13 April 2017

2017 Legislative Review
General Law Unit
Department for Child Protection & Family Support
PO Box 6334
EAST PERTH WA 6892

Dear Legislative Review Panel,

Please accept this submission to the review of the ***Children & Community Service Act 2004*** Consultation Paper, December 2016.

The Aboriginal Family Law Services provides legal representation and education to Aboriginal communities in Western Australia in the context of family and sexual violence. This document contains information acquired by experience and supported by secondary research to support recommendations for legislation change in how Aboriginal people are affected and impacted by the *Children & Community Service Act 2004*.

This submission addresses Consultation Questions 3, 4, 5 in Part 2 and Consultation Question 6 in Part 3.

- **Consultation question 3**

  Are there any changes to the Act which could help to clarify or strengthen the intended operation of the child placement principle as a way of enhancing and preserving Aboriginal children's connection with family and culture?

- **Consultation question 4**

  What legislative changes might improve the effectiveness of the consultation required of the Department when making a placement arrangement for an Aboriginal Child?

- **Consultation question 5**

  Are any changes required to increase the effectiveness of the principles set out in Sections 13 and 14?

- **Consultation question 6**

  What further amendments might improve the effectiveness of the Act in protecting children from family and domestic violence while keeping them safe with a protective parent.

The Aboriginal Family Law Services (WA) welcome the opportunity to provide further information as required, including being consulted on the draft legislation.

Yours sincerely

M. C. Mat

Corina Martin
Chief Executive Officer

Submission to the Department for Child Protection and Family Support

Review of the *Children and Community Services Act* 2004, Consultation Paper December 2016

Lodged by 14 April 2017

1. About Aboriginal Family Law Services (WA)

The Aboriginal Family Law Services (WA) is committed to being a leader in the provision of family violence legal services, support and education for Aboriginal and Torres Strait Islander people in Western Australia (WA) who have experienced, or, who are experiencing family and sexual violence. (**Please note**: The term Aboriginal is used herein to refer to both Aboriginal and Torres Strait Islander people wherever relevant.)

Funded by the Department of the Prime Minister and Cabinet (DPMC) under the national Family Violence Prevention Legal Service (FVPLS) Program, we are the largest FVPLS provider in Australia. The FVPLS program provides specialist legal services in the area of family violence matters. It aims to 'prevent, reduce and respond to incidents of family violence and sexual assault among Aboriginal people'.[1] Fourteen services are funded nationally to provide these services to 31 rural and remote locations.

Services are delivered in six regions across WA covering the West Kimberley, East Kimberley, Gascoyne, Midwest, Goldfields, and Pilbara regions. 47% of the state's Aboriginal population resides in these regions.[2]

Offices are located in Broome, Carnarvon, Geraldton, Kalgoorlie, Kununurra, and Port Hedland. From these locations outreach services extend to over 30 remote townships and Aboriginal communities. The corporate services office located in Perth provides strategic and management support to all regional offices including finance, human resources, administration, quality assurance and compliance functions.

2. Introduction

The Aboriginal Family Law Services (WA) welcomes the opportunity to have input into the Review of the Children and Community Services Act 2004 Consultation Paper December 2016.

We also endorse the submissions provided by:

- The Aboriginal Legal Service
- Women's Law Centre of WA
- Legal Aid of WA
- Djinda Services

Aboriginal Family Law Services (WA) provides professional legal assistance to Aboriginal peoples that have experienced or are experiencing domestic or sexual violence. This submission on Review of the Children and Community Services Act 2004 Consulation Paper will address Consultation questions 3, 4, 5 and 6 in Parts 2 and 3 in the terms of reference.

The Aboriginal Family Law Services (WA) would be pleased to provide further information additional to this submission if required.

[1] Productivity Commission (2014) Access to Justice Arrangements Draft Report, p 29
[2] Aboriginal and Torres Islander Census counts 2011 – Australian Bureau of Statistics http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2075.0main+features32011

3. Background Information

The child protection system is in crisis nationally, with symptoms being experienced across Australia including burgeoning numbers of children – particularly Aboriginal children – entering out of home care. In the past few years there has been a significant increase in the number of Aboriginal Children entering into care[3] comparative to non-Aboriginal Children.

3.1 Aboriginal Services Framework

The historical legacy of managing the welfare of Aboriginal people is stated in the *Aborigines Act* (1905), where it was the responsibility of the Chief Protector to control every aspect of Aboriginal people's lives, for the purpose of protection, control and segregation of all Aboriginal people in an attempt to assimilate future generations and cause the race to die out.

