity of care.[352] NAAJA reiterates its position from its Submissions on Pre- and Post-Detention that policy and practice must prioritise the voice of the child and continuity of care. NAAJA submits that the creation of child advocates and Aboriginal community visitors who can strongly advocate on behalf of the child, will assist to ensure that the best interests of the child (and thus the importance of the child's views and wishes and continuity of care) will be the pre-eminent consideration in relation to out of home care placements upon children leaving detention.

3.10 Complaints, monitoring and oversight

3.10.1 Aboriginal Children's Commissioner

As the experience in Victoria has shown, having an Aboriginal Children's Commissioner enhances the effectiveness of the important monitoring functions of that body.[353] In Mr Jackomos' evidence, it makes complaints more likely, it provides an Aboriginal-centric view at a high level, support for the Aboriginal-community sector and ability to engage with the Aboriginal community more generally.[354]

Consistent with the position taken by other Aboriginal organisations, in a change that would be welcomed by the current Children's Commissioner,[355] NAAJA strongly submits for the establishment under statute of two Aboriginal Children's Commissioners – one based in the Top End and the other based in Central Australia – given Mr Jackomos' view that it is critical that the Commissioner be known

[350] Exhibit 241.001, Statement of BV, 19 February 2017.
[351] Exhibit 577.000, Statement of DB, 7 [52].
[352] Exhibit 491.013, Annexure KB-13 to the statement of Karen Broadfoot, 20 June 2017, *Children in Care and the Youth Justice System procedure.*
[353] Oral evidence of Larissa Behrendt, 29 May 2017, 4006:30-38; Exhibit 459.000, Statement of John Burton, 22 May 2017, [17].
[354] Exhibit 558.000, Statement of Andrew Jackomos, 13 June 2017, [21]-[22].
[355] Oral evidence of Colleen Gwynne, 19 June 2017, 4495.15.

to the community and conversely, know the community he or she serves. It is NAAJA's view that a suitably qualified and experienced Aboriginal persons are best suited for these positions.

That office could be responsible for monitoring the implementation of recommendations to come from this Commission.

Witness CM:

I didn't know I could make a complaint about OCF. I thought they were the boss. I thought if I complained they would come and take the rest of my kids. I am still scared that they will come and do that because I am making this statement and being a part of the Royal Commission.[356]

Complaints

Effective complaints mechanisms must be transparent, unbiased and not present any fear of repercussion. The Territory Families Complaints Unit, and its internal complaints mechanisms do not meet that criteria.

Ms Wharburton's assurances that 'multiple eyes' in the complaints unit on a complaint before it is concluded provides a 'safeguard' again bias[357] are not terribly convincing.

There is a real fear held by families and carers that complaints made to the Department may jeopardise their care arrangements.[358] The evidence would support that this is a valid concern. Complaints have been met with defensiveness and vindictiveness.[359] The FCA has found it necessary to pursue complaints up to very high levels in the executive in order to get a response. Most individual complainants would not have such an opportunity.

The Children's Commission has powers to investigate complaints, however, it refers most complaints back to the Department for investigation, with or without instructions. It should be sufficiently resourced to be in a position to conduct its own investigations into complaints.

The establishment of an Aboriginal Children's Commissioner will not only lead to greater oversight of care and protection services but will make that office a more accessible one for complaints (currently provided for under section 20 of the *Children's Commissioner Act*). It should be the recipient of complaints by or about Aboriginal children. It should be funded to investigate and assess complaints itself return the complaints to Territory Families if satisfied that process will be properly undertaken, with the power to review that investigation and assessment and substitute its own decision if necessary. Importantly, the objectivity, legislative permanence and skills of the office of Aboriginal Children's Commissions are well placed to address deeper structural and/or cultural issues. The

[356] Exhibit 485.000, Statement of CM, 26 May 2017, [98].
[357] Oral evidence of Leonie Wharburton, 22 June 2017, 4807-4808.
[358] Exhibit 571.000, Statement of Ann Owen, 23 May 2017, [74].
[359] Exhibit 667.001, Statement of Peter Fletcher, 11 May 2017, [19], [23]-[24]; Exhibit 523.000, Statement of Tracey Hancock, 25 May 2017, [40]; Oral evidence of Tracey Hancock, 20 June 2017, 4533; Exhibit 550.000, email from complaints officer regarding NAAJA client complaints.

experts who have given evidence before the Commission have indicated that this is missing in current Territory complaints processes.[360]

Recommendation 42	That two Aboriginal Children's Commissioner positions, located in the north and central regions of the Territory, be established under statute.

3.10.2 Monitoring children's welfare

The evidence is that children are not likely to make a complaint due to fears of retribution or causing trouble for others, or because of a view that nothing will be done about it anyway. Accordingly, complaints mechanisms for children need to be proactive, more user-friendly, rather than placing an onus on them to make the decision to complaint and then find a particular service or entity to complain to.[361] Only then will harm in OOHC be mitigated and potentially prevented.

Accordingly, NAAJA's position is that there needs to be a variety of mechanisms embedded in legislation to ensure that children's voices are heard:

Independent child advocate/personal advisor

The consistent evidence is that relationships are key to developing trust and providing a child with the confidence to say things. Dr McDowell spoke of the personal adviser model in the United Kingdom that he considered being best practice. The importance of being a mentor associated with the child not only whilst in care but also after they leave care.[362] Some child and foster carer witnesses have specifically asked for an advocate position to be created.[363] NAAJA suggests it would be preferable that the advocate/advisor role be one requiring legal training and that the person have access to sites such as residential facilities, detention centres, mental health facilities without notice. This type of role would be welcomed by the current Children's Commissioner.[364]

Aboriginal community visitor program

There is a need for a community visitor program, which must, for the Northern Territory, involve Aboriginal community visitors, to support and monitor all children in care. The current Children's Commissioner believes such a role to be essential.[365]

The importance of this role is the informal nature of the contact, allowing for complaints to be made without being dependent upon the child initiating that process. Such an approach will do more to identify young people who are victims or at risk of becoming victims of abuse, identify systemic and procedural issues. Whilst it may lead to more complaints that are less significant, there are measures

[360] Oral evidence of Larissa Behrendt, 29 May 2017, 4006; Oral evidence of Colleen Gwynne, 19 June 2017, 4496.
[361] Oral evidence of Joseph McDowall, 23 June 2017, 4938; Exhibit 492.000, Statement of Leonie Wharburton, 12 May 2017, [123].
[362] Oral evidence of Joseph McDowall, 23 June 2017, 4939.
[363] Exhibit 464.000, Statement of CD, 18 May 2017, [57.4]; Exhibit 478.000, Statement of CK, 29 May 2017, [14].
[364] Oral evidence of Colleen Gwynne, 19 June 2017, 4495, 4496.
[365] Oral evidence of Colleen Gwynne, 19 June 2017, 4496.

that could be put into place to monitor that. It is important that whoever conducts this service is independent. There would then be avenues for reporting to the Children's Commissioner and/or government where necessary. Something similar to the community visitor program in Queensland should be considered. [366] It is NAAJA's position that the role must be enshrined in statute ensuring unhindered access and the capacity to advocate and report without repercussion.

It is noted that there is consideration by the current Territory government to introduce independent oversight or community visitor powers.[367]

CREATE Foundation forums and surveys

NAAJA supports the continued role CREATE plays in giving children a platform to speak and indeed, develop solidarity with other children in care, through its forums and surveys and other national networks. That arrangement should be enhanced by greater information sharing in the Northern Territory, as recommended by the Nyland Royal Commission in SA and requested by Dr McDowell in his evidence.[368]

Recommendation 43	That a community visitor scheme, involving Aboriginal community visitors, be established to be run out of the Children's Commission office.
Recommendation 44	That Aboriginal Child Advocates, who are accessible to every child in care and who can advocate on behalf of a child in relation to any decision or dispute that affects or impacts upon the rights of that child, are employed under the Office of the Children's Commissioner.

3.10.3 Monitoring and accountability of care providers

In line with other States, out of home care providers in the Territory must be accredited. [369] Accreditation permits standards to be set, by which performance may be measured and enforced. It is understood that this is on the potential agenda for the new Territory government.[370] The standards for accreditation should be informed by best practice experiences. They must include a proven capacity to implement trauma-informed practice and meet a child's cultural needs.

Ms Wharburton accepted that there is not a clear line of sight on what is occurring in resicare facilities or for purchased care placements. Rather, she understood the greater oversight measures will be included as part of the reviews and reforms taking place in tandem with the transition of OOHC to non-governmental providers.[371]

[366] Oral evidence of Joseph McDowall, 23 June 2017, 4938-4939.
[367] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [29].
[368] Exhibit 572.000, Statement of Joseph McDowall, 25 May 2017, [5], [9]-[10], [26]-[28], [30], [35]-[36]; Oral evidence of Joseph McDowall, 23 June 2017, 4945.
[369] Exhibit 476.000, Statement of Marnie Couch, 18 May 2017, [17].
[370] Exhibit 661.001, Statement of Luke Twyford, 5 May 2017, [29].
[371] Oral evidence of Leonie Wharbuton, 22 June 2017, 4791-4792.

The findings of the recent Deloittes Review of OOHC in the Northern Territory must be taken on board in that process.[372] Importantly, its findings that:

- Government should have strategies to develop needed capacity within the sector through a pre-qualification process in partnership with the sector
- Clear expected outcomes and outputs for OOHC services must be set in partnership with the sector, to ensure that there are measures by which the delivery of services to children can then be assessed.

Recommendation 45	That standardised training, accreditation and monitoring of OOHC providers be implemented across all care providers, to include cultural care and trauma-informed practice components.

3.10.4 Transparency and accountability measures

Publication of policies

NAAJA has continuously, over many years, advocated for Child Protection policies to be made publically available. All OOHC policies are not currently available publicly.[373] NAAJA has continued to receive advice from the Department that the Child Protection policies will be made available to the public 'soon'. This must be rectified immediately with the electronic publication of all non-sensitive Child Protection policies and procedures.

Review

There is currently no external review available for the myriad of decisions involved in the out of home care framework, not the least including placement and contact decisions, or eligibility for foster and kinship care decisions. NAAJA joins with the lawyers who gave evidence in a roundtable discussion,[374] Mr Jackomos[375] and Ms Gwynne[376] in suggesting that administrative reviews of significant decisions affecting children and their families should be legislated for.

Administrative review of placements (including the application of the ACPP) and family contact decisions in particular will improve internal decision-making processes and ensure that an objective assessment of the case occurs prior to a final decision. The review should be able to be sought by any

[372] Exhibit 661.014, Annexure 13 to the Statement of Luke Twyford dated 5 May 2017, Deloittes Review OOHC, 8-9, 13.
[373] Oral evidence of Bronwyn Thompson, 23 June 2017.
[374] Exhibit 673.001, Statement of Thomasin Opie, 23 May 2017, [40]; Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [106]; Exhibit 677.001, Statement of Anneleise Hey, 1 June 2017, [124].
[375] Oral evidence of Andrew Jackomos, 23 June 2017, 4886.
[376] Oral evidence of Colleen Gwynne, 19 June 2017, 4496-4497.

party affected by the decision i.e. the child and the child's parents. It could be a streamlined relatively low cost review to a Tribunal, as occurs under the Queensland *Child Protection Act 1999.*

Additionally, there should be a power for the court making protection orders to make orders as to family contact. That would also bring a measure of independence to such decisions.

Independent legal service for court orders

NAAJA urges the Commission to consider recommending the establishment of a separate legal entity which would take over the conduct of child protection proceedings following upon the matter being the subject of provision protection and temporary protection orders, similar to how the Director of Public Prosecutions acts, independently from police and from government, in respect of indictable offences. Such a body has been established in Queensland – Director of Child Protection Litigation. This would provide a measure of independent oversight for orders, which would occur within the first fortnight of a removal into the CEO's care having occurred.

Recommendation 46	That the following is established under statute: • Administrative review of placements and family contact decisions • So that a court considering protection orders can make orders for minimum family contact arrangements • An independent legal agency to take over the conduct of child protection proceedings.

