



The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service

Thank you for providing us with another opportunity to provide our views to the Commission.

Consistent with our first submission dated 28 September 2012, the views contained in this correspondence are informed by our experience acting for, supporting and working with Aboriginal and Torres Strait Islander women as they navigate the child protection system in Queensland.

We have provided responses to the questions in the Discussion Paper that appear to be relevant to our client group and the expertise of our service.

Discussion Paper Questions

Chapter 5: Working with children in care

What are the barriers to the granting of long-term guardianship to people other than the chief executive?

In our view, the main barrier to the granting of long-term guardianship to people other than the chief executive is the Department's reluctance to work with extended family members. Consequently, kinship carers and other family members are left to grapple with cumbersome legislative provisions that make it difficult for family members to seek a long-term guardianship order in their favour.

Who is a 'suitable person' to grant a long-term guardianship order in favour of?

The Child Protection Act 1999 ("the Act") clearly provides that the court must not grant long-term guardianship of a child to the chief executive if the court can properly grant guardianship to another 'suitable person.'

Section 9 of the *Child Protection Regulation 2000* sets out the definition of a suitable person. The main difference between section 9(1) (which relates to being a suitable person for having the guardianship of a child) and section 9(3) (which relates to being a suitable person to be a kinship carer) is that section 9(1) requires that the person be able and willing to care for the child in a way that meets the standards of care in the statement of standards.

However, section 135(b)(v) of the Act provides that a kinship carer must be able to meet the standards of care in the statement of standards and section 122 provides that the chief executive must take reasonable steps to ensure that a child placed in care under section 82(1) is cared for in a way that meets the statement of standards. Section 82(1) includes placing a child with a kinship carer.

It follows that, if a person is a suitable person to be an approved kinship carer of a child, they are also a suitable person for the purposes of section 59(7)(b). This submission is confirmed in *Dept Child Safety v SB & Ors [2010] QChCM 1*.

Notwithstanding the above, of their own volition, we have never seen the Department apply for an order granting guardianship to a person other than the chief executive.¹

We have acted for kinship carers and extended family members who were seeking guardianship orders. This can be a difficult, resource intensive exercise because the non-party provision in the Act² does not provide family members with standing. The Act provides that the Court *may* hear submissions from them.

It is our view that if the Department is seeking a long-term guardianship order and the relevant child/ren are being cared for by an approved kinship carer, the Department should be required, with the consent of the carer, to seek an order granting guardianship in favour of that carer.

Further, we suggest that the Act be amended to allow Aboriginal and Torres Strait Islander family members to apply to become parties to the proceedings so that their ability to make submissions, respond to allegations and seek guardianship of children is improved.

How could case workers be supported to implement the child placement principle in a more systematic way?

As stated in our initial submission, developing the cultural competence of departmental officers is essential to improving adherence to the child placement principle.

Clarifying the role of Recognised Entities or other Aboriginal and Torres Strait Islander organisations could also assist the implementation of the child placement principle.

We understand that family support workers within Aboriginal and Torres Strait Islander organisations that also perform Recognised Entity functions are required to identify family community members who may be able to care for children. In order to confirm this we suggest that the role and responsibilities of family support workers be clarified, consistent and made publically available.

CASE STUDY

A client approached us for assistance to apply to become the kinship carer of her granddaughter. We contacted the relevant Recognised Entity to ask them to assist our client to make her application. The Recognised Entity refused to assist with this request – they said that it was not their role. We then contacted another Recognised Entity to ask whether they were able to provide this type of assistance. They said that they could provide this assistance and that they were able to go and visit the client in her home to complete the application.

¹ We have seen one case whether the Department eventually varied their application to seek a long-term guardianship order in favour of long-term kinship carers where the mother of the children was deceased and the father was unknown. This was after sustained advocacy on behalf of the kinship carers.

² See section 113 of the Act.