The later *Native Administration Act* (1936) empowered the Chief Protector to have total control of all Aboriginal children 21 years and under. This Act resulted in the suppression of Aboriginal languages and cultures in much of WA and the removal of many children from their families. The impact of these 2 Acts on Aboriginal culture and families within WA has been catastrophic.

Both of these Acts were administered by the Native Welfare Department. In 1972 this Department was abolished and its functions combined with the Child Welfare Department to form the Department for Child Protection. The Department for Child Protection was subsequently renamed as the Department for Child Protection and Family Support ("**DCPFS"**).

Today, DCPFS administers the *Children and Community Services Act* (2004)("**The Act"**)

It is the intention of The Act to ensure that Aboriginal children now have their cultural and identity needs met.[4] Those intentions and the engagement of DCPFS and the open willingness of DCPFS to assess its performance and embrace change for a better future form the basis of this submission.

3.2 Domestic Violence

It is believed domestic and family violence are the key drivers behind the overrepresentation of Aboriginal children in child protection[5]. While there is limited recent data from WA to support this claim, the recent evidence from the Victorian Taskforce 1000 project – a review of the cases of the thousand or more Aboriginal children in care – has found that "well over ninety per cent of Aboriginal children entering care" have done so due to family violence.[6]

[3] Department for Child Protection and Family Support (March 2017) Out-of-Home Care Reform in Western Australia & why long term planning for children in care is so important.

[4] Department for Child Protection (December 2012) Aboriginal Services Framework

[5] Department for Child Protection & Family Support Op cit

[6] Victorian Aboriginal Community Controlled Organisations and Community Service Organisations (2014) Koorie Kids: Growing Strong in their Culture, A Plan for Aboriginal Children in Out of Home Care, October 2014 Update

DCPFS is unable to state how many children in WA are in the CEO's care due to family and domestic violence as they do not currently specifically capture and report on this data, however they estimate this to be between 70-90 percent. In their 2013-14 Annual Report they state that "Violence in the home, predominantly against women and children, is a major underlying factor in many child protection cases. Other common issues that lead to children being at risk of harm include parental drug and alcohol misuse, mental health issues and financial problems".[7]

Statistically Aboriginal women fare much worse compared to non-Aboriginal women in relation to the prevalence and impact of family and domestic violence:

- There is a higher use of restraining orders compared to the non-Aboriginal population, with a higher level of violence in these situations.
- Aboriginal women are statistically more prone to hospitalization and death as a result of family and domestic violence (358 times and 109 times respectively).

However, it is relevant to note that while Aboriginal people make up 3.1% of the Western Australian population, the Kimberley population is closer to 50%.[10] The region with the largest increase in Domestic Violence is the Kimberley, showing a 5-year increase of 79% in Domestic Violence Incident Reports (DVIR) that have been completed by police. These figures do not specify ethnicity so it is unknown how many of these DVIR relate to Aboriginal people.

In that same 5-year span, hospitalizations related to family and domestic violence have increased for men and women by an average of almost 46%. Homicides have doubled. The number of perpetrators charged with assault and sexual assault has decreased by 19% and 29% respectively. The number of perpetrators charged with breaches of a restraining order, including police orders has increased by 45%.

Further ramifications of family and domestic violence on Aboriginal women and communities are visible through other indicators:

- Aboriginal people are overrepresented in the child protection system with Aboriginal children making up 53% of children in out of home care in WA.[11]
- The percentage of Aboriginal compared to non-Aboriginal children in care by region (including metro) in WA varies from 20% (Peel) to 100% (East Kimberley).[12]
- Aboriginal people are overrepresented in the prison system, comprising 40 percent of the total prison population, with the adult female prisoner population over 50 percent.[13]

[7] Department for Child Protection and Family Support (2014) Annual Report 2013-14

[8] Australian Institute of Health and Welfare (2006) Family violence among Aboriginal and Torres Strait Islander peoples http://www.aihw.gov.au/workarea/downloadasset.aspx?id=6442458606

[9] Family Violence Prevention Legal Services – Research and Needs Analysis Report, 16 July 2013, Nous Group

[10] Western Australia's Family and Domestic Violence Prevention Strategy to 2022: Achievement Report to 2013

[11] Department for Child Protection and Family Support, November 2015-2016 Annual Report

[12] Department for Child Protection and Family Support, November 2014

[13] Australian Bureau of Statistics (ABS), 4512.0 - Corrective Services, Australia, September Quarter 2014 (4 December 2014) (Table 14)

- Children who experience family violence or have been in care are more likely to use legal aid as adults.[14]

For Aboriginal communities the prevalence and impact of family and domestic violence is understood in terms of loss of connection to family, culture and self.