4 Legal processes

4.1 Issues with respect to the *Care and Protection of Children Act*

4.1.1 The Aboriginal Child Placement Principle

The Aboriginal Child Placement Principle (the Principle) is legislated in every jurisdiction in Australia, including in the Northern Territory. Section 12(3) of the *Care and Protection of Children Act* (the Act) requires that as far as practicable, an Aboriginal child should be placed with (in order of priority) a member of the child's family; an Aboriginal person in the child's community in accordance with local community practice; any other Aboriginal person; a person who is not an Aboriginal person, but in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

Dr Fejo King told the Commission that the Principle was specifically designed to recognise and respect the complex and non-linear nature of Aboriginal kinship systems.[1]

> The [Principle] was meant to reflect and apply the framework of the Aboriginal kinship system. It was intended to guide child protection services to strength Aboriginal children's connections with their family, community and cultural identity.[2]

However, save for s 12(3), the Act is silent on a child's right to maintain their cultural identity.

Despite these legislative requirements successive reports by the Northern Territory Children's Commissioner indicate that less than half, and sometimes as low as one third, of Aboriginal children in out of home care in the Northern Territory are placed with Aboriginal families.[3] The Commission heard concerns that there is a consistent lack of commitment to ensuring the Principle is upheld and a lack of oversight in ensuring its implementation within Territory Families. NAAJA has not observed any concerted or sustained efforts to address this.

Ms Martin's view is:

> The Aboriginal child placement principle is nothing but … a section in the legislation. It needs to inform every single aspect of the Department's dealing, in terms of employment of Aboriginal staff, training of existing staff, use of interpreters, understanding of children's best interests, including cultural rights, and including Aboriginal organisations and supporting Aboriginal community organisations to be able to assist the Department or collaborate with the Department.[4]

For example, care plans often only contain brief notes of Territory Families' assessment of kinship care options, like: 'DCF attempted to assess [person] as kinship carer but the outcome was unsuccessful.

[1] Oral evidence of Christine Fejo-King, 21 June 2017, 4663: 30-45.
[2] Exhibit 538.000, Statement of Christine Fejo-King, 22 May 2017, 3 [13].
[3] Exhibit 016.001, Statement of Colleen Gwynne, 7 October 2016, 9 [47].
[4] Pip Martin, Transcript of Legal Process Meeting, 21 June 2017, 27:25.

DCF will continue to work with [the parents] to identify possible kinship carers in the event that reunification is not possible.'[5]

Adherence to the Principle can be monitored by the adoption of a legislative requirement for Territory Families to file a comprehensive report of all efforts made to comply with the Principle on each occasion.

Mr Burton gave evidence that there are concerns about the 'extreme lack of safeguards' around how the new permanent care order provisions may be used, particularly with regard to oversight of the Principle, when a matter will not come back before the court.

As the Commission heard from Dr Fejo King, there must be some mechanism to hold the Department accountable when it fails to adhere to the legislatively prescribed requirement of the Principle.[6]

Mr Burton stated that the Victorian model has a legislative requirement in the *Child Youth and Families Act* that provides for 'somebody involved in the process who can assess whether that child's cultural needs are being met by the permanent care order being made.'[7]

The Act and Practice Directions could be amended to strengthen the Principle:

a) The Act could be amended so that a Permanent Care Order cannot be made unless it is made on the recommendation of an Aboriginal community entity or Aboriginal and Torres Strait Islander community controlled organisation.[8]
b) Section 10(2) of the Act should be expanded to include the importance of a child's Aboriginality, to bring it in line with s 60CC of the *Family Law Act 1975* (Cth), where Aboriginality is considered as one of the factors in deciding the best interests of the child.
c) Territory Families should have to file a comprehensive report of all efforts made to comply with the Aboriginal Child Placement Principle when making applications to the court.
d) Court decision-making should be done in community where possible. The Commission heard evidence from the Elders group that having child protection matters determined in community would be better for families, so long as there were appropriate facilities.[9]

[5] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, 41 [191(c)].
[6] Oral evidence of Christine Fejo-King, 21 June 2017, 4676: 10, 4677: 5.
[7] Oral evidence of John Burton, 29 May 2017, 4056:37-39.
[8] Oral evidence of John Burton, 29 May 2017, 4056: 30-35.
[9] Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4564: 5-10; Oral evidence of Rosalee Webb, 20 June 2017, 4599: 40-45.

Recommendation 47	That s 12 of the *Care and Protection of Children Act* is amended to require Territory Families to address how an Aboriginal child's cultural needs will be met if it is decided that a family or kinship placement is not in the child's best interests.
Recommendation 48	That s 70(2) of the *Care and Protection of Children Act* is amended to require Territory Families to address how an Aboriginal child's cultural needs will be met in care plans.
Recommendation 49	That Territory Families must file a comprehensive report of all efforts made to comply with the Aboriginal Child Placement Principle when making applications to the court.
Recommendation 50	That the Care and Protection Court shall adjudicate in the community where the families who are the subject of its decision-making are located.

4.1.2 Reunification and permanency planning in the context of culture and kinship

Section 8(4) of the Act provides that 'as far as practicable, and consistent with section 10, if a child is removed from the child's family … (b) the child should eventually be returned to the family.' Section 10 states that 'when a decision involving a child is made, the best interests of the child are the paramount concern.' When considering the best interests of a child pursuant to s 10, the court should give consideration to 'the child's need for permanency in the child's living arrangements'.[10]

It is NAAJA's submission that the legislative requirement for the court should not elevate permanency planning above other factors when determining what is in a child's best interests. Section 10(2)(h) of the Act states that the court should give consideration to a child's 'age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds' in determining the child's best interests. This is inadequate.

Considering the high rate of Aboriginal children in out of home care, determining what is in the best interests of the child should be one of the prime consideration of the child's rights – that is to enjoy their Aboriginal culture and language. Section 60CC of the *Family Law Act* 1975 (Cth) sets out the considerations for the Family Court in determining the best interests of a child and specifies that the Court is to consider 'if the child is an Aboriginal child or a Torres Strait Islander child':

i. the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
ii. the likely impact any proposed parenting order under this Part will have on that right.

[10] Section 10(2)(e), CPC ActCare and Protection of Children Act 2007 (NT), s 10(2)(e).

Section 60 CC(6) of the *Family Law Act* takes the best interests of a child principle further, stating that for the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

a) to maintain a connection with that culture; and
b) to have the support, opportunity and encouragement necessary:
    i. to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    ii. to develop a positive appreciation of that culture.[11]

In NAAJA's experience, despite s 8(4) of the Act stating that a child should be returned to their family if it is in their best interests, Territory Families will only pursue short-term protection orders for a child if it believes there is a realistic chance of the child reunifying with their parents. Where it does not perceive parental reunification to be possible, long-term orders are often sought and kinship care options may not be adequately explored.

This present approach to reunification 'fails to recognise the Indigenous broad concept of family and … the strengths and opportunities within the broader family group to return children to their community and preserve their sense of identity and cultural wellbeing.'[12]

Territory Families ought to seek short-term orders to allow sufficient time to identify and proactively work towards a reunification with an alternative member of the child's family or community, in circumstances where reunification of the child with their parents is unlikely.

NAAJA has from time to time observed that Judges of the Local Court make comments that support permanency planning to the apparent exclusion of a child's cultural rights, such as 'unless a child has a stable home life they are not going to be interested in their culture.' This disconcerting view does not reflect the Aboriginal community, as the Commission has heard: 'Kid want to be in the place where him is born, and he want to stay there and learn something, our language too. And our ceremony and our dreamtime stories, and ceremony story, and all that, you know.'[13]

It is necessary to build an enduring relationship between the court and the Aboriginal communities in remote regions that the court visits in order for appropriate and considered decision making. This will require regular cross-cultural training to assist Judges to make culturally appropriate decisions in relation to Aboriginal children and will improve adherence to the Principle.

The court should only be able to make a long-term order for an Aboriginal child if recommended in a comprehensive, culturally appropriate court report prepared by or with Aboriginal law and justice groups or Elders within the child's community.

[11] Family Law Act 1975 (Cth), s 60CC.
[12] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, 45 [214].
[13] Oral evidence of Jerry Jangala, 20 June 2017, 4551: 5-15.

If a long-term order is sought for a child, court hearings should be listed in the community that the child originates from to allow the child's family and community to give evidence about what is in that child's best interests.

Recommendation 51	That s 10(2) of the *Care and Protection of Children Act* is expanded to include the importance of a child's Aboriginality, to bring it in line with s 60CC of the *Family Law Act 1975* (Cth) where Aboriginality is considered as one of the factors in deciding the best interests of the child and is considered equally with other factors set out in s 60CC of the *Family Law Act*.
Recommendation 52	That s 10 of the *Care and Protection of Children Act* is amended so that a child's right to enjoy their Aboriginal and Torres Strait Islander Culture is considered as part of determining their best interests. For that purpose, s 10 should be brought in line with s 60CC of the *Family Law Act*.
Recommendation 53	That permanency planning is not elevated in priority to usurp a child's right to enjoy their Aboriginal culture.
Recommendation 54	That long-term orders are only considered upon a culturally appropriate court report being provided to the court.
Recommendation 55	That a child's family and community is consulted before a long-term order is made and that if a long-term order has been applied for, the matter is heard in the child's home community.
Recommendation 56	That all judges of the Family Matters Jurisdiction of the Local Court receive regular cultural awareness and competence training.

4.1.3 Mediation

NAAJA refers the Commission to section 4.2.1 of this submission relating to Mediation and Family Group Conferencing. However, with specific regard to amending the Act:

a) Section 49 should be amended to provide scope for parents or the child's legal representative to request a mediation conference is convened.[14]
b) Part 2.1 Division 6 of the Act must be enacted. As NAAJA understands it, Part 2.1 Division has not been enacted because facilities to hold mediations have not been established.[15] It is vital that Part 2.1 is enacted and rolled out Territory-wide, as the Act does not provide any other

[14] Currently section 49 only provides for the CEO to 'arrange for a mediation conference to be convened'.
[15] Fiona Arney et al, 'Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs' (Report, Centre for Child Development and Education, Menzies School of Health Research, 2012), 42; Nicholas Petrie and Louise Kruger, *The Northern Territory – Fertile Ground for Family Group Conferencing in Child Protection Matters* (1 July 2014), Part II.

means for parents to be involved, outside of court proceedings, in reviewing an arrangement made for the care of a child or agreeing on the best means of safeguarding their wellbeing.

Recommendation 57	That s 49 of the *Care and Protection of Children Act* is amended to provide scope for parents or the legal representative of a child to request convening of a mediation conference and that the CEO must convene a mediation conference where concerns have been raised about the wellbeing of a child and a mediation conference might reasonably address those concerns.
Recommendation 58	That Part 2.1 Division 6 of the *Care and Protection of Children Act* is enacted and mediation facilities are established across the Territory.

4.1.4 Accountability and review

There are no sufficient accountability and review mechanisms in the Act to ensure that the court has the ability to review the circumstances of children in care, once the protection order has been made.

Section 49 of the repealed *Community Welfare Act* (NT) required that the court review the circumstances of a child under the sole guardianship of the Minister every two years or at such times as the court thought fit.

The *Care and Protection of Children Act* imposes no such requirement. As a consequence, the court no longer has the power to review the circumstances of children in care and act as a check and balance on the child protection system once protection orders have been made. The Coroner exposed this legislative deficiency in his findings in the Melville Inquest:

> There is no provision in Part 2.2 of the Act which deals with children in the CEO's care for a Court review of a daily care and control direction. Furthermore, under Part 4.7 there is no provision for the CEO's decision to place the children in the care of a particular carer to be reviewed. In short, there is no external review of certain important decisions concerning the ongoing care of children. Given the systemic problems in FACS, this is disturbing.[16]

The Act requires the CEO, 'as soon as practicable' after a child is taken into care, to prepare a care plan which identifies the needs of the child, outlines measures that must be taken to address those needs and sets out decisions about daily care and control of the child. Care plans are required to be reviewed after an initial two months and then at six-month intervals.[17]

Six-monthly reviews of care plans cannot be considered an adequate mechanism for ensuring children's needs are being met when in the care of the Minister. It is NAAJA's experience that care plans are often not prepared in accordance with the legislation.[18] Further, parents of children in care

[16] Inquest into the death of Deborah Leanne Melville Lothian [2010] NTMC 007 [259].
[17] Care and Protection of Children Act 2007 (NT), ss 70, 74.
[18] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [233]-[238].

regularly instruct NAAJA that they do not receive care plans every six months, despite the legislative requirement.