The Recognised Entity should be a party to child protection proceedings, should be represented and should file material that, among other things, details the steps that have been taken to identify family and community members. Part of the mandate of Recognised Entities should be to assist Aboriginal and Torres Strait Islander peoples to become kinship carers.

Recognised Entities should be vested with decision making powers so that the Department cannot make a placement decision in relation to Aboriginal or Torres Strait Islander children, other than in an emergency, without the approval of the Recognised Entity.

Recognised Entities should regularly be audited to ensure that they are performing their statutory duties.

In our initial submission we recommended that the charter of rights in the Act be expanded to include the right of Aboriginal and Torres Strait Islander children to be placed in accordance with the child placement principal. We also said that the Act should provide a mechanism for children to enforce their rights.

We note that the Department's submission to the Commission commented that the majority of Aboriginal and Torres Strait Islander applicants for blue cards have been successful. We have seen examples of clients applying to become kinship carers and household members applying for blue cards where paperwork has been lost by departmental officers and applications have not been processed. We doubt that these applications are captured in statistics that are relied upon by the Department. Furthermore, it should be noted that the kinship carer approval process involves more than simply obtaining a blue card.

Chapter 7: Addressing the over-representation of Aboriginal and Torres Strait Islander children

What would be the most efficient and cost-effective way to develop Aboriginal and Torres Strait Islander child and family wellbeing services across Queensland?

Our view is that there are opportunities for better collaborations between services. In many instances we have seen families supported by a range of workers whose roles are unclear and undefined. We have seen numerous examples of duplication of services provided by the non-government sector and an overlap between what can be provided by the Department, Recognised Entities, family support services, social workers and legal service providers. Clear, formal referral pathways should be established between the Department, Recognised Entities, family support and legal services.

Could Aboriginal and Torres Strait Islander child and family wellbeing services be built into existing service infrastructure, such as Aboriginal and Torres Strait Islander Medical Services?

As stated in our initial submission, our service provides legal and family support services to women who are involved in the child protection system. Our family support worker provides women and couples with counselling and supports them to access, among other things, accommodation and health services. Positioning a family support service within our legal service is an example of the effectiveness of this type of model.

The Commission could give consideration to recommending positioning family and child wellbeing services within a range of organisations, including Aboriginal and Torres Strait Islander legal services and other Aboriginal and Torres Strait Islander service providers.

How would an expanded peak body be structured and what functions should it have?

A peak body for Aboriginal and Torres Strait Islander agencies that have child protection responsibilities should be responsible for ensuring that consistent and quality services are provided by these agencies.

Any Aboriginal and Torres Strait Islander service wishing to deliver child protection services or responsibilities should be accredited by the peak body. An organisation should only be accredited if it can demonstrate that it has implemented policies and procedures that comply with an agreed set of standards that are negotiated having regard to the expectations of funding bodies, clients and the community.

What statutory child protection functions should be included in a trial of a delegation of functions to Aboriginal and Torres Strait Islander agencies?

An evaluation of Aboriginal and Torres Strait Islander agencies should be performed. Within this evaluation agencies should be asked which child protection functions they would like to perform.

Our view is that the relevant agencies should be given the opportunity to opt in or out of all statutory child protection functions. We note that the transfer of child protection powers to Indigenous organisations in the province of British Columbia in Canada has resulted in various agreements – where some agencies provide all child protection services while others have opted out of the role of removing children from their families and prefer to focus on providing preventative support services.³

What processes should be used for accrediting Aboriginal and Torres Strait Islander agencies to take on statutory child protection functions and how would the quality of those services be monitored?

Standards used for the accreditation and ongoing evaluation of Aboriginal and Torres Strait Islander agencies should be developed as a result of proper consultation between government, the Department, the agencies and the Aboriginal and Torres Strait Islander community.

Accreditation should include a process of cultural auditing that ensures that agencies that take on statutory child protection functions are culturally competent and that they are able to support the bringing up of children in a cultural way.

As previously stated, accreditation and ongoing quality assurance processes could be managed by the peak body.