Creating the conditions whereby trauma can be healed for those who have already experienced family and domestic violence is crucial to preventing violence for the next generations. A focus of resources and sustained effort is needed to break the cycle of violence.

3.3 Signs of Safety Assessment & Planning

The Aboriginal Family Law Service ("AFLS") supports effective child support services, structured systematically in a non-paternalistic way to respond to child mistreatment.

The historical approach to Aboriginal welfare issues was paternalistic. Paternalistic practice occurs when case work professionals "adopt the position that they believe they know what is wrong in the lives of service recipient families and they know what the solutions are to those problems".[15] A paternalistic approach is harmful to families because it disenfranchises the families that DCPFS wants to assist.[16]

In more recent years, DCPFS policy has adopted an approach intended to be non-paternalistic, called the Signs of Safety Assessment & Planning, when deciding if a child should enter out-of-home care. It is a process of creating a map of the cirucmstances surrounding a vulnerable child.[17] It requires active understanding, recognition and working within family networks, local communities and acknowledgment of cultural obligations and connections.

Given the intense and personal impact the DCPFS predessesors had on the lives of Aboriginal people and the damage it caused to individuals, familes and communities, it is more important than ever for DCPFS to be supportive towards Aboriginal families, by consistently delivering transparent and appropriate assistance when required, properly identified through the Signs of Safety assessment and in compliance with The Act.

Unfortunately, in the experience of AFLS, there are often cases that do not adhere to the intended meaning of the Act from the Aborignal experience.

Section 7 of the Act provides the paramountcy principle and section 8 the factors relevant to determining the paramountcy principle. In reality this principle is not applied as the Act intends it to do so.taken into full consideration on the ground.

The following listed commonly held issues our clients face when dealing with DCPFS. These issues concerns the AFLS and the application of The Act in its current form and DCPFS's interpretation of it for the placement of an Aboriginal child in rural WA.

[14] Productivity Commission (2014) *Access to Justice Arrangements*, Inquiry Report No. 72, p 777

[15] Turnhell & Murphey *Signs of Safety Child Protection Approach and Framework: Comprehensive Briefing Paper* (August 2014), Resolutions Consultancy pg 8

[16] Ibid pg 8

[17] Ibid pg 8

Common Client issues

Contact

1. S143 proposals often include inappropriate modes of contact between parents and children, such as skype where internet is unreliable in communities.

2. Telephone contact can also be difficult when again there are coverage issues, phone numbers change and relies on the co-operation of carers facilitating the making and receiving of calls.

3. Travel arrangements are often not supported by the Department for family members to travel for contact visits, particularly when not residing in the same towns or regions as the children.

4. In the event DCPFS offices are short-staffed contact can be cancelled at short notice, causing extreme distress to both parents, family and the children.

5. Often distressed parents act on their distress and then case workers will respond discretionally by cancelling the contact. Clients often describe this as feeling held to randsom by individual case workers.

6. Discretionary preference given to one parent to the detriment of the other. For example supporting the father incarcerated with contact and post release plans but not the mother who was the victim of his violence.

Harm

7. The question of harm as set out in section 8 needs to be significant in nature. However, in reality it may not be “significant in nature”.

8. Case workers frequently do not recognise an Aboriginal mother’s deliberate measures to ensure the safety of their children. For example, placing them with safe and secure kinship family members, particularly during periods of violence.

Comprehension of the Orders Sought

9. There is a need for the DCPFS to ensure parents at risk of having their children taken into care are legally represented in every case, especially during pre-birth care planning and signing consent orders.

10. Parents often do not fully understand the consequences of what they are signing or feel under duress to sign.

Case workers’ lack of experience

11. DCPFS frequently appoint their most inexperienced case workers to complex matters and with inadequate knowledge or understanding of Aboriginal cultural issues or expertise in complex cases.

12. Affidavit evidence of DCPFS often refer to historical facts and do not recognise updated facts, for example when parents have completed courses, or tasks that DCPFS have requested they do.

13. Distressed parents are often taken as being aggressive which results in a personality clash with the case worker.

14. DCPFS are forgiving when the foster carer requires time out from child caring, but do not extend the same forgiveness or understanding towards parents' need for respite.

