

QUEENSLAND COMMISSION OF INQUIRY INTO THE CHILD PROTECTION
SYSTEM



QCPCI

Date: 22.3.2013

Exhibit number: 193

Final Submission on behalf of the Aboriginal and Torres Strait Islander Legal
Service (Qld) Ltd

Recommendations

Recommendation A:

The establishment of a single, State-wide Child Protection/Well Being Agency that has delegated statutory responsibility to deliver universal, secondary and statutory services.

Recommendation B:

'Differential Response Child Protection Model' (from initial screening through to fruition of case management).

Introduction

Meeting Children and Young People's safety and well-being needs must be our only touchstone.

1. For Aboriginal and Torres Strait Islander children and young people this requires a framework of service delivery that reflects current knowledge and understanding of Aboriginal and Torres Strait Islander social and emotional wellbeing needs and that acknowledges and is informed by past experiences of Aboriginal and Torres Strait Islander peoples. Most importantly, it is a service delivery model that gives practical expression to their unique cultural rights enshrined in the *Child Protection Act*. It is one that respects connection to culture, community, family and country while

providing a holistic wraparound approach to address the complex needs of Aboriginal and Torres Strait Islander children and families.

2. The current high rates of Aboriginal & Torres Strait Islander children substantiated for neglect, is evidence of the challenging needs of Aboriginal & Torres Strait Islander children and families.
3. Social and economic disadvantage is evidenced by Aboriginal and Torres Strait Islander families' lower socio economic status. This directly impacts upon a family's ability to access safe, affordable, long term housing and basic house hold needs. These are exacerbating risk factors for families that result in reduced parental capacity.
4. It is essential that the future Aboriginal and Torres Strait Islander child protection service delivery model has complementary approaches which address and/or accommodate the intergenerational cycles of trauma, significant poverty and the low socio-economic status of such families.
5. Past government and non-government policies and practices that resulted in the forced removal of children from their families, a practice we know as the 'Stolen Generations', has contributed to intergenerational cycles of Aboriginal and Torres Strait Islander families in contact with the child protection system. The legacy of past practices still impacts upon families today and yet only partially informs contemporary Aboriginal and Torres Strait Islander child protection service delivery practices.
6. The failure to comprehensively implement recommendations from successive inquiries has resulted in decades of misguided interventions that have failed to, at a minimum, steady the rates of over-representation let alone reduce the rates.
7. The Aboriginal and Islander Child Care Agency ('AICCA') was a grass root level agency that evolved at the tail end of the stolen generations to respond to the needs of Aboriginal and Torres Strait Islander families. The benefits of the concept of this model have clearly been accepted by past inquiries.
8. AICCA services met the holistic needs of Aboriginal and Torres Strait islander children and families on the basis of meeting therapeutic/services needs within a culturally competent framework.
9. The importance of cultural competency within a service delivery framework can not be underestimated. Lack of cultural awareness or competency is a significant barrier to engagement. Understanding cultural nuances is highly significant when engaging with Aboriginal and Torres Strait Islander people¹.

¹ Transcript: Day 38 16 January 2013 Shane Duffy 10-20 page 37-93

10. Having a comprehensive understanding of cultural competency is more than being able to articulate a politically correct statement; it is how it is reflected in the fabric of an organisations (or government's) service delivery framework.
11. Aboriginal & Torres Strait Islander children and families require a service delivery model that balances cultural sensitively while meeting therapeutic/support needs. This requires a holistic wraparound model that has capacity to deliver universal, secondary and statutory services.
12. With the rates of Aboriginal and Torres Strait islander children and young people in out of home care predicated to rise to 60% by 2015, there can be no question that the time for a fundamental change in policy and practices is upon us.
13. This Inquiry has been provided with an opportunity make recommendations that can be the catalyst for positive change. It is a unique opportunity to create equality in service delivery and assist Aboriginal and Torres Strait Islander children and young people to reach their full potential, ultimately contributing to safer, stronger and highly functional Aboriginal and Torres Strait Islander communities.

Recommendation A:

The establishment of a single, State-wide Child Protection/Well Being Agency that has delegated statutory responsibility to deliver universal, secondary and statutory services.