Section 73 of the Act requires the CEO to provide a copy of the care plan to the child, the parents, the carer and any other person the CEO considers to have a direct and significant interest in the wellbeing of the child. However, section 73(2) excuses the CEO from providing the care plan if it is inappropriate or impractical having regard to the wishes of the child, the risk of harm to the child or 'any other matters the CEO considers relevant.'[19] NAAJA submits that the extraordinarily broad nature of 'any other matters' is a major loophole in the Department's statutory obligations. Without the provision of care plans to parents and carers or the oversight of regular court review, there is not sufficient external oversight of the care of a child once a long-term order is made. Further, it stifles legitimate dissatisfaction with an aspect of a child's care and complaints to the Practice Integrity section of Territory Families and Children's Commissioner.

In NAAJA's experience, these mechanisms lack transparency and act to endorse Territory Families' conduct provided it meets some nominal minimal standard.[20]

The responsibility for review of this system should not be solely borne by its participants. This fails to account for the great difficulties Aboriginal people face of illiteracy, access, remoteness and how to navigate the white system of bureaucracy within government departments, and the consequential inability to self advocate and reluctance to complain. In NAAJA's experience, 'working with Aboriginal communities is that people are resilient and will put up with a significantly large amount of very poor conduct before exercising any right to complain (if they are even aware of the right to complain).'[21]

Recommendation 59	That the *Care and Protection of Children Act* is amended in accordance with the Northern Territory Coroner's recommendation: 'to permit a regular court review of protection order made under Subdivision 3 of Division 4 of Part 2.3 of the Act'.[22]
Recommendation 60	That s 73(2) is amended to require the CEO to bring an application before the court if the CEO seeks to dispense with the service obligations of the care plans pursuant to s 73. Service may only be dispensed with by order of the court.

4.1.5 Lack of ability of interested non-parties to bring the matter back to Court

The Act attempts to recognise the Aboriginal concept of family by adopting culturally appropriate definitions of 'parent', 'relative and 'family'[23] and by recognising the particular needs of Aboriginal children. However, the ability of family members to participate in the court process is constrained, as the Act only permits parties to the proceedings to apply to vary a protection order. The Act does not

[19] Care and Protection of Children Act 2007 (NT), s 73(2)(c).
[20] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [255].
[21] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [260 (a)].
[22] *Inquest into the death of Deborah Leanne Melville-Lothian* [2010] NTMC 007, at 85 <http://www.localcourt.nt.gov.au/judgements/2010%20NTMC%20007.pdf>.
[23] Care and Protection of Children Act 2007 (NT), ss 17, 18, 19.

allow a kinship carer or other culturally relevant family member to apply for an order to be revoked or varied if that person was not a party to the original court proceedings.

Parents are often reluctant to consent to an order that has the effect of restricting who can be joined to the proceedings, particularly if family members have not yet been assessed as potential kinship carers.[24] This can cause delays in proceedings as kinship assessments take up to six months.

The Commission has heard evidence that family members and kinship carers may not be aware of their legal rights or the requirement to be joined as a party prior to the order being made. The Commission received evidence from NAAJA lawyer Brianna Bell that in her experience to date 'family members who have discussed with TF a desire to care for a child have not been informed of their right to apply for parental responsibility in their own right, without the supervision of TF.'[25]

NAAJA recommends the amendment of s 137 to include a category of person who is entitled to apply to the court for an order to be varied or revoked that mirrors the test for joinder, that is 'any other person who is considered to have a direct and significant interest in the wellbeing of the child'.[26]

Recommendation 61	That section 137 of the *Care and Protection of Children Act* is amended to allow 'any other person who is considered to have a direct and significant interest in the wellbeing of the child' to apply for an order to be varied or revoked.

4.1.6 Temporary Placement Arrangements

The Act allows the CEO to make a Temporary Placement Arrangement (TPA) over a child who lives with their parents, which gives them daily care and control of the child for the two months that the arrangement is in force. [27] TPAs can be extended for up to six months after they are made.[28] This is an administrative arrangement and does not have any court oversight. The parents of a child can apply to terminate the TPA and request that the CEO return the child/children to their care.[29]

The Commission has heard evidence from vulnerable witness DD that her child was placed in the care of the Department under a TPA. DD gave evidence that:

- At the time the TPA was made, DD was told by Territory Families workers that 'they had to take [DC] into care' and that she did not have any other options but to agree to a TPA, placing her child in Territory Families' care for several months.[30]

[24] Parents may provide instructions not to consent to an Order being made while the kinship care assessment process, which takes six months, is underway, so that family can be joined to the proceedings or apply for parental responsibility if the assessment is successful.
[25] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [209].
[26] Care and Protection of Children Act 2007 (NT), s 137.
[27] Care and Protection of Children Act 2007 (NT), s 46(1).
[28] Care and Protection of Children Act 2007 (NT), ss 46(2)(a) and 46(6).
[29] Care and Protection of Children Act 2007 (NT), s 46(8).
[30] Exhibit 536.000, Statement of Witness DD, 11 June 2017, 4 [40].

The witness DD was not told she could access a lawyer and was not actively referred to a lawyer for advice.[31]

DD received no legal advice and so was not informed about the nature and effect of the TPA at the time that she agreed to it.[32] It is highly likely that DD was unaware that she could apply to have her child returned to her.

Given that the court has no oversight over TPAs, it is fundamental to the principles of natural justice that families are informed of their right to access legal advice, before they are encouraged by Territory Families to sign a TPA, which places their children in the care of the CEO by consent.

Section 46 of the Act should be amended to compel Territory Families to refer parents and carers for independent legal advice prior to obtaining consent to enter into a TPA.

Recommendation 62	That s 46 of the *Care and Protection of Children Act* is amended to compel Territory Families to refer parents and carers for independent legal advice prior to entering into a Temporary Placement Agreement.

4.1.7 Evidence

The Family Matters Jurisdiction Court of the Local Court is not bound by the rules of evidence.[33] This is usual in all matters where the best interests of the child is the paramount consideration, with the Court needing to prioritise protecting the child from the kinds of behaviours that can be concealed and difficult to prove on a strict interpretation of the evidence rules. Unsubstantiated allegations, cursory information and hearsay evidence are all evidentially admissible.

In NAAJA's experience, the CEO will often file applications that provide inadequate details about allegations, which omit key contextual information and are so vague and tenuous that our clients are unable to know of the allegation, or respond, in any meaningfully way. Ms Bell's evidence was that applications to the Court frequently omit highly relevant facts with respect to the parent's ability to keep the child safe.[34] For example, applications will include a reference to reports of incidents of interactions between the Northern Territory Police and parents, but do not disclose the location of the incident (it may have been in a location that did not expose the child to the incident) or state who called the police.

The quality of evidence that is brought before the Court was described by Maurice Scarbossa of NTLAC as:

> It's my view that a lot of the evidence that's put [by the CEO], I think, is of very poor quality; usually hearsay, remote hearsay, opinion, sometimes quite scandalous and vexatious from time to time, and I think that just raises the ire of parents and I think it

[31] Exhibit 536.000, Statement of Witness DD, 11 June 2017, 4 [41].
[32] Exhibit 536.000, Statement of Witness DD, 11 June 2017, 5 [54].
[33] Care and Protection of Children Act 2007 (NT), s 93(2).
[34] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [128].

> doesn't – it's not helpful, I think, to the process. I think that with the rules of evidence or some modification to them would certainly promote a more disciplined approach to the presentation of evidence that, I think, would be – and also focus attention on what sort of evidence do we need to gather in the first place to make a case for the orders being sought, or being rejected, or dealt with in some way, and I think that it will have more of an element of fairness about it.[35]

NAAJA agrees that proceedings should be conducted to meet the needs of the public with as little formality and legal technicality as circumstances permit and that the rules of evidence rules should not apply unless directed by the Court.[36] However, Territory Families should be required to file certain factually evidence-based material (such as Police PROMIS reports, CCIS extracts, records of notifications or key conversations, and child protection investigation reports). This would allow issues to be more appropriately ventilated and would enable families to know the allegation and to properly instruct their legal representatives to answer the case against them and ensure the Court properly considers issues.

4.2 Issues in relation to current legal processes

4.2.1 Mediation and Family Group Conferencing

The Act provides for the use of mediation conferences both as an early intervention alternative to statutory intervention,[37] and as a court-ordered mediation, after Territory Families has filed an application for a protection order.[38]

NAAJA lawyers have not seen or been involved in any exercise of the power being used. Section 127 has not been enacted and no services around mediation and family group conferencing have been funded or established.

The use of Family Group Conferencing (FGC), ideally in tandem with early referrals to legal services, would likely increase parental and community understanding, increase participation in the child protection system, and promote early resolution of matters. It would allow Territory Families to better mobilise community and family support networks to ensure the best possible outcomes for children.[39]

FGC is currently used across other Australian jurisdictions that have enabled child protection systems to enhance feelings of empowerment for families, improve how families perceive how 'acceptable' case plans are, mobilise greater informal and formal support for families, and increase the safety of children and other family members where violence is a concern.[40] More broadly, FGC is able to

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[35] Maurice Scarbossa, Transcript of Legal Process Meeting, 21 June 2017, 25:15.
[36] Care and Protection of Children Act 2007 (NT), s 93.
[37] Care and Protection of Children Act 2007 (NT), s 49.
[38] Exhibit 014.002, Board on Inquiry Report - Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children, Annexure 8.1.
[39] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [81].
[40] Nathan Harris, *Family Group Conferencing in Australia 15 Years On* (Australian Institute of Family Studies, NCPC Issues No. 27, 2008).

empower the extended community to solve problems in a manner more likely to deliver better outcomes for children, and is consistent with principles of family and community involvement.[41]

Emerging as a result of a policy shift to provide families with a greater say in child protection and youth justice, FGC has been used as the primary decision-making tool of the New Zealand child protection system since 1989. Based partially on Maori practices, FGC shifts decision-making power back to children, parents and the broader family structure, in a manner that ensures a high level of early intervention, support and consultation, where concerns that may require a statutory response have arisen.[42] Acting as a form of diversion, whereby families and the child protection authority seek to reach mutually agreeable solutions and avoid court, FGC has three distinct phases:

- The sharing of information held by child protection workers and other professionals with the family
- Allowing the family time to deliberate and arrive at their own solutions, and
- Seeking to arrive at an agreement as to the child's need of care and protection, and implementation of a plan to address the concerns child protection workers have raised.[43]

While frequency and basis of use varies widely in Australia, the Northern Territory lags considerably behind all other states and territories across all measures of FGC use, with no form of FGC implemented until late 2010.[44]

The value and importance of providing mandated culturally appropriate FGC (or similar mediation models) in the Northern Territory has been consistently highlighted.[45] Child protection matters continue to be largely resolved before the courts or through legally and proprietarily dubious 'family way placements'.[46]

As noted by Nicholas Petrie and Louise Kruger in *The Northern Territory – Fertile Ground for Family Group Conferencing in Child Protection Matters,* the functioning of the child protection system could be greatly improved through the introduction of a rebuttable presumption that 'all child protection matters where [Territory Families] are considering applying for a protection order should first have been dealt with by FGC' and 'where a FGC plan is prepared which alters the "daily care and control"

[41] Ibid.
[42] Nathan Harris, *Family Group Conferencing in Australia 15 Years On* (Australian Institute of Family Studies, NCPC Issues No. 27, 2008).
[43] Ibid.
[44] Fiona Arney et al, 'Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs' (Report, Centre for Child Development and Education, Menzies School of Health Research, 2012); Nathan Harris, *Family Group Conferencing in Australia 15 Years On* (Australian Institute of Family Studies, NCPC Issues No. 27, 2008).
[45] Exhibit 014.002, Board on Inquiry Report - Growing them strong together, Promoting the Safety and Wellbeing of the Northern Territory's Children; Department of Children and Families (NT), *Major Review of the Care and Protection of Children Act – Issues Paper* (2012).
[46] Nicholas Petrie and Louise Kruger, The Northern Territory – Fertile Ground for Family Group Conferencing in Child Protection Matters (1 July 2014), Part II.

or "parental responsibility" of a child, the court must approve the FGC plan, with the presumption being that the plan will be adopted'.[47]

Similarly, Mr Fawkner, Principal Legal Officer of KWILS, considers that enacting section 127 to allow mediations 'would have an immediate impact on the resolution of matters before the court'.[48]

Case conferences provided for in the Practice Directions are not an adequate substitute for mediation.[49] Case conferences can be convened at any stage of the proceedings and are intended to determine what 'matters are in dispute, or resolving any matters in dispute.'[50] However, there is no provision for a convener to be approved by the parents or have particular qualifications or experience.[51]

As with mediation, the matters discussed in the conference are inadmissible unless agreed. At the conclusion of the case conference, if all matters are not resolved all parties are required to file a statement of agreed and disputed issues and matters still in dispute.