Siblings

15. It is all too common for the Department to separate siblings, rather than being placed together and subsequently causing further trauma to the children and the parents.

Placement

16. There is frequently no appropriate consultation with Aboriginal persons pursuant to the Act or noted in their decisions.

17. The names of other potential family kinship carers provided by parents or family are often not explored by caseworkers.

18. Consideration and support are often not given to mothers that have been subjected to domestic violence and the children are then placed with family members of the perpetrator.

19. The Act allows for Supervision Orders but this is very rarely used for parents.

Reunification

20. Once a child has been placed in DCPFS care it is then difficult for the children to be reunified with their biological parents. The Department then relies on the Western connotation of attachment formed to non-kinship carers as reasons not to reunify.

21. Parent are not adequately or properly supported by DCPFS to enable reunification.

The above issues are examples of our clients' issues faced in dealing with the Department but are not unique or an exhaustive list.

Recommendation 1

The Children and Community Services Act 2004 be amended to include express provision for the President of the Children's Court to publish cases at first instance of legal import and or legal interest, in an appropriately anonomised format.

Recommendation 2

Subdivision 5 -Protection Orders (until 18) and Subdivision 6-Protection Orders (special guardianship) be amended to exclude Aboriginal Children from being the subject of out-of-home orders until 18 under the Act.

Recommendation 3

The Act be amended to include a requirement for siblings to be kept together and placed in the same home environment except in exceptional circumstances that prevent it. Keeping siblings together should be the default position of the Act.

Recommendation 4

The Act be amended to make it compulsory for DCPFS to engage in Active Efforts to support a family, without reference to inadequate housing, substance abuse and non-conforming to social behaviours, unless those issues have caused significant harm to the child evidenced by proven facts.

Recommendation 5

Amend Section 148 of the Act to clarify and require;

1. All children subjected to protection applications be legally represented.
2. Legal representation for children be referred to as " Child Representative"
3. Clarify the basis upon which the legal representative acts; on instruction or best practice guidlines
4. Legal representation for children to be culturally competent for Aboriginal children.

Recommendation 6

Amend the Act to include reference to mandatory monitoring of out-of-home placements with scope for return of the children to their protective parent if the placement does not provide a measurable improvement to the child's home experience.

Recommendation 7

The Act should include reference to a special requirement for DCPFS competence when intervening in Aboriginal families, with competence to include understanding of skills, knowledge and values relevant to the Aboriginal experience.

Recommendation 8

The Act 2004 be amended to include express provision for each region to have an external body, group or organization separate to DCPFS to be appointed to review and monitor all Aboriginal out-of-home care cases and for and the body group or organization to consist of Aboriginal members with cultural connections to country and kinship.

Recommendation 9

Amend the Act to include provision for the Court to be fully informed about the best interests of a child when presented with an application for consent orders for negotiated settlement by appointing legal representation for the child if one or both parents are not represented.

Recommendation 10

Amend section 13 of the Act by making changes that effectively have the meaning of the word “Allowed” to be removed and changed to the meaning of “Must” and amend “with as much self-determination as possible’ to “with self-determination”. The amendments need to reflect that it is not discretionary for the application of the self determination principle as at present. Make it mandatory.

Recommendation 11

Amend section 14 of the Act to make it mandatory for an Aborignal kinship group, community group or representative organization to participate in decision making under the Act, for every child.

Recommendation 12

Amend the Act to include express recognition of Aboriginal Attachment to the extended family as different to the Notion of Western Attachment to the nuclear family

Recommendation 13

Amend the Act to include express provision for DCPFS to return children to their parents in the event legislated time frames are not maintained and remove the discretion of the court to grant extensions in time.

Recommendation 14

Amend Section 28(2) of the Act to be the exlusive decision of a kinship group, community representative or Aboriginal organisation before a new born baby is taken into care based on “likely” to suffer harm.

Recommendation 15

Amend the Act to clarify the appropriate placement of a child with a protective parent in cases where the protective parent is the victim of domestic and family violence.

Recommendation 16

Amend the Act to prevent a child from being placed with the perpetrator of domestic or family violence or his/her family.

Recommendation 17

The Act be amended to enact full and frank disclosure of all information related to a protection application unless expressly prohibited by the Act and for such disclosure to be required within specified time frames.

Recommendation 18

The Act be amended to include requirement for an interepreter fluent in the langurage of the regional area.