14. The Aboriginal and Torres Strait Islander community controlled child protection sector currently consists of the following agencies and services:
 - a. Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd
 - b. 11 Recognised Entity Services
 - c. 11 Family Support Services
 - d. Foster and Kinship Care Services
15. In response to the question posed in the Commission's February 2013 discussion paper,² ATSILS submits that the most efficient and cost-effective way of developing Aboriginal and Torres Strait Islander child and family well-being services would be to streamline the current recognised entity, family support service and foster and kinship care services into the one State-wide organisation, the 'Child Protection/Wellbeing Agency' (or perhaps simply the 'Child Wellbeing Agency'). ATSILS proposes this organisation incorporates a peak secretariat that has frontline delivery responsibilities³.

² QCCPI February 2013 Question 21.

³ Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd public submission November 2012.

16. ATSILS recommends that the Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency have delegated statutory responsibility to deliver universal, early intervention (secondary) and statutory support services. The complex environment of Aboriginal and Torres Strait Islander children's over-representation within the child protection system requires definitive and enduring actions. Children require an immediate revamped service delivery standard.
17. ATSILS recommends the most efficient and logical method of strategic delivery, is a State-wide agency. In particular, the advantages of such a model is that it can guarantee a process to ensure quality assurance frameworks are complied with and maintained - which is essential in any transfer of proposed statutory responsibility.
18. It is anticipated that a State-wide model would reflect and implement community led and determined approaches, by the use of local indigenous organisations. For example, it would be expected the model would have formal Memoranda of Understanding arrangements with Queensland Health and accredited Indigenous Medical Services to respond to children and families health requirements.
19. The Child Protection/Wellbeing Agency would be better placed to ensure the most cost effective implementation and would enable a consistent approach to be promoted across six functional sections:
 - a. Corporate, finance, administration and information technology;
 - b. Human Resource Management and Personnel;
 - c. Universal intervention services;
 - d. Early Intervention services;
 - e. Statutory Intervention services; and
 - f. Specialist Intervention services.
20. Furthermore, strong service delivery relationships can exist with local community stakeholders such as elders groups, justice groups, local government authorities and essential community based services which can strengthen responsive localised outcomes. It is important an Aboriginal and Torres Strait Islander controlled sector deliver child protection services within a context which embraces Aboriginal and Torres Strait Islander values, beliefs, principles and practice frameworks.
21. In order to ensure high quality service delivery, quality assurance mechanisms will need to be implemented to ensure compliance with:
 - a. Standardised Service Delivery Framework;
 - b. Practice Manual;
 - c. Audit Compliance; and
 - d. Quality determined by outcomes not outputs
22. Similar submissions have been made by the Queensland Aboriginal & Torres Strait Islander Child Protection Peak ('QATSCCP')⁴ with the major point of difference being

⁴ Queensland Aboriginal & Torres Strait Islander Child Protection Peak Ltd public submission October 2012.

ATSILS proposes a State-wide model whereas QATSCCP proposes a model of regional hubs.⁵

23. It is accepted by both organisations that capacity needs to be built within the sector in order to deliver the services proposed, at the level required⁶.
24. In order to enhance the skill level of the current workforce, capacity needs to be built. This should include an employment strategy, setting improved service delivery standards through the active recruitment of tertiary educated and qualified professionals which should occur alongside specialist program development.
25. In particular, enhanced specialist roles and program responses targeting the following harm and risk factors:
 - a. Neglect;
 - b. Domestic and Family Violence;
 - c. Substance Misuse;
 - d. Parenting capacity; and
 - e. Mental Health (inclusive of responses to intergenerational grief and loss cycles)
26. Blended staffing structures inclusive of Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander professionals must become an accepted framework throughout the non-government sector. Non-Aboriginal and Torres Strait Islander tertiary educated professionals operating within Aboriginal and Torres Strait Islander values, principles and practice frameworks are an asset to Aboriginal and Torres Strait Islander organisations. ATSILS and the Queensland Aboriginal and Torres Strait Islander Medical Services are examples of proficient blended staffing structures targeting client needs.