Depending on the personalities of all participants involved, case conferences without a convenor can descend into verbal criticism of the families and are counter-productive. The Commission heard evidence that 'no independent mediator or conciliator makes it unclear whether they assist as it depends entirely on the personalities of the clients, caseworkers and lawyers as much as the evidence of risk of harm'.[52]

In their current format, while useful for narrowing the issues in dispute, case conferences are not culturally sensitive as they do not involve all people relevant to an Aboriginal child's life and often do not explore the child's cultural care plan in any meaningful detail.

While the case for FGC appears clear, its effective operation in the Northern Territory requires:

- mediation to include all family members who play a significant role in the child's life, to ensure processes are culturally appropriate
- financial and other assistance is proactively provided to ensure that all involved parties are able to attend sessions
- mechanisms to exist that enable FGC sessions to be conducted in remote communities, and
- a convenor who is either an Aboriginal person or adequately educated in kinship and cultural systems.[53]

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[47] Ibid.
[48] Matthew Fawkner, Transcript of Legal Process Meeting, 21 June 2017, 25:45.
[49] Local Court Act Practice Direction 1 of 2015 (Care and Protection of Children Act) makes provision for case conferences to be ordered by the Court in circumstances where the orders sought are opposed.
[50] Local Court, Practice Direction 1 of 2015 (Care and Protection of Children Act).
[51] Sections 49 and 127 of the *Care and Protection of Children Act 2007* (NT) requires the appointment of a person (the convenor) who is approved by the parents the child and has the qualifications or experience prescribed by regulation to convene the mediation.
[52] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, 11 [47].
[53] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, 22 [81].

Aboriginal Family-Led Decision-Making processes and conferences are discussed in further detail at section 3.2.1 of these submissions.

4.2.2 Broad responsibility of the Northern Territory Government to support families

Section 7 of the Act establishes the Northern Territory Government's responsibility for 'promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children'. This responsibility is not restricted to the Department of Territory Families (the Department).

The Act is silent on how the Northern Territory Government should discharge this responsibility.

NAAJA's experience is that Territory Families does not often work in collaboration with other Northern Territory Government departments, such as the Department of Housing, to proactively assist children and families to address protection concerns prior to removal or to promote reunification.

NAAJA welcomes the Northern Territory Government's steps to move towards a whole-of-government approach to supporting Aboriginal families to keep children in their care.[54]

The Children's Commissioner gave evidence that she supports a holistic and early intervention approach to addressing underlying social and economic issues, such as health, education and housing.[55]

As indicated in the APO NT submission,[56] interagency collaboration currently appears limited to exchanging information about reporting harm, without any constructive assistance provided to prevent harm. At best, a caseworker may write a letter to the Department of Housing in support of an application for priority housing. While this type of action may help the family become eligible for priority housing, it will generally not result in the family being allocated a house any quicker to address risk factors.

The limitations of this approach were identified in the evidence of Ms Bamblett:

> Child Protection should have access to priority housing for at risk to be able to, you know, be able to make available those types of accommodation options … And so it's about, you know, having access and priority housing. So Aboriginal – for young people leaving care there's priority to priority housing for young people leaving, so they get transitional housing and housing support. So it's about having a housing system that is a resource to the child protection – to the juvenile justice system.[57]

[54] Oral evidence of Leonie Warburton, 22 June 2017, 4796.
[55] Oral evidence of Colleen Gwynne, 19 June 2017, 4494.
[56] APO NT, Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory, July 2017, 104.
[57] Oral evidence of Professor Muriel Bamblett, 13 October 2016, 229.

Similarly, Ms Fejo-King gave evidence of the necessity of Territory Families addressing the underlying causes of protection concerns:

> If you're going to make a decision to remove a child, look at the real issues, you know, and fix the things that can be fixed. NT housing is responsible for the fixtures in the houses. They're responsible. But teach the families what they can do and help them to do it rather than just saying, 'Take the kids away.' My sister is a general practitioner consultant, she worked out in our communities. They were taking kids away because of scabies. Scabies is a health problem. It should have been addressed through the health things that are in place. The education should have been in place. The children should not have been removed because of a health issue. [58]

Current Practice Directions do not require Territory Families to detail the steps it has taken to support families prior to taking steps to remove children, including working with other Northern Territory Government departments to address protection concerns or risk factors. This means that the court is often unaware of the interrelationship between the Northern Territory Government's failure to provide necessary services and families' ability to address protection concerns.

In order to properly discharge its obligations as a model litigant when making applications to the court, Territory Families should be required to provide affidavit evidence of:

- The steps it has taken to support the family to address protection concerns or risk
- Relevant information regarding gaps in Northern Territory Government service provision that mean a parent is unable to independently address protection concerns. For example, the absence of residential rehabilitation facilities in a parent's remote community where the protection concern relates to substance abuse or the absence of available housing in the community that the family can move to and the length of the waiting list for public housing where the protection concern relates to overcrowding in the house.

4.2.3 Lack of engagement or consultation with Aboriginal community

The legal process is administratively commenced, and judicially considered, through a non-Aboriginal lens. The process is targeted towards resolving the question of 'the best interests of the child'. Statistically speaking, in any one case, it is highly probable that the best interests under consideration are those of an Aboriginal child. As indicated in the Royal Commission's Interim Report:

- 78% of mandatory notifications made relate to Aboriginal children, and
- 89% of children in out of home care are Aboriginal.[59]

[58] Oral evidence of Christine Fejo-King, 21 June 2017, 4675.

[59] Office of the Children's Commissioner Northern Territory, Annual Report 2015-2016, Northern Territory Government, Darwin, 2016, 64 (cited in the *Royal Commission into the Protection and Detention of Children in the Northern Territory Interim Report*, 31 March 2017, 10).

Despite this context, the evidence received by the Commission appears to demonstrate a distinct lack of Aboriginal voices or contribution to this process,[60] and a disregard of Aboriginal worldviews and cultural mores, particularly in terms of child rearing.

Professor Behrendt gave evidence of entrenched institutional bias in government views on Aboriginal affairs (including child welfare):

> [P]art of the rhetoric … was that Aboriginal communities and people and their culture were part of the problem, not part of the solution … as part of that kind of blanket approach, what was missed was the fact that across the Territory, as there is across other parts of Australia, although there are communities that have very difficult circumstances and high levels of social dysfunction, there are also a lot of communities that have a lot of social cohesion … most of the very effective mechanisms that we see of dealing with issues that we think are intractable … have been developed by communities themselves, not imposed top-down by governments into those communities … there has been a general under appreciation of the capacity of Aboriginal communities to come up with solution and an … overlooking or … failure to engage with the knowledge that is on the ground in those communities and particularly in those communities and … community-controlled organisations.[61]

Likewise, there is a significant amount of evidence before the Commission on the disregard of Aboriginal perspectives (coined by others as a lack of cross-cultural awareness) in drawing conclusions, making decisions or value judgments with respect to what is in a child's best interests. As articulated by Professor Behrendt:

> In terms of an unconscious bias … there … seems to be a focus on what parents aren't doing under this Eurocentric gaze, rather than looking at a strengths-based approach and looking at what the benefits are that Aboriginal families, Aboriginal carers give their children and the many benefits of keeping Aboriginal children in their community. That doesn't seem to be valued much at all…[62]

The former Managing Civil Solicitor of NAAJA, Philippa Martin, expressed a similar sentiment:

> The fact that consistently around 85% of children in care in NT are Indigenous should, in itself, suggest that a culturally sensitive and informed approach should be embedded in every aspect of the Department's operations. It is not enough to state that children's cultural needs should be met without express recognition in policy, professional standards, guidelines and training about what this means in practice for the indigenous majority of the children in its care. I find it strange, given the statistics that the Department's strategic plan does not mention 'culture', 'Aboriginal' or

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[60] See also, Exhibit 689.001, Statement of Anneleise Hey, 29 June 2017, [46.1] where she discusses the contribution of legislative restrictions on publication and privacy as exacerbating the current limited ability of Aboriginal organisations to contribute to the legal process.

[61] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 3997: 35–3998: 3.

[62] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4002:26-31. See also, Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [77].

> 'Indigenous' and that the practice standards and framework, while mentioning culture do not specify Indigenous culture.[63]

There were many tangible examples before the Commission of the absence of Aboriginal worldviews in the operation of the child protection system. The most powerful were captured in personal stories and case studies. However, legal practitioners, academics and support workers also described misconceptions around matters such as:

- Significant numbers of visitors or community-centric raising of a child as 'neglectful'.[64]
- The display or suppression of emotion upon removal of a child as indicative of a parent's attachment to or capacity to care for a child.[65]
- Lack of participation in meetings as indicative of a parent's capacity to care or willingness to change without noting who was the culturally appropriate person to speak in that context.[66]
- Poverty (and its associated disadvantages) as indicative of a lack of commitment or inability to care for children.[67]
- Refusal of consent for health or medical procedures as being obstructive, uncooperative, or unwilling to prioritise the best interests of the child, without considering the cultural factors relevant to that decision.[68]
- Developmental or health matters being attributable to parenting issues without considering other plausible explanations such as congenital or genetic factors.[69]

The lack of participation in decision-making regarding children was aptly described by Counsel Assisting, when he said:[70]

> [B]oth the Commonwealth and the Northern Territory Government have, over decades, done things *for* or *to* Aboriginal people and have not done things *with* Aboriginal people. [emphasis added]

The significance of this distinction cannot be overstated – it goes to the heart of the fundamental principle of self-determination. In her evidence, Professor Behrendt explained that the principle of self-determination is critical both at a philosophical and practical level. She described strong evidence of approaches including self-determination resulting in better outcomes.[71]

The ways in which the Aboriginal community could contribute to the legal process (and therefore to the long-term wellbeing of children), incorporating principles of self-determination, are 'multifaceted'.[72] In section 3.1.2 of these submissions, NAAJA outlines the benefits of ACCOs being

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[63] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, 7 [30].
[64] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4000:5-14.
[65] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [44(b)].
[66] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [44 (c)].
[67] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [45(c)]; Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4001: 20-31; Exhibit 689.001, Statement of Anneleise Hey, 29 June 2017, [123].
[68] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [45(f)].
[69] Exhibit 676.001, Statement of Maurice Sgarbossa, 1 June 2017, [84].
[70] Opening address of Senior Counsel Assisting Tony McAvoy SC, 29 May 2017, 3991:19-21.
[71] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 3996:13-47.
[72] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 3995:26-36.

responsible for OOHC functions, under the supervision and guidance of an overarching Northern Territory ACCA. However, the potential benefits of such a structure are broader than this.

Evidence before the Commission suggests that Aboriginal community bodies and ACCOs could serve additional and extremely useful functions throughout the legal process (from investigation to long-term orders), such as:

- Facilitating the participation of the broader community in order to gather information relevant to decisions, make decisions on individual cases, consult regarding policy development and monitor the safety of children.[73]
- Playing a significant role in investigation and early intervention processes to avoid removals (including by ensuring that all of the appropriate extended family members are gathered and consulted, and that the child's views are considered).[74]
- Assisting to locate alternative placements within the community (or in nearby communities) for children 'at risk' of removal, to avoid statutory removal.[75]
- Facilitating or participating in family group conferencing.[76]
- Assisting with negotiations regarding the return of children to placements in community, including issues regarding transition and risk or safety assessments.[77]
- Lessening the impact of cross-cultural issues, including ensuring that information is being exchanged in the appropriate language.[78]
- Becoming involved in rehabilitation programs as part of early intervention or reunification processes.[79]
- Sitting with the Judge in child protection court in community to ensure that families understand what is happening with their children, and to assist the judge with cultural issues, including kinship.[80]

[73] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 3995 [33]-[36], and 4002 [1]-[3]; Oral evidence of Andrew Dowardi, 20 June 2017, 4552:42-46.
[74] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4003: 3-16; Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4549:29–4550: 35; Oral evidence of Jerry Jangala, 20 June 2017, 4550:42–4551: 12; Oral evidence of Andrew Dowardi, 20 June 2017, 4552:23-45 and 4557:11-39.
[75] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [65]; Oral evidence of Marcia Wala Wala, 20 June 2017, 4578:44–4579:23.
[76] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4006:2-18. See also, Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [25]-[27], [45].
[77] Oral evidence of Marcia Anne Wala Wala, 20 June 2017, 4566:20-34 and 4571:25-46; Oral evidence of Andrew Dowardi, 20 June 2017, 4566:36-39; Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [116]-[124].
[78] Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4569:17-35; Oral evidence of Jerry Jangala, 20 June 2017, 4569:36–4570: 3; Oral evidence of Andrew Dowardi, 20 June 2017, 4557: 5-36. See also, Exhibit 667.001, Statement of Matthew Fawkner, 11 May 2017, [26]-[27].
[79] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [58(a)]; Oral evidence of Marcia Anne Wala Wala, 20 June 2017, 4555:1-38.
[80] Oral evidence of Jerry Jangala, 20 June 2017, 4548:44-46 and 4563:29–4564: 17; Oral evidence of Andrew Dowardi, 20 June 2017, 4554:7-31. A number of other witnesses expressed the importance of child protection Court sitting in communities – see, eg, Exhibit 671.001, Statement of Maxine Carlton, 24 May 2017, [31].