Recommendation 19

A case worker must not confer or deal directly with a parent or other non DCPFS party in a protection application if that person is represented by a legal practitioner unless the legal practitioner has previously consented in writing.

Recommendation 20

Final orders need mandatory condition of contact for natural parents. Carers cannot take a child out of the jurisdiction, interstate, inter region, international without bringing the matter back to court.

4. Transparency in Child Protection Practices

It is important to note the current lack of transparency in the WA child protection system. All care and protection applications to the Children's Court and the outcomes go unreported, unless a matter is appealed.

This lack of exposure to practices, external monitoring of case management or review of cases by the legal profession and other interested parties, is of significant concern to the AFLS. The practices of DCPFS are largely not known to anyone not directly involved with a matter. Nor will the findings of the Court involved in DCPFS matters and the significance of case law created by decisions be available for external legal consideration.

Effectively, the non reportable at first instance protocols result in much of DCPFS's activies to be completely confidential and therefore isolated incidences known only for those involved. Neither the legal profession or the wider community are privy to what are likely commonly occurring circumstances surrounding care and protection practices in WA.

AFLS is of the view there is a need for transparency in the actions of DCPFS with all management of out-of-home protection cases. As with other governmental policy and practices, checks and balances ensure consistency, compliance and adherence to the law. When dealing with children and especially in the context of vulnerable populations, such as Aboriginal families in WA where there is a history of paternalistic, intergeneral trauma and damaging social practices, transparency and compliance with the Act is paramount.

Ananomised Reporting

The AFLS supports the need for maintaining confidentiality over the identities of individual family members involved in care and protection matters that come before the Children's Court. But the AFLS does not support the DCPFS case worker's management of those cases being held confidential nor the final outcomes in the Children's Court. To the contrary, the AFLS considers transparency in care and protection matters to be essential to good practice.

The Family Court of Australia and the Family Court of West Australia have adopted an anonymised system of reporting cases at first instance. The names of individuals within a matter are annonomised as well as sufficient detail to prevent identities being discernable.

> *"Judgments published on this website have been anonymised by substituting pseudonyms for party names and, where appropriate, by editing information that would allow parties to be identified. Judgments are the "reasons for decision" made by the judicial officer at the conclusion of the case.*
>
> *A judgment generally outlines*
>
> - *the facts of the case*

- *the issues*
- *the law*
- *the interpretation of the law, and*
- *orders made as a result.*

Judgments may be delivered orally at the end of the trial (ex tempore) or the decision may be reserved and presented formally in a written document at a later date."[18]

The AFLS considers it possible for the Children's Court to emulate this practice of reporting by drafting express changes to the *Children and Community Services Act 2004* to make it compulsory for select decisions to be published.

The current form of the *Children and Community Services Act* 2004 does not appear to prohibit anonamised reporting of care and protection cases. It is however, an accepted practice not to do so. The reporting of some appealed care and protection matters by His Honour, President of the Children's Court, further supports the possibility that anonamised reporting at first instance can be introduced.

It is not AFLS's position that all cases at first instance should be reported anonomously. Rather, those that His Honour, the President of the Children's Court considers particularly relevant and or informative and of interest to the legal profession and wider community. similarly to current practice in the Family Court of Western Australia.

The AFLS does not consider the non-written format of Children Court's judgements preclude child protection cases from being reportable in the Childrens Court and the importance of transpareny, in our opinion, outways any inconvenience it might cause.

A transcript of selected decisions could be transcribed and altered to the extent necessary to keep identity details confidential. Alternatively, the President might request the presiding Magistrate convert decisions of interest into a written judgement, then have it appropriately anonomised before publication.

Ideally, the AFLS proposes it appropriate for all decisions for care and protection matters be changed from no-written to written, given the gravity and importance of of those decisions. Aboriginal children, living with the impact of past colonization actions still resonating today, are amongst the most vulnerable members of our society.

The following submissions by AFLS are premised on the over-riding proposal that it is imperative that DCPFS and the Children's Court cease the confidential & hidden nature of out-of-home care. The gravity and impact on children make it an important necessity for all concerned.

The existing culture of secrecy must change and become transparent, not only for the sake of the children involved but also for the credibility of the agencies that meter out actions and decisions. As stated by Lord Acton in the English case of *Roe v Minister for Health*;

[18] Family Court of Western Australia website, *Judgements* page

> *"Every thing secret degenerates, even the administration of justice: nothing is safe that does not show how it can bear discussion and publicity."* [19]

Lord Denning M.R in his judgment in *Argyll v Argyll* [20] stated that the scope of 'public interest' is open-ended. He comes close to saying that it is justifiable in the public interest to disclose confidential information which is 'of public interest' in that there is a public willing to read about it.