Required Law Reform-Recognised Entity and decisions relating to Aboriginal & Torres Strait Islander children.

27. As previously canvassed in ATSILS November 2012 submission to the inquiry, we recommend legislative amendments that transfer case management and authority to the proposed Child Protection/Well-Being Agency⁷.
28. A fundamental flaw in the implementation of the Recognised Entity ('RE') model is that professionals in the decision-making process have been limited to participation and consultation roles.
29. The current framing of this section of the legislation provides that the RE must be provided with an opportunity to **participate** in the decision-making process⁸but for

⁵ Statement of Natalie Lewis sworn 2 January 2013 pages 53-54; Transcript: Day 38-16 January 2013 paragraphs 30-40 pages 37-39.

⁶ Transcript: Day 38-16 January 2013 Natalie Lewis paragraphs 1-10 pages 37-39.

⁷ ATSILS November 2012 submission Recommendation 24 page 53; Recommendation 25 page 54.

⁸ S 6 (1) *Child Protection Act 1999*.

significant decisions, the Department is only obliged to **consult** the RE before making the decision⁹.

30. This Inquiry has heard evidence in respect of the former Aboriginal Child Care Agencies ('AICCA'). These agencies emerged at the tail-end of the stolen generations and evolved at a grass-root level led by volunteers to respond to the needs of vulnerable families in the communities¹⁰.

31. This Inquiry has also heard evidence that the AICCA were heavily consulted in relation to the drafting of the Child Protection Bill 1998. Of particular interest is the commentary in respect to what eventually became section 6 of the Act:

'This clause recognises the special needs of indigenous children and their families and communities to receive service which meet the cultural and identity needs of indigenous children, and to avoid dislocation of children from their communities. It recognises the unique needs of Aboriginal and Torres Strait Islander families stemming from their history as indigenous Australia, as evidence by the over-representation of indigenous children in care'.¹¹

32. The policy behind the law is clear; however the ultimate drafting and implementation of s 6 has failed to enliven the principle of the policy.

33. We propose the following amendments s 6:

- a. The RE is to be consulted in relation to Aboriginal and Torres Strait Islander children who are subject to Intake and Investigation and Assessment.
- b. Amend 6 (4) to provide that the RE must provide that information by way of a written report to the court.
- c. The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the RE to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.
- d. The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the RE to deliver case work and case management responsibilities for the development, implementation and review of children and young people's cultural support plans.
- e. The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the RE to deliver case work and case responsibility for child and family contact.

Required Law Reform-Section 82 Child Protection Act 1999 Placing a Child in Care

⁹ S 6(2) Child Protection Act 1999.

¹⁰ Statement of Julie Bray sworn 17 December 2012 paragraph 16-17 page 3.

¹¹ Ibid at paragraph 23.

34. Amendments to the section 82 will provide the legislative framework for Foster and Kinship Care agencies to instrumentally meet children and young people's holistic needs through the provision of proficient child placement practices and cultural supports.
35. We recommend s 82 be amended to allow the Chief Executive to grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies, the authority to place children.

Cultural Shift in Corporate Will

36. The current and predicted rates of Aboriginal and Torres Strait Islander children within the child protection system, is representative of not only the challenging and complex needs of Aboriginal and Torres Strait Islander children and families, but also the ineffectiveness of the current system to assist this vulnerable cohort.
37. Fundamental to this currently deficient model is the high-level failure to provide a culturally competent service provider. To affect change, necessitates a fundamental shift in the current system to reflect a greater understanding and approach's to the needs of Aboriginal and Torres Strait Islander children and families.
38. Pivotal to this undertaking is the requirement for a fundamental shift in corporate will and strategic drive, and a filtering of such a change throughout the Department. This Inquiry has had the benefit of hearing evidence which reveals a lack of confidence in, and pro-activeness of, the current model to make effectual change for Aboriginal and Torres Strait Islander children and families in contact with the Department.
39. Aboriginal and Torres Strait Islander cultural competency must be enhanced and embedded within both Government and Non-Government child protection service delivery. Starting with a detailed analysis of how the current departmental structure is reflected in a cultural competent framework. If found wanting, then there needs to be a willingness to promote a departmental restructure.
40. While cultural competency training is undertaken during the initial trainer program for Child Safety Officers and Departmental Officers, continual training or assessment of that competency appears to be unavailable.
41. This Inquiry has also heard evidence which identified the failing of current service delivery providers to undertake an Aboriginal and Torres Strait Islander specific cultural training course - with the current model being limited to a universal cultural training program only.
42. To ensure that a culturally competent service is provided within the child protection system, a systematic, coordinated government response is necessary. This response must focus on embedding concepts of cultural competency across all levels of