- Assisting to develop and run children's safe houses or foster homes in community, staffed by local people, to avoid removal of children from community.[81]
- Assisting with cultural training specific to their local community for visiting welfare workers and other decision makers.[82]
- participating in regular forums across regions and communities in order to share problems and solutions.[83]
- contributing to decision-making processes, policy development and implementation.[84]

NAAJA strongly endorses the significant potential offered by the proposed structure of Top End and Central ACCAs, with local ACCOs.

NAAJA also concurs with Professor Behrendt's caution that there is the need to simultaneously ensure that the capacity of communities to take on this role is not unjustifiably discounted, while also ensuring that communities who require support to build capacity to implement the proposed model receive long-term support:

> There's often a perception, particularly within Government … that there's not the capacity within the Aboriginal community … to take on that role … I have to say that for somebody who has worked on the ground in the Territory in a range of ways, I see lots of evidence that … there are communities and community members that are more than capable of taking on these roles. In our work where we've seen the opportunity given to communities to take on roles more actively in these sorts of issues that affect their lives, it's not only resulted in great outcomes for – in a policy and program sense, but it has also … been energising and transformative for the individuals and the communities involved.
>
> The Territory, like every other place in Australia, has communities that have varying degrees of capacity, and … the shame is that often we overlook the capacity that is there on the ground in some communities because others have problems. So we always say that there's no one-size-fits-all approach in Indigenous policy-making but that seems to be something that is always overlooked. So I guess the other part of the self determination puzzle is the investment that's needed to ensure that where capacity exists in Aboriginal communities, that that can be tapped into and energies, that there is a capacity building exercise that needs to take place, and that that also needs to be intensively done in other communities.
>
> And … the other final observation I would make is that in research work we did … it seemed more destructive to the communities to put programs in as pilot programs and then rip them out than it was to not put the programs in at all and I think that does remind us that when we make a commitment to a strategy that's going to include

[81] Oral evidence of Andrew Dowardi, 20 June 2017, 4564:41–4565: 4; Oral evidence of Marcia Wala Wala, 20 June 2017, 4565:6-14; Oral evidence of Jerry Jangala, 20 June 2017, 4565:16-21. See also, Exhibit 673.001, Statement of Thomasin Opie, 23 May 2017, [23].
[82] Oral evidence of Marcia Anne Wala Wala, 20 June 2017, 4566:39-45 and 4567:1-4.
[83] Oral evidence of Andrew Dowardi, 20 June 2017, 4579:27-34.
[84] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 3995:31-32.

> Indigenous people in these sorts of issues, that that has to be a long-term commitment and not a pilot project.[85]

4.2.4 Care plans

NAAJA refers the Commission to section 4.1.4 of this submission with respect of the legislative requirements around the preparation and provision of care plans and the limitations that they have in providing a system of accountability.

NAAJA also refers the Commission to the submissions made at section 3.2.2 of this submission with respect of cultural care plans.

Territory Families' policy specifies that a child's care plan 'should promote and maintain their connection to their cultural heritage' and should be developed in consultation with the child's family and extended family, or if that is not possible, with representatives from the child's community.[86] Territory Families *Standards of Professional Practice* require that care plans 'identify how a child's cultural needs will be met', but do not provide guidance on how that will occur.[87]

The Commission heard evidence that care plans are not used in a manner that genuinely ensures cultural engagement. Dr Larissa Behrendt gave evidence that:

> I guess, the other issue that came up repeatedly that is also of concern was that when Aboriginal children weren't placed with direct family members, there was concern about their treatment within care and, also, with the fact that cultural care plans seemed to be very superficial so included things like attendance at NAIDOC events rather than really deeply understanding how important the connection to community was.[88]

There is also evidence that the requirements for care plans often aren't complied with. The Northern Territory's Children's Commissioner expressed concerns about the lack of individualised approach to cultural care plans; she has seen examples where insufficient information is provided or the plan is identical to another child's.[89]

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[85] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4010:7-34.
[86] Exhibit 553.097, Annexure BT-097 to the Statement of Bronwyn Thompson, Procedure: Culture in Care Planning.
[87] Exhibit 469.189, Department of Children and Families Standards of Professional Practice, 4.
[88] Oral evidence of Professor Larissa Behrendt, 29 May 2017, 4000:25-35.
[89] Oral evidence of Colleen Gwynne, 19 June 2017, 4500.

Recommendation 63	That s 70 of the *Care and Protection of Children Act* is amended to compel the CEO to prepare a care plan that identifies the needs of the child and outlines measures that must be taken to address those needs. Where it is an Aboriginal child, the care plan must address 'promoting the child's ongoing affiliation with the culture of the child's community'.

4.2.5 Access to court

Court location

The Family Matters Jurisdiction of the Local Court sits in Darwin every Thursday and in Katherine every second Friday. While the lists are busy, they seem to meet demand. There can be significant delays in obtaining hearing dates when matters are contested.[90]

Many families rely on Territory Families to fund trips to court in Darwin and Katherine. This does not always occur. NAAJA's experience is that we receive 'inconsistent information about the policies about when Department would fund access and bring parents to court'.[91] Territory Families' policy and procedure manual are not publicly available.

Hearings of child protection matters do not take place in remote communities. The Commission heard evidence from the Kurdiji of Lajamanu that they would like the Family Matters Jurisdiction of the Local Court to sit in community:

> We want them in the community now, in Lajamanu, because kids court – didn't come into Lajamanu court yet, but we could have them starting, might be when the welfares come and look for the little ones, you know…[92]

The cultural importance of the broader community being able to be involved in decisions that affect an Aboriginal child's life is vital. Given that the Family Matters Jurisdiction sits within the Local Court and this court circuits to most remote Aboriginal communities every one to three months, Family Matters Court should also be able to convene in a child's home community. This would allow greater access to justice for Aboriginal people and for the Court to hear evidence from the child's broader community and put the Court in a better position to appropriately inform itself of a child's best interests.

Personal service

Personal service of court applications would work towards early resolution of matters.

Although the Act requires all court applications to be personally served on the parents of a child, the CEO does not need to do so if it considers it would be 'impractical' and instead provides for postal

[90] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [58].
[91] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [59].
[92] Oral evidence of Jerry Jangala, 20 June 2017, 4548.

service to the last known address.[93] The issue of remoteness for Aboriginal people should not excuse Territory Families from carrying out of its functions.

The Commission has heard evidence that 'the Department does make attempts to personally serve parents but there appears to be no consistent process and formal procedure for what steps need to be taken before postal (or other types of service) can be effected.'[94] This means that there is no court or legislative oversight ensuring that parties (who are predominantly Aboriginal) are provided procedural fairness.

The inequity of failing to assist Aboriginal parents with personal service and assistance fails to consider issues of literacy, language barriers, the inability to be an active participant in crucial decision-making processes and the preparation of any legal case or evidence.

A child protection system that fails to consider and accommodate the vulnerabilities and needs of its main users being Aboriginal children and parents is not a system of justice.

Chapter 7 of the Family Court Rules 2004 requires all initiating applications to be personally served on all parties.[95] In the event that personal service cannot be effected, rule 7.18 of the Family Court Rules 2004 requires a party to make an *ex parte* application to the Court setting out the alternative form of service proposed or an application to dispense with service. The Court will then have regard to the following factors when making an order allowing alterative service, substituted service or the dispensation of the requirement for the application to be served:

- The proposed method of bringing the document to the attention of the person to be served
- Whether all reasonable steps have been taken to serve the document or bring it to the notice of the person to be served
- Whether the person to be served could reasonably become aware of the existence and nature of the document by advertisement or another form of communication that is reasonably available
- The likely cost of service, and
- The nature of the case.

The service requirements the Act should be amended to reflect the process in the Family Law Rules where that personal service is unable to be effected by Territory Families.

[93] Care and Protection of Children Act 2007 (NT), s 124.
[94] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [60].
[95] *Family Court Rules 2004*, rules 7.03 and 7.05.

Recommendation 64	That s 124(2)(b) of the *Care and Protection of Children Act* is amended so that personal service of applications is not at the discretion of the CEO.
Recommendation 65	That if substituted service of an application is required then the CEO make an application to the Court and the legislation and regulations be amended to reflect the requirements of Chapter 7 of the Family Law Rules 2004.

4.3 The selection and use of specific orders

4.3.1 Overuse of Temporary Protection Orders

In NAAJA's experience, child protection removals by Territory Families nearly always proceed on an urgent basis. The Act allows Territory Families to administratively remove a child into provisional protection before submitting an application for a Temporary Protection Order (TPO).[96]

The overuse of TPOs creates a culture of crisis around a family, where often the Department could proceed on a non-urgent basis. TPOs compromise the procedural fairness afforded to the family in a number of ways. The Act does not require service of a TPO application on the parents or extended family of a child. As a result, TPO applications are often made on an *ex parte* basis.

Ordinarily when a court hears an application on an *ex parte* basis, the party presenting the application is required to provide all relevant evidence, both in favour and against their case. This requirement exists due to the absent party's inability to present their case and the legal practitioner's first obligation being to the court. Territory Families workers are not bound by the same legal professional obligations of candour and professional and ethical responsibilities. Nor is any such obligation articulated in the Act.[97]

Further, the Act does not provide for a TPO application to be adjourned. Often if a family has been served with the application, they are not afforded the opportunity to obtain adequate legal advice or to put material or evidence before the court that supports their position that a TPO is not an appropriate order. It is NAAJA's experience that if a family is served at all, they will often only be provided with the application documents at court.

Using the non-urgent procedure in a greater number of cases would ensure the removals of children are more evidence based and the issues are thoroughly ventilated before the court.

This may also assist with changing community perceptions of Territory Families, because the child would be removed at the order of the court, rather than being done administratively.[98] Territory Families should consider greater use of the non-urgent court-based mechanisms for removal of children rather than enacting administrative provisional protection as a matter of course. To effect

[96] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [101]-[102].
[97] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [107].
[98] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [103].

this, the Act could be amended to reflect the Victorian model which is outlined at sections 240–243 of the *Child and Youth Families Act* 2005 (Vic).

These sections envisage two types of applications – emergency care applications and applications by notice. There are no Provisional Protection or Temporary Protection Order mechanisms. Rather, section 242 of the Victorian legislation mandates that the court must hear an emergency care application within one working day of the child being taken into care and if there is no court available, by a bail justice. This ensures that the court has oversight from the very commencement of a child's removal and that children are not simply removed administratively, as occurs in the Territory.

The Victorian legislation requires parents to be personally served unless they cannot be found after reasonable enquiries. Although there is nothing in the Act to say that the matter shouldn't proceed in the absence of the parents, it is the protocol at the Children's Court Victoria that matters are adjourned to give parents an opportunity to attend.

This addresses issues of procedural fairness and ensures the court is able to hear all relevant evidence on the best interests of the child before making the decision as to whether an emergency care order is appropriate. This approach should be adopted in the Northern Territory to remedy the disadvantage by parents and carers in not having supporting material and witnesses when the TPO application is heard, and the inability to remedy this due to not being able to seek an adjournment.

Recommendation 66	That Chapter 2 Division 7 and Part 2.3 subdivision 1 of the *Care and Protection of Children Act* is repealed and replaced with sections modelled on ss 240–243 of the *Child and Youth Families Act 2005* (Vic).

4.3.2 The least intrusive order

The Act is premised on protecting the best interests of the child. Implicit in the Act is the presumption that a child's best interests are served by living with and being cared for by their family to the greatest extent possible.[99] Equally, those presumptions can be similarly found in the relevant articles of the *Convention on the Rights of the Child*.[100]

The Commission heard an abundance of evidence from experts, elders,[101] and from grandparents, parents and children underscoring and humanising the effects of severing ties between children and their families.