The AFLS does not advocate disseminating confidential individual information about care and protection matters. But does strongly purport that proper checks and balances external to DCPFS should be in place to review all care and protection practices for Aboriginal children. The soaring and disproportionate numbers of Aboriginal children in out-of-home care requires it.

The AFLS propounds it is in the public's interest to have an external body to review all DCPFS cases and matters brought before the Children's Court.

Recommendation 1

The Children and Community Services Act 2004 be amended to include express provision for the President of the Children's Court to publish cases at first instance of legal import and or legal interest, in an appropriately anonomised format.

4. Response to questions from Terms of Reference Part 2 & 3

Consultation Question 3

Are there any changes to the Act which could help clarify or strengthen the intended operation of the child placement principle as a way of enhancing and preserving Aboriginal children's connection with family and culture?

4.1 Repeal "Until 18 year" Orders

Permanence in the context of DCPFS out-of-home placements reflects the Western notion of stability within a household, attachment to the nuclear family and a requirement that the arrangement continue throughout childhood.

Although Aboriginal cultures vary from group to group and between Aboriginal Countries, the practices of child rearing remains constant throughout. The Aboriginal way is "growing up" children, an approach both conceptually different and bipolar to the western way.[21]

Although the mother remains important in the care of a baby after it is born, the baby becomes part of the community group at birth. All members of the community engage with the baby and assist with the care of baby in a way not practiced in the Western tradition.

> *"The details of kinship are complex… kin relationships and the associated obligations extend well beyond the immediate family group. Children are always*

[19] *Roe v Minister for Health* (1954) 2 All ER 131
[20] *Argyll v. Argyll* [1967] Ch. 302,331 if.
[21] SNAICC (2011) *Growing up Our Way: Practice Matrix*

surrounded by a range of people who can respond to their needs. For example, a child has several fathers and mothers. A father's brother is classified as, and is called, a father. The mother's sister is considered to be, and is known, as a mother (Edwards 1988)."[22]

It is not appropriate to impose Western cultural values for child rearing that undermine the Aborigninal experience on Aboriginal families in crisis. It is clear it is not working. It is the AFLS's position that out-of-home care placements based on western attachment theory deny the Aboriginal child a right to his or her heritage and culture, and perpetuates paternalistic practices against Aboriginal people.

Current practice also continues the disenfranchisement of Aboriginal people, after generations of children being removed from their kinship groups, irretreveably damaging many family relationships.

History has proven it is not the best interest of the Aboriginal child to be removed for extended periods of time. The importance of community and kinship in raising a child is best summarized as follows;

"The security of an Aboriginal child would be derived from a network of regular caregivers and acceptance in their community. Attachment in a network of multiple caregivers, takes on special significance. The opportunity of forming an enduring affective relationship with more than one specific person in the community allows the support and maintenance of the child's emotional health throughout their life span. Child rearing is literaly a family and community concern and is not confined solely to the parents of the child." [23]

The Act should be amended to repeal reference of until 18 orders altogether for Aboriginal children. At most, a 2 year care and protection order is adequate to ensure a child's safety and wellbeing, while enabling the family opportunity to work with DCPFS and satisfy reunification plans designed for the Aboriginal child.

Reunification should remain the single focus of all child placements throughout the child's childhood and all steps necessary should be taken to achieve this outcome. An until 18 year order prevents this from occurring. Permanently removing a child for 1 to 2 years at first instance places that child at serious risk of becoming a ward of the State until 18 years, based on the current western practices of attachment theory.

No Aboriginal child should be at risk of removal until adulthood because it is not possible to predict if the future holds alternative care options for that child. In the context of Aboriginal child rearing, flexibility is a constant.

Recommendation 2

Subdivision 5 -Protection Orders (until 18) and Subdivision 6-Protection Orders (special guardianship) be amended to exclude Aboriginal Children from being the subject of out-of-home orders until 18 under the Act.

[22] SNAICC (2011) *Growing up Our Way: Practice Matrix* pg 32

[23] SNAICC (2011) *Growing up Our Way: Practice Matrix* pg 31

4.2 Separation of Siblings

Children are commonly separated from siblings when