governance, strategic leadership, management and policies and driven through frontline practices.

43. ATSILS recommends that in alignment with a change in governance, a comprehensive review of the current strategies, policies and practices in place to reduce rates over-representation needs to occur.
44. Of grave concern is the fact current measures accepted by the department relate only to improving outcomes for those children already in out of home care – as opposed to a focus upon not bringing them within the system in the first place¹².
45. In order to adequately resource the highest level of child safety services and lead strategic implementation, ATSILS highly recommends the Aboriginal and Torres Strait Islander Coordination Unit be re-positioned within the Office of the Director General Department of Communities, with an Executive Director leading a team of policy and practice development officers. Aboriginal and Torres Strait Islander professionals should ideally comprise the majority of the staffing profile.
46. Under the Executive Director of Child Safety Services and subsequent departmental hierarchy, independent department sections have their allocated portfolios. ATSILS recommends as a must identified Aboriginal and Torres Strait Islander policy and practice co-ordination officers are established and maintained in all departmental sections. These strategically positioned officers will ensure the internal and external implementation of Aboriginal and Torres Strait Islander child protection responses.
47. Throughout the Department's regional offices, there are a range of identified Aboriginal and Torres Strait Islander positions. It is strongly recommended that such roles be redesigned to community development officers focused upon building a referral bank of preferred suppliers to assist differential responses lead by Aboriginal and Torres Strait Islander child protection models. Such roles might also have a co-ordination or practice development responsibility for addressing Aboriginal and Torres Strait Islander over-representation.
48. Cultural competency implemented in the form of corporate structure and strategic sections must be meaningful and enduring. Executive policy, program and practice directives targeting over-representation must be assisted through corporate structure and strategic drive.
49. **'Attachment A': Recommended Organisational Structure with embedded Cultural Competency.**

¹² Transcript-Day 45: 26 February 2013 paragraphs 1-50 pages 44-64.

Recommendation B:

'Differential Response Child Protection Model' (from initial screening through to fruition of case management).

Non-Government Intake

50. By 'differential response' we mean a process and practice that provides for more than one initial response to notification of reports of abuse or neglect. In this context, we recommend a differential response to the notification with a process and practice in place to allow a referral pathway to the most appropriate universal, secondary or tertiary service, dependent upon an assessment that the risk is low, medium or high.
51. ATSILS supports the exploration of a non - government preliminary assessment model which screens child protection concerns and then allocates either to State Investigation and Assessment services or to a non-investigative pathway underpinned by preferred suppliers of services aimed at addressing child welfare concerns (i.e. differential response options). Given that public resources are greatly expended at this stage, the social benefits in relation to non-stigma based intervention and the economic benefits of early intervention would be highly significant.
52. A differential intake service ideally should sit in the private sector and assist families with a range of service types in response to low, medium and high level concerns whilst maintaining safety. Differential responses will allow for a holistic approach and provide a responsive framework within which to achieve effective long-term family restoration and achieve high levels of child safety and wellbeing. A direct statutory referral pathway must also be available in order to ensure both the protection of most at risk children and young people and that appropriate investigations are carried out (with police involvement where appropriate).
53. This NGO intake service must consist of a multi-disciplinary team to allow expert knowledge on a range of different areas. Teams should include a range of professional backgrounds to assist in intake assessments and determine either a formal statutory investigation or a non-investigation pathway with differential responses.