The Act recognises the role of the family in s 8 and the role of Aboriginal families specifically in section 12(2). However, this recognition is by way of principles underpinning the legislation. Given the

[99] Care and Protection of Children Act 2007 (NT), s 8.
[100] Exhibit 005.002, *Convention on the Rights of the Child*, articles 9(2), 9(3), 18(2), 27(3).
[101] See eg, oral evidence of Jerry Jangala, 20 June 2017, 4551:25; Exhibit 623.000, Statement of DJ, 15 June 2017, 12 [79]; oral evidence of Andrew Dowadi, 20 June 2017, 4552: 25; Exhibit 459.000, Statement of John Burton, 22 May 2017, [33]-[34].

importance of preserving familial rights to the great extent possible, these principles should be elevated into legislative requirements.

Recommendation 67	That the *Care and Protection of Children Act* is amended to promote the preservation of family responsibility for and involvement in decisions relating to their children as follows: • A section is inserted in the *Care and Protection of Children Act* explicitly confirming that the court should only make an order if it is the least intrusive option available that provides the protection sought. • A section is inserted in the *Care and Protection of Children Act* explicitly articulating the types of orders that a court may make in relation to children. In particular, NAAJA recommends it specify that an order may be made giving daily care and control to a person (inclusive of the chief executive of the Department) other than a parent of the child, while the parents or family retain parental responsibility.

4.3.3 Long-term orders

The Commission has heard that there are widespread concerns relating to the increasing use of permanent care orders. The principle of stability needs to be recognised as a broad term that encompasses cultural stability and the 'range of connections that are important to child's identity and wellbeing'.[102]

Permanency planning in foster care: a research review and guidelines for practitioners states:

> Permanency planning is a *systematic*, *goal-directed* and *timely* approach to case planning for children subject to child protection intervention, aimed at promoting stability and continuity … permanency planning is theoretically informed by attachment theory and understandings of child development and identity formation. Decision-making should be individualised, timely and culturally appropriate. Children themselves, their parents and carers all need to be involved in planning. Practitioners must be prepared to undertake extensive observation and assessment to serve the best interests of children when making permanency decisions.[103]

The principles of permanency planning articulated above do not support long-term orders being made except in circumstances where the child's needs have been extensively assessed. NAAJA strongly supports the need for children to have stability in out of home care, however agrees with the evidence

[102] Oral evidence of John Burton, 29 May 2017, 4056:15-25.
[103] Clare Tilbury and Jennifer Osmond, 'Permanency planning in foster care: a research review and guidelines for practitioners', *Australian Social Work* (2006), 59, 3, 265-280.

of Mr Burton 'that that notion needs to be based on a much broader concept than just a legal order for permanency of care.'[104]

The trend towards Territory Families seeking permanent care orders on the first application, or for children who are very young cannot be supported by the principles of permanency planning, as it is impossible that a child's individual needs will have been appropriately and culturally mapped at that stage of the proceedings. This approach is contrary to the Act, which supports a child being eventually be returned to their family (section 8(4)(b)).[105]

NAAJA's position at a policy and legal advocacy level is that long-term orders for Aboriginal children, that is until a child is 18, should only be made as a last resort after parents, properly supported, have had an opportunity to address the protection concerns,[106] and kinship care options have been exhaustively explored.

A culturally appropriate view of what family means to Aboriginal people should be taken into account when considering if there is another appropriate person for the child to be placed with. Section 130(2)(b) of the Act states that long-term orders giving parental responsibility to the CEO should only be made when there is no one 'better suited to be given the responsibility.' This section provides very little protection as 'in practice a protection order for more than two years can be made based on the assertion of a Departmental caseworker that no other family members are available to care for the child.'[107]

This Commission has heard significant and repeated evidence about Territory Families' systemic failure to assess kinship care placements. It remains unclear the extent to which caseworkers actively seek out alternative family members as carers.[108] It is also unclear the extent to which family members are dismissed as options and not encouraged to go through the assessment process.

NAAJA reiterates that a significant difficulty for families in remote communities is the inability to access support services to assist in addressing protection concerns. There needs to be a significant increase in the level of support provided to address the 'underlying causes and contributing factors that are putting children at risk'.[109] It is more appropriate to better fund services, such as relationship counselling, drug and alcohol rehabilitation and counselling services, mental health facilities and parenting support services, and properly investigate kinship placements than to pursue long-term orders.

We repeat our concerns about the lack of accountability and oversight mechanisms if a long-term order is made.

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[104] Oral evidence of John Burton, 29 May 2017, 4056:15-25.
[105] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [214].
[106] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [43].
[107] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [34].
[108] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [35].
[109] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [45].

Recommendation 68	That long-term and permanent care orders cannot be applied for as the first protection order that a child is subject to.
Recommendation 69	That Territory Families must provide detailed affidavit material of all attempts made to place a child with kinship carers and that a permanent care order must not be made unless the court is satisfied that the Department has diligently exhausted all other options.
Recommendation 70	That support services are appropriately funded in remote communities.
Recommendation 71	That any permanent care order must be reviewed by the court within two years and in doing so the Department must file with the court all care plans for the child for that period.

4.4 Delay in the legal process

We understand that one of the purposes of introducing the Court's Practice Direction 1 of 2015 was to progress matters at a faster rate, giving better effect to the principle articulated in section 138 of the Act that, to the greatest extent possible, the Court should avoid granting adjournments as 'it is in the best interests of the child for the application to be decided as soon as possible.'

While NAAJA appreciates the benefit to a child of decisions with regard to that child's future not languishing in the court system, the need for an application to be decided as soon as possible is only one factor that should be taken into account when determining a child's best interests.

In effect, section 138 compels parents and families to make very significant decisions about their children without an appropriate period of time to consider their options. Ms Martin gave evidence to the Commission that advising and seeking instructions in child protection matters takes time – hours – and it is generally not possible to give advice and get comprehensive instructions in one sitting.[110] Clients need to consider their options and discuss them with family.

Further, NAAJA emphasises the importance of obtaining instructions face to face with Aboriginal clients and with the use of interpreters. NAAJA seeks to obtain instructions from clients who live in community when we visit those communities.[111] Due to funding constraints, NAAJA is only able to visit various communities on a circuit basis and the time between visits varies between four and 12 weeks. It is NAAJA's common experience that the court is accommodating of adjournment requests on this basis.

While families may acknowledge that it is in the child's best interests for a protection order to be made, they will often and understandably are reluctant to give instructions to consent to an order until the kinship assessments have been made. Families, particularly where their children have been

[110] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [54].
[111] NAAJA provides legal services to 24 Aboriginal remote communities throughout the Top End of the Northern Territory.

removed from remote communities and are placed with non-Indigenous families in regional centres, will want to know that their children will be returned to their culture before an order is made.

Elders gave strong evidence to the Commission that 'Now, welfare taking that kid away, not only is taking that kid, is taking his culture away and taking his song line.'[112] There are two fundamental reasons why a family will agitate for the kinship carers to be assessed and approved before an order is made:

1. Territory Families gave evidence acknowledging there has been 'systemic failures by the Department of Territory Families or its predecessors to identify kinship carers for Aboriginal children.' [113] The Commission heard evidence that caseworkers do not always spend an appropriate amount of time and resources trying to locate appropriate kinship carers.[114] Ms Martin gave evidence that kinship care assessments can take up to six months.[115]
2. Section 137 of the *Care and Protection of Children Act* only allows parties to the proceedings to apply for the order to be varied or revoked. On that basis, it is reasonable for the kinship carer to be joined as a party to the initial proceedings, particularly if long-term orders are sought.

The Commission heard evidence from the Kurdiji and the Burnawarra Law and Justice Groups that Aboriginal people hold strong views that children should remain in their communities and so expecting that the kinship placement is finalised before the court order is reasonable. The Commission has also heard evidence of case managers not being appointed to children and cultural care plans not being prepared or provided after orders are made.[116]

Present delays could be reduced by the Department being appropriately resourced to assess kinship placements within a shorter time period and the kinship placement requirements being remodelled to be culturally appropriate. For example, it is onerous for Aboriginal people in remote communities to obtain identification documents and working with children clearances, the 'ochre card'. Territory Families should proactively assist families to overcome logistical hurdles.

Furthermore, appropriate use of Aboriginal Family-Led Decision-Making/Family Group Conferencing processes prior to, and throughout, any proceedings will likely reduce delays as families, the Department and other relevant persons/entities will be provided the opportunity to resolve issues in a problem solving, non-litigious and less alien environment. Further discussion and recommendations relating to conferencing are contained in section 3 of these submissions.

[112] Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4552.
[113] Oral evidence of Kirsten Schinkel, 30 May 2017, 4111:10.
[114] Oral evidence of Donna Ah Chee, 29 May 2017, 4042:5-15.
[115] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [33].
[116] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017 [233]-[238].

Delays caused by the need to file summons and subpoenas in child protection matters (and for that material to be produced) could be reduced by a legislative requirement for Territory Families to file the primary materials it relies on, including:

- A summary schedule of notifications and outcomes (as currently annexed to TPO applications).
- Police PROMIS reports relating to any notifications or other incidents to be relied upon in an application.
- A copy of all finalised child protection investigation reports.
- CCIS extracts or records regarding notifications and/or key conversations with notifiers (redacted as appropriate), the parents, and/or other family members.

4.5 Legal representation for children and families

4.5.1 Legal referrals

Currently, legal referrals are made in an ad hoc manner by Territory Families staff,[117] that often result in parents only having access to legal representation after their child has been removed[118] or on their first court date.[119] This limits the extent to which parents are informed about protection concerns, limits their ability to exercise their legal rights, limits understanding of legal procedures, and reduces the likelihood of positive engagement with Territory Families.

The benefit of an early referral for legal advice is that the parents are able to understand, and so begin to address the protection concerns held by Territory Families. As described by Mr Fawkner:

> They get an application, and it can be quite detailed, getting the instructions and explaining to them that these are concerns in a way that they understand, and once … the parents understand what the concerns are, then a lot of the times they're happy to address them and do something about them, but it's just understanding between department-speak and the reality on the ground and what's happening in the family.[120]

Vulnerable witness DJ gave evidence that they were not provided with a legal referral at any stage of Territory Families' investigation, and did not see a lawyer until the day of their first court appearance.[121] Witness DD gave evidence that Territory Families do not adequately inform parents and carers of their rights in relation to child removal, and specifically fail to provide referrals or information around legal rights and representation.[122]

Ms Huddleston from the Child Abuse Taskforce at Territory Families gave evidence that families are not legally represented when the Department meets with them,[123] are not legally represented when

[117] Oral evidence of Sarah Huddleston, 19 June 2017, 4461:30.
[118] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [50].
[119] Exhibit 623.000, Statement of Witness DJ, 15 June 2017, [40], [43].
[120] Matthew Fawkner, Transcript of Legal Process Meeting, 21 June 2017, 5:25.
[121] Exhibit 623.000, Statement of Witness DJ, 15 June 2017, [40], [43].
[122] Exhibit 536.000, Statement of Witness DD, 11 June 2017, [40]-[41].
[123] Oral evidence of Sarah Huddleston, 19 June 2017, 4461:35.

Territory Families attend with Police,[124] that in some cases Territory Families would advise families of their right to legal advice but 'not always',[125] and that she did not recall her training involving the requirement to tell families of their right to legal advice.[126]

Ms Brown, the Managing Lawyer of the Child Protection Team at the Solicitor for the Northern Territory (SFNT), which represents the CEO in its applications to court, agrees that early referrals would expedite the process:

> It could work much better, if people did access lawyers more quickly. Not all people want a lawyer or need a lawyer, but most of them do.[127]

The involvement of legal representatives at the beginning of child protection investigations could achieve a number of positive outcomes for families, the child and community.[128]

Recommendation 72	That Territory Families consider implementing a policy of proactive referrals to legal service providers at the time of investigating child protection concerns and are legislatively required to do so prior to seeking provisional protection of a child.

4.5.2 The role of legal representative of a child

The role of the legal representative of a child is to act on the instructions of the child or act in their best interests regardless of their instructions, and to present the view and wishes of the child to the court.[129] Children under the age of 10 are presumed not to have sufficient maturity and understanding to provide instructions. Legal representatives are required to inform the court whether they are acting on instructions from the child.