Chapter 8: Workforce development

³ Kate Rosier *Indigenous led approaches to Indigenous child abuse and neglect. An exploration of implementing indigenous approaches in Canada, with potential lessons for Australia* (National Child Protection Clearing House 2010).

Should there be an alternative Vocational 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 officers in the workforce? Or should this pathway be available to all workers?

We support improvements to the recruitment and training of Aboriginal and Torres Strait Islander child safety officers. An alternative, culturally appropriate pathway is required for Aboriginal and Torres Strait Islander workers. These types of tailored programs have been consistently demonstrated to be effective in a range of other industries.

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

As stated in our initial submission, our view is that all departmental staff should be required to attend regular and ongoing cultural competency training. This training should be relevant to the Aboriginal or Torres Strait Islander peoples who live in the area that the office exists. It should also be relevant to the responsibilities of the departmental staff. The training should be delivered by an Aboriginal and Torres Strait Islander agency that is independent of government and should be assessed by Aboriginal and Torres Strait Islander community leaders who have specific knowledge of the child protection system rather than expertise in training or curriculum development.

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?

The employment of Aboriginal and Torres Strait Islander people in the child protection sector should be encouraged. Specifically designed recruitment processes should ensure that there is a gender balance.

Our clients have reported instances of men supervising them when they are expressing milk or breastfeeding their children. This is culturally inappropriate and the Department should ensure that Aboriginal or Torres Strait Islander women perform these types of roles when working with Aboriginal or Torres Strait Islander families.

CASE STUDY

The following story illustrates the importance of Aboriginal and Torres Strait Islander women supporting Aboriginal and Torres Strait Islander mothers who are struggling with their parental responsibilities:

We attended a family group meeting with a client of our service. During case planning the client asked the child safety officer what 'bonding' meant. The child safety officer responded that bonding was holding and cuddling your child.

Senior Aboriginal women at ATSIWLAS explain that the bonding process is significant for Aboriginal peoples. Knowledge about bonding is passed down by senior Aboriginal women – lore women. Bonding begins in the womb, is associated with the heart-beat, smell and blood of the mother. Specific traditional practises ensure that mothers are bonded to their babies.

Chapter 10: Courts and tribunals

Should a judge-led case management process be established for child protection proceedings? If so, what should be the key features of such a regime?

ATSIWLAS supports the establishment of a case management process for child protection matters that includes the following features:

- A docket system that allows for the assignment of one judicial officer to oversee proceedings from commencement to conclusion;
- The development of rules of court and practice directions.

What sort of expert advice should the Childrens Court have access to, and in what kinds of decisions should the court be seeking advice?

Our view is that when proceedings involve Aboriginal or Torres Strait Islander children the court should have access to expert cultural advice. This could be achieved by establishing a specialist unit within 'Children's Court Clinics' or by mandating the Recognised Entity to file expert cultural evidences in proceedings. Alternatively, if a party seeks to brief a person to prepare a social assessment report, the selection of the report writer should be subject to the approval of the Recognised Entity. The Recognised Entity should only approve the selection of a report writer after being satisfied that the report writer is able to demonstrate knowledge of relevant Aboriginal or Torres Strait Islander child rearing practises, with a preference for the report writer to be an Aboriginal or Torres Strait Islander person.

What, if any, changes should be made to the family group meeting process to ensure that it is an effective mechanism for encouraging children, young people and families to participate in decision-making?

As stated in our initial submission, we propose greater collaboration with families prior to family group meetings to ensure that extended family members and community members are involved in case planning and to ascertain whether there are adjustments that can be made to the usual process of conducting a family group meeting to make the family more comfortable.

Ensuring that cultural planning occurs during the family group meeting is essential. Potentially some part of the cultural planning could occur at the beginning of the meeting to allow the family of the child to discuss the importance of their culture. We believe that this may assist in correcting the power imbalance that we have observed in family group meetings.