54. Expertise which might be beneficial to a future intake service with differential capabilities may include:
- a. Maternal and Child Health Nurse with sound knowledge of child and adolescent development;
 - b. Occupational therapist across therapeutic needs;
 - c. Psychologist with sound understandings of abuse and resulting trauma; and
 - d. Social work and Social Science based disciplines to provide a holistic understanding of risks and possible community based approaches.
55. There will always remain a need for a statutory investigation pathway. However, ATSILS proposes that the creation of a non-government intake service with differential response capabilities will release pressure on the statutory system, and should prove to be a more efficient and cost effective method of assisting children and families.
56. ATSILS recommends that the State only be mandated for Investigation and Assessment, court functions and the most intrusive case management responsibilities. Whilst the State also maintains a strategic role through policy and practice development, and a purchaser of services model which can maintain high quality standards through contract management and monitoring performance (for example, much like the Commonwealth Attorney-General's Department currently does with ATSILS).
57. This Service should maintain a regional presence, not unlike the Department's current Regional Intake Service and may sit within multiple non-government service providers within an agreed framework.
58. ATSILS highlights that the Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency that has authority, responsibility and capacity to deliver universal, early intervention and statutory support services is a differential response in the form of a culturally competent specialist child protection provider.
59. **'Attachment B': Differential intake and child protection system.**
60. ATSILS highlights that children and families may further benefit from accessible differential responses being integrated across the child protection continuum. Therefore families may be assisted at any stage of statutory case management through differential pathways. In essence ATSILS highlights a whole of agency practice shift towards a "Differential Child Protection System".
61. A Regional Intake Service with differential diversion capabilities will assist at-risk families from entering the statutory system, while a whole of system approach will assist families across the complete continuum. Aboriginal and Torres Strait Islander over-representation would be greatly reduced within a "differential" child protection model. A regional intake service could provide an oversight function at significant points in practice. For example, the family group meeting stage to review

all cases, particularly families close to restoration and determine possible differential exits or pathways out of the statutory system.

62. 'Attachment C': Hierarchical Organisation Chart ATSILS CP model.

63. ATSILS recommends that in order to further facilitate differential responses that a referral pathway be readily available to a list of preferred legal service providers - as early as the statutory Investigation and Assessment stage. Such will also better ensure interventions can be put in place to divert families away from the statutory child protections system where appropriate.

64. ATSILS recommends core legal providers (such as Legal Aid, Community Legal Centres, Private Practitioners, Aboriginal and Torres Strait Islander Legal Services and Child Safety Court Services) develop regional Memoranda of Understandings to ensure children, young people, parents and extended families receive the earliest opportunity to receive high quality, culturally competent legal representation and advocacy.

65. ATSILS recommends multi-disciplinary approaches or differential responses be integrated into the proposed preferred suppliers of said legal services. This will allow a strengthening of initial interventions in the interim court stages and promote the appropriate resolution of risk or protection from harm within a non statutory arrangement, such as family and community responses or more formal diversion to the differential child protection systems.

66. ATSILS recommends and promotes specialists child protection legal practitioners. The standard should be akin to that relating to accreditation as a Family Law Specialist.

67. It is noted in evidence before this Inquiry from legal practitioners supports the assertion that better outcomes will be achieved if parents have the opportunity to obtain legal advice at an earlier stage.¹³

Response to QCPCI February 2013 Discussion Paper

Working with children in care

What alternative out of home care models could be considered for older children with complex and high needs?

68. The concept of Secure Care is an extreme measure. The concept facilitates the deprivation of liberty of a child who is in out of home care, who does not have a mental illness or disturbance, and who has not been charged with or convicted of, a

¹³ Transcript: Rebekah Bassano Day 39 17 January 2013; Alison Glanville Day 36 14 January 2013; Cathy Pereira Day 37 15 January 2013.

criminal offence. The principles of the United Nations Convention on the Rights of Child apply guidance and highlight custody as a last resort for children and young people.

69. ATSILS accepts evidence presented to this Inquiry that such a facility might be required; however ATSILS recommends if secure care is implemented, that this should be a minimally implemented.

70. ATSILS strongly highlights a variety of considerations:

- a. Admission must be largely based upon medical expertise and from a therapeutic treatment basis not a behaviour management strategy.
- b. It must be recognised that secure care referrals should be an appropriate option in rare and exceptional cases, utilised only as a last resort and for the shortest possible duration.
- c. Secure Care must be used as a short term option for children in acute crisis. It must be used as a transit residence to stabilise a young person and address significant and immediate risks until appropriate care can be provided in a less restrictive setting.
- d. Secure Care must only be a 'circuit breaker' for children who have an imminent risk of significant danger such as suicide or significant self-harm or extreme risk of serious harm or exploitation.
- e. Admission to a secure care facility must only be by order of a court and reviewable at least quarterly. The young person must have a legislative right to legal representation whilst under such an order¹⁴.

Workforce Development

Should child safety officer be required to hold tertiary qualification in social work, psychology or human services?

71. Child Safety officers should be able to draw on their discipline's theoretical framework when working with families and children with complex social and emotional needs.

72. Qualifications in social work, psychology and other human service degree allow for such.

Should there be an alternative Vocation Education and Training pathway for Aboriginal and Torres Strait Islander workers to progress towards a child safety officer role to increase the number of Aboriginal and Torres Strait Islander child safety officer in the workforce? Or should this pathway be available to all workers?

73. The vocational education pathways for certificate and diploma level should continue to exist for all entry level child protection professionals. ATSILS commends to the

¹⁴ If Queensland moves in this directions it is suggested that we are informed from the key learning from NSW on how to balance the therapeutic need with containment models (currently unpublished evidence)

Commission the evidence of Mr David Bradford who offered innovative and compelling solutions to this consideration.

74. ATSILS recommends that the previous model of Child Safety Support Officers transitioning to the Child Safety Officer be reinstated.

75. It is recommended that this process of up-skilling of professional qualifications be available to the non- government sector. In recognition of the need for diversity in skills, the pathway should include access to multi-disciplinary fields such as social work, social sciences, midwifery, nursing, psychology, criminology and the humanities. This multi-disciplinary work force will better place child protection workers to respond to complex and diverse child, adolescent and families' needs.

Are there specific areas of practice where training should be improved?

76. We must accept that children and young people who enter the child protection system experience a level trauma by virtue of harm and neglect experiences, and the unintended impact from being removed from their families.

77. This experience of trauma is exacerbated in circumstances where the child or young person experiences a number of placements¹⁵. We cannot assume that being in out of home care is always, or even in the majority of cases, a positive experience. It has to be recognised that to be in care is a form of harm itself.

78. We recommend that child safety officers undertake annual mandatory professional development seminars in the following practices areas:

- a. Domestic Violence;
- b. Identifying and working with people with Mental Health Issues;
- c. Building parental capacity;
- d. Cultural competency;
- e. Drug & Alcohol Abuse;
- f. Attachment Theory;
- g. Trauma & Loss;
- h. Grief; and
- i. Building Emotional Resilience/Protective Factors for Child Safety Officers.

In line with other jurisdictions in Australia and *Closing the Gap Initiatives*, should there be an increase in Aboriginal and Torres Strait Islander employment targets within Queensland's child protection sector?

79. In short: "yes".

Conclusion

¹⁵ Transcript: Day 33 8 November 2012 Associate Professor Brett McDermott.

80. Aboriginal and Torres Strait Islander children have and deserve unique human rights as outlined within the United Nation’s Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. ATSIILS considers it fundamentally important that the holistic care and wellbeing rights of Aboriginal and Torres Strait Islander children and young people in out of home care are upheld - particularly their right to cultural identity preservation and meaningful connection with family, kin, language and cultural and community groups.
81. It is important that Aboriginal and Torres Strait Islander children and young people have access to a competent Aboriginal and Torres Strait Islander community controlled non – government sector that delivers sound best practices and evidenced-based outcomes across governance, management, leadership and frontline service delivery. Further, our recommendation for legislative reform will allow this sector to transition towards a more responsive model that presents a promising opportunity for Aboriginal and Torres Strait Islander professionals to deliver meaningful casework within a culturally competent service model.

ATSILS recommended cultural competency organisational arrangements.