Part of the legal representatives' role is to ensure that appropriate investigations and recommendations have been made by Territory Families. In this way, the legal representative of a child should act as a check and balance on the child protection system, bringing the court's attention to failures by Territory Families to address the best interests of a child.

There are no safeguards in the Act to ensure that the child's views are properly sought and the evidence is tested on those instructions in instances where orders are not contested by the parents. This role is particularly important where long-term orders are sought.

Legal representatives should be appointed for all children involved in child protection court proceedings, irrespective of the age of a child or the fact that the parents are consenting to the Territory Families' application. The legal representative for a child plays a crucial role in ensuring that

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[124] Ibid, 40.
[125] Ibid, 45.
[126] Ibid, 45.
[127] Gabrielle Brown, Solicitor For the Northern Territory, Transcript of Legal Process Meeting, 21 June 2017, 3.
[128] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [51].
[129] *Care and Protection of Children Act 2007* (NT), s 143B.

a child's best interests are upheld and in bringing the court's attention to any failures by Territory Families to address the best interests of a child – which is crucial regardless of the age of the child or the position of the parents.

Further, the checks and balances of a legal representative for a child should not end when orders are made by the court. By continuing to act as the legal representative for a child after orders have been made, the legal representative would be in a position to independently monitor Territory Families' decisions concerning the care of the child and thereby work to ensure that Territory Families continue to uphold the best interests of the child. Alternatively, as discussed in section 1.4.1 of these submissions, a legally qualified child advocate, in conjunction with Aboriginal community visitors, could perform this role once orders have been made.

The Commission has heard evidence from young people absconding from placements and are being exposed to risk, if these young people had access to a legal representative to voice any concerns they had about the appropriateness of their placement or other issues relating to their wellbeing, some of these risks may be avoided.

For this important role to be performed effectively, it is essential that the legal representative of the child is independent, and is independently funded, to avoid any actual or perceived bias towards Territory Families. Currently, legal representatives for children are funded by Territory Families and selected by a panel appointed by the SFNT.

Gabrielle Brown gave evidence about the process:

> A child may be represented by a separate legal representative. This is a lawyer appointed by the court to represent the child if the court considers doing so in the best interests of the child (sections 143A to 143E). In my experience this is almost always done if the child is over 10 years of age. When the court appoints the legal representative, Solicitor for the Northern Territory Legal services co-ordination section will select a lawyer from the panel of expert lawyers that have been accepted through the SFNT tendering process. Those lawyers will have contact with the child if the child is of an appropriate age and will act either on instruction of the child, or in the best interests of the child.

NAAJA understands that the system may have recently changed so that Territory Families have an active role in the payment of children's legal representatives' fees. The payment of the fees by Territory Families and their appointment by SFNT who represent Territory Families, at a very minimum creates a perception of bias.

Recommendation 73	That s 143A of the *Care and Protection of Children Act* requires that the legal representative for a child should be nominated by the Court and independently funded, to bring the child protection system in line with the Family Law Court system.
Recommendation 74	That s 143A of the *Care and Protection of Children Act* is amended to require that a legal representative is appointed for all children involved in child protection proceedings.
Recommendation 75	That the *Care and Protection of Children Act* is amended to establish a child advocate with an ongoing role for each child in the child protection system, be that the child's legal representative, child advocate or a community visitor.

4.5.3 Children's legal representatives to be accredited (family law model)

NAAJA has advocated for the role of the child's legal representative to be clearly defined so that the assessment of what work needs to be done is not left to the interpretation of each particular child's legal representative. The current provision of the Act requiring that a 'legal representative must take all reasonable steps to actively and professionally represent the child'[130] is not sufficient guidance.[131]

Amendments were made in 2013 that required children's legal representatives to act on the instructions of a child over 10 years of age and of sufficient maturity.[132] It is unclear how effective the current process is in enabling children to fully participate in the court process. There appears to be no safeguards to ensure that the child's views are properly sought and the evidence tested on those instructions.[133]

The Northern Territory Law Society Protocols for Lawyers Representing Children provide guidance for lawyers representing children. [134] Given the complexity of child protection cases and the long-term impacts on the life of a child who enters the child protection system, children's legal representatives should be required to fulfil training and experience requirements similar to independent children's lawyers (ICL) in family law matters. To be included on the ICL panel in Victoria, a legal practitioner must:

i. have completed the Independent Children's Lawyer National Training Program run by the Law Council of Australia
ii. have at least five years recent experience doing family law work in cases involving children's issues
iii. submit a written outline of the practitioner's understanding of the role of the ICL, including the practical applications of that role

[130] Care and Protection of Children Act 2007 (NT), s 143C(2).
[131] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [50].
[132] Care and Protection of Children Act 2007 (NT), s 143B.
[133] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [53].
[134] Northern Territory Law Society, *Protocols for Lawyers Representing Children* (at 18 May 2017).

iv. submit written outlines of three complex matters the practitioner has had carriage of within the last 24 months, where an ICL has acted. Matters must have been prepared for final hearing in the Family Law Courts. Matters can include those where the practitioner has acted as ICL or where other ICLs have acted.
v. have personally appeared in at least three matters involving different hearing types in the Family Law Courts within the last 12 months, and submit written outlines of how the practitioner prepared for each of the hearings **or**
vi. have had carriage of at least three matters involving different hearing types in the Family Law Courts within the last 12 months, and submit written outlines of how the practitioner prepared counsel to appear at each of the hearings. The practitioner may have acted as an ICL or a family lawyer in these matters.
vii. have had carriage of at least two matters that have been settled, or substantially settled, by negotiation, including personally appearing in a pre-litigation or litigation intervention family dispute resolution service, pre-litigation or litigation intervention settlement conference or mediation, and submit written outlines of how the practitioner prepared and conducted each matter. The practitioner may have acted as an ICL or a family lawyer in these matters.
viii. fit one of the following categories:
    a. be a Law Institute of Victoria Accredited Specialist in children's law or in family law
    b. have completed Masters in Family Law
    c. has at least 30 per cent of fulltime workload comprising family law matters
    d. has completed at least five Continuing Professional Development points covering family law or family violence topics in the last two years
    e. have a Working with Children Check.[135]

Recommendation 76	That children's legal representatives in child protection matters are required to be accredited to a standard that is reflective of independent children's lawyers in family law matters.

4.6 The role of Territory Families

4.6.1 Relationship with community

The Commission heard evidence directly from Territory Families that there has been a systematic failure to appropriately identify kinship placements. Ms Schinkel, a social worker employed at Territory Families as an acting team leader, gave evidence that there has been 'systemic failures by the Department of Territory Families or its predecessors to identify kinship carers for Aboriginal children', as well as 'systemic failures to assist identified kinship carers, who are appropriate, with barriers to a placement coming to fruition.'[136] While there are many reasons for this systemic failure, Territory Families have consistently failed to engage with communities and Elders to find culturally appropriate solutions to child protection concerns.

In NAAJA's experience, people in remote communities still view Territory Families through the lens of welfare and the stolen generation. Territory Families workers are seen as people who come and take

[135] Victorian Legal Aid, Independent Children's Lawyer Panel individual entry requirements, May 2015.
[136] Oral evidence of Kirsten Schinkel, 30 May 2017, 4111:10.

away Aboriginal children.[137] The Commission heard evidence from NAAJA employees that in their experience:

> the only part of the child protection system that is directly visible in remote communities is that Territory Families workers come and talk to families, and then take away their children. This perception of Territory Families creates a significant level of fear and distrust of, and anger towards, Territory Families workers.[138]

If Territory Families are to address the systematic failures in identifying kinship placements, the onus is on them to dispel this fear by working with communities, to sit, listen and learn from the communities in order to build trust and cultural competency.

The Commission heard from Maningrida and Lajamanu Elders. Mr Dixon gave evidence that the Elders of the Kurdiji in Lajamanu are not consulted by Territory Families when there is departmental intervention in families in the community:

> Welfare don't come to our office … We would like welfare coming to our office. Not only welfare. Welfare come to ... and take our children away. We would like family coming into office as well and, you know, speaking to them, what things that we will need to do, solve problem. See, we see in our community and we know people that – we know their background and you know, we know – we know people. And welfare coming in and – coming in and just taking our kids away, and that's not right for us.[139]

The Commission heard evidence from Mr Dowadi that the experience of the Burnawarra in Maningrida with Territory Families is the same:

> And I do know what the past look like, what kind of welfare are, so I've seen those people, so I went to them and they don't want to – they won't – they won't speak to me.[140]

The Commission heard that if Territory Families consulted with the community, the appropriate kinship placement could be found for the child, to enable the child to remain in their community and allow them to continue to grow in their language, culture and tradition.

Mr Dixon gave evidence that:

> We got our grandmothers as well and grandpa, even cousins that – you know, they know how to look after kids, and we know every background in our community and the families.[141]

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[137] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [14].
[138] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [15].
[139] Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4549.
[140] Oral evidence of Andrew Dowardi, 20 June 2017, 4553.
[141] Oral evidence of Minawarra Japangardi Dixon, 20 June 2017, 4550.

Territory Families employs Remote Aboriginal Community Workers (RACWs). RACWs are often members of the community they work in. While this is to be commended as a first step towards a culturally appropriate approach to child protection issues for Aboriginal children, NAAJA submits that it would be of more benefit for Territory Families to build relationships with and support Aboriginal community led groups in communities such as the Ponki Mediators, Kurdiji and the Burnawarra. The benefits of having an Aboriginal community organisations undertake this role, versus RACWs, are that:

- Aboriginal community entities could take a broader more strategic approach to keeping kids in community.
- As an entity independent of Territory Families, families and community members may feel more able to engage in open and frank discussions regarding difficulties they are experiencing.
- Such entities could be composed of a group of people with appropriate cultural authority to create meaningful changes without the need for statutory intervention.[142]

4.6.2 Interpreters

The Commission heard consistent evidence that the provision and use of Aboriginal language interpreters by Territory Families is inadequate. This is a fundamental breach of the human rights of the family and community members being investigated/involved in child protection proceedings. It alienates those participants from the process and places them at a distinct disadvantage when trying to navigate the child protection system.

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR), which guarantees 'the right to the free assistance of an interpreter if the person cannot understand or speak the language used in court.'[143] In the Supreme Court of the Northern Territory case of *R v Wurramarra,*[144] Blokland J affirmed that the ICCPR is a legitimate influence on the development of Australian law and found that contemporary practice and standards for the provision of Aboriginal interpreters are generally consistent with the right to an interpreter as set out in the ICCPR.

Mr Dowadi gave evidence that in his experience often families do not understand what has happened once Territory Families become involved: 'No. They only come to me, say – they come to me, the parents and families come to me there, "I lost one kids. What we going to do?" I don't know.'[145]

The Commission heard evidence from former NAAJA Managing Lawyer Philippa Martin on NAAJA's broader experience. Ms Martin gave evidence that clients would regularly disclose that Territory Families 'did not work with interpreters when talking to them'.[146] It is disconcerting that caseworkers continue to communicate with parents and carers even after NAAJA has advised them that an interpreter is required. Department staff and lawyers would sometimes dismiss our concerns with comments such as the client 'said it was ok' or 'they understood me.'

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[142] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [67].
[143] Exhibit 005.001, International Convention on Civil and Political Rights, article 14(3)(f).
[144] [2011] SCNT 89.
[145] Oral evidence of Andrew Dowardi, 20 June 2017, 4554.
[146] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [88].

Ms Martin describes the issue:

> [C]onversational English doesn't necessarily mean a person understands legal language in a completely emotionally fraught situation when they have got to be making decisions, and I think lot of the Aboriginal languages may not have an easy word-to-word translation for the legal concepts in the legislation, so lawyers and case workers will just flip the concepts off thinking that it's self-evident, but the interpreter and the client or the person concerned are completely lost.[147]

NAAJA is concerned that 'focusing on a family's competence in English, particularly if assessed on the basis of a conversational English, is apt to provide a misleading outcome.'[148] The need for an interpreter is situation-specific and should be determined on whether the family can understand and articulate core concepts of the child protection system, not simply engage in conversational English.

Ms Martin's evidence was that NAAJA obtained fulsome and sometimes different instructions from its clients when using interpreters. Ms Martin gave evidence that it is 'not uncommon for caseworkers and Department lawyers to diminish these instructions we had received using interpreters as the client changing their story or NAAJA not acting on instructions.'[149]

NAAJA continues to experience Territory Families showing a total disregard for the importance of the use of interpreters to understand and be understood. As recently as July 2017, NAAJA represented a young breastfeeding mother who did not speak English. Her baby was removed from her due to a failure to thrive. No interpreter was used at the hospital to explain to the mother how to feed the baby, by Territory Families when the baby was removed, or at the court mention for the Temporary Protection Order. The mother had no understanding of what had happened.

This example in a lot of ways mirrors the experience of vulnerable witness DI who provided evidence. Witness DI is from Maningrida and her first language is Burarra. DI's grandson was placed in her care. While Witness DI did not make specific comment about the lack of an interpreter, she gave clear evidence that how to properly use formula was not explained to her in a way she could understand and further that in her engagement with Territory Families prior to the child's removal, it was never made clear to her that Territory Families intended on removing the baby because he was too skinny.[150] She told the Commission that 'when Welfare gave me the papers (for Provisional Protection) I didn't know what they meant. No one explained them to me.'[151]

A dramatic realignment is required by Territory Families 'away from this question of "competence", towards an attitude that respects people's rights to hear allegations against them, and respond to those allegations, using the language they communicate best in.'[152]

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[147] Pip Martin, Transcript of Legal Process Meeting, 21 June 2017, 12:40.
[148] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [32].
[149] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [90].
[150] Exhibit 651.000, Statement of Witness DI, 15 June 2017, [31].
[151] Ibid.
[152] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [28].

Ms Martin gave evidence that Territory Families' lack of sensitivity towards working with interpreters extends to the Department not passing on information about the need to work with an interpreter to third parties such as psychologists or medical staff. Territory Families has assessed parenting capacity based on reports prepared without an interpreter.[153] Ms Martin gave evidence that interpreters are often not used in the gathering of evidence, particularly when Territory Families is interviewing children. Children's evidence is given significant weight by the court and Territory Families; the lack of interpreters is acutely problematic when interviewing children about allegations of neglect, physical or sexual abuse.[154]

While the Family Matters Jurisdiction of the Local Court is responsive to applications for interpreters to be present at court, these applications are often only made in the course of the first mention of a matter.

It is an obligation of the Local Court to ensure that parties are able to understand proceedings before it and to ensure use of interpreters for Aboriginal languages and sign languages, and to ensure the court can accommodate disabilities such as hearing loss and deafness.

Noting that the rules of evidence do not apply in this jurisdiction, limited weight should be placed on evidence that has been provided to the Court without the appropriate use of an interpreter. The Act should be amended to compel Territory Families to provide affidavit material detailing the use of interpreters in all interactions with Aboriginal families and if an interpreter has not been used, the basis for that decision.

[153] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [91].
[154] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [94].

Recommendation 77	That the Court ensures that all parties are provided with an interpreter for all families for whom English is not their first language.
Recommendation 78	That the *Care and Protection of Children Act* is amended to explicitly compel the Department (or other entity investigating child protection concerns) to use interpreters in any case where English is not the first language of a participant, unless the offer of an interpreter in the relevant language is explicitly declined by the participant.
Recommendation 79	That the *Care and Protection of Children Act* is amended to compel Territory Families to provide affidavit material detailing its use of interpreters in all interactions with Aboriginal families and if an interpreter has not been used, the basis of the decision to not use an interpreter.
Recommendation 80	That the Northern Territory Government appropriately fund and support the Aboriginal Interpreter Service so that all language groups are appropriately resourced.

4.6.3 Need for an independent body to work with families after children have been removed

For many families, the act of removal of their children has absolutely destroyed any feelings of trust and confidence that they may have previously developed with Territory Families and its workers during early intervention efforts.[155]

Making the relationship more strained is the impact of vague allegations made by Territory Families: '[what] practitioners in this jurisdiction regularly see are allegations in an application that tell only one side of a story, or are so vague that our clients are not even able to respond.'[156] If families exercise their right to oppose the making of protection orders, any remaining goodwill is often eroded by the extremely adversarial court processes. It is NAAJA's experience that parents or family members who resist protection order applications are sometimes criticised by Territory Families for opposing applications.[157]

After the making of an order, families are then required to work collaboratively with Territory Families to meet the best interests of their children and work towards reunification.[158]

Establishing a well-resourced service to support parents who have had children removed, which is parent-focused and independent of Territory Families, will increase prospects of children being reunified with their families.

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[155] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [142].
[156] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [128].
[157] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [162].
[158] See section 8(4)(b) of the *Care and Protection of Children Act* which states that as far as practicable 'the child should eventually be returned to the family.'

NAAJA endorses Aboriginal run and community developed services to support families, such as the Gurrutju Wellbeing program run by Marcia Anne Wala Wala.[159] Each community should have a support service that is tailored to that community and based on the recommendations of the community in recognition of the cultural diversity of each nation.

Understanding of what mandatory reporting is, why it exists, and what may happen as a result remains very poor among people in remote communities. Given the fundamental role the mandatory reporting mechanism plays in the child protection system, it is vital that all people have a strong understanding of mandatory reporting and what can happen as a result.[160] An extension of the independent body could be to work with families around the purpose and function of mandatory reporting.

Recommendation 81	That independent of Territory Families and well-funded support services are established to assist families work towards reunification.
Recommendation 82	That the support service is, at a minimum, developed in consultation with Aboriginal people and tailored to each community.

4.7 The availability of expert reports

4.7.1 Expert reports – independent investigative powers of the court

Section 149 of the Act gives the court the power to order that a report is prepared about the wellbeing of a child. This provision should be used to ensure the court is presented with evidence of a thorough and independent assessment of a child's wishes and best interests by an appropriately qualified and culturally sensitive expert.[161] At present, the objectivity and neutrality of these reports is often questionable, as the cost of or preparation of these reports usually falls upon Territory Families.

Omnipresent issues of poor cultural competency and inadequate use of interpreting services are exacerbated when Territory Families arranges expert evaluation of parenting capacity or psychological assessment, which may not appropriately use interpreters or address inherent biases that may impact the reliability of their usual testing.

NAAJA's experience is that it is 'common for such psychological testing to be conducted using … inappropriate standardised tests, and without an interpreter', a reality which has at times led to erroneous outcomes culminating in unfounded child removal.[162]

This challenge, posed by inappropriate initial assessment, is compounded by the extreme difficulties in obtaining further independent assessment of NAAJA's clients. For example, it costs 'in the order of $4,000 or more to obtain an independent report from a psychologist to travel to Katherine to conduct

[159] Oral evidence of Marcia Anne Wala Wala, 20 June 2017, 4544.
[160] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [21]-[24].
[161] Exhibit 681.001, Statement of Philippa Martin, 15 June 2017, [52].
[162] Exhibit 678.001, Statement of Brianna Bell, 26 May 2017, [199]-[203].

further assessment', which places a significant financial burden on NAAJA where initial testing has been inappropriately conducted.

The investigative powers of the Family Matters Jurisdiction of the Local Court should be brought in line with s 62G of the *Family Law Act 1975* (Cth). That section provides the Family Court with the ability to order that a family consultant 'give the Court a report on such matters relevant to the proceedings as the Court thinks desirable.'[163] In preparing their report, the family consultant must 'ascertain the views of the child in relation to that matter',[164] and include those views in the report.[165] Further, the Family Consultant 'may include in the report ... any other matters that relate to the care, welfare or development of the child.'[166]

The purpose of the reports or 'family assessments' is to provide a professional forensic assessment to assist the Family Court or the parties to decide on parenting arrangements for children. A family assessment provides a comprehensive and impartial social science perspective, and has the functional value of contributing to informed and child-centred decisions. The assessment provides information about the views and needs of children and their relationships with their parents and other significant adults, and of the attitudes and parental capacities of adults to meet children's needs. Family assessments should include assessment of any risk factors identified in a matter. Where there are concerns about family violence, a specialised family violence assessment should be included in the assessment and the report.[167]

In February 2015, Diana Bryant AO, Chief Justice of the Family Court of Australia, John Pascoe AO CVO, Chief Judge of the Federal Circuit Court of Australia and Stephen Thackray, Chief Judge of the Family Court of Western Australia, published the *Australian Standards of Practice for Family Assessments and Reporting.* Its purpose is to outline a minimum standard of practice when conducting family assessments and preparing reports. The Standards include specific directions for assessing families so that they can participate in the report without restriction due to language, culture or disability.[168] The Standards also establish the minimum standard that must be complied with in a family assessment in which one or more party identifies as Aboriginal or Torres Strait Islander.[169]

The investigative powers of the Family Matters Jurisdiction of the Local Court should be expanded to enable the Court to order, arrange and fund the preparation of independent reports in relation to a child. A standard replicating the *Australian Standards of Practice for Family Assessments and Reporting* should be adopted to ensure minimum standards are set in conducting and reporting in family assessments.

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[163] *Family Law Act 1975* (Cth), s 62G(2).
[164] *Family Law Act 1975* (Cth), s 62G(3)(a).
[165] *Family Law Act 1975* (Cth), s 62G(3)(b) noting that s60CE of the *Family Law Act* states that a child cannot be compelled to express their view in relation to any matter.
[166] *Family Law Act 1975* (Cth), s 62G(4).
[167] Australian Standards of Practice for Family Assessments and Reporting, February 2015. Retrieved from: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting>.
[168] Ibid, [34].
[169] Ibid, [35].

Recommendation 83	That s 149 of the *Care and Protection of Children Act* is amended to enable the court to order, arrange and fund the preparation of independent reports in relation to a child.
Recommendation 84	That the investigative powers of the Family Matters Jurisdiction in the Local Court are brought into line with s 62G of the *Family Law Act 1975* (Cth).
Recommendation 85	That a standard is published by the court to outline minimum standards of practice for family assessments and preparing reports.

4.7.2 Culturally appropriate expert reports

Considering Aboriginal children make up the majority of children in out of home care in the Northern Territory,[170] it is essential that court-appointed specialist report writers conduct assessments that are specifically designed to best represent the cultural and social needs of Aboriginal people and are culturally informed.

The Commission heard evidence from Dr Fejo-King about the western family tree concept being restrictive and fundamentally different to the Aboriginal kinship system.[171] Dr Fejo King told the Commission:

> The use of genograms by child protection agencies, including Territory Families, is inappropriate when dealing with Aboriginal children and families. It does not reflect the Aboriginal family kinship system and disregards important members of a child's extended family and cultural relationships. Such agencies should instead be using kinship mapping, whereby the understanding and documenting of the child's family is done by reference to skin groups, totems, mission relationships and ceremonial links of reciprocity.[172]

The Commission heard about the use of Gladue Reports in Canada, which are pre-sentence reports written an Aboriginal people that provide recommendations to the court about 'what an appropriate sentence might be, and include information about the Aboriginal persons' background such as educational history, child welfare removal, physical or sexual abuse, underlying developmental or health issues, such as FASD, anxiety, or substance use.'[173] Mr Sharp told the Commission:

> So a Gladue report is ordered by the court as an alternative to a conventional pre-sentence report and it has a very different focus. It looks at the background of the defendant in great detail. So a report such as this one on the screen would probably

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[170] Office of the Children's Commissioner Northern Territory, *Annual Report 2015-2016*, (Northern Territory Government, Darwin, 2016) 64.
[171] Exhibit 538.000, Statement of Christine Fejo-King, 22 May 2017, [14].
[172] Exhibit 538.000, Statement of Christine Fejo-King, 22 May 2017, [15].
[173] Native Women's Association of Canada, 'What is a Gladue Report?'. Retrieved from: https://nwac.ca/wp-content/uploads/2015/05/What-Is-Gladue.pdf.

> run to something like 40 pages. It provides enormous detail for the court about background issues, such as in Canada residential schools or stolen generation issues that that defendant may have experienced, or the family may have experienced, about that person's home community, about trauma that they've experienced and potential options by way of healing processes for that person to participate in.[174]

Gladue style reports would be of significant benefit in child protection matters to assist the court to determine the best interests of Aboriginal children. Report writers should be mandated to collaborate with any Aboriginal community entities, such as Law and Justice Groups operating in the child's home community, to ensure that child's kinship is appropriately mapped.

Recommendation 86	That Aboriginal community entities such as Aboriginal Elders and Law and Justice Groups are funded and supported to provide specialised cultural information and information about kinship options for Aboriginal young people.
Recommendation 87	That the *Care and Protection of Children Act* is amended to require all reports prepared for the court pursuant to s 149 to include a young person's cultural information as provided by Aboriginal Elders, family, Law and Justice Groups, or Aboriginal community entities.

[174] Oral evidence of Jared Sharp, 10 May 2017, 3660:6–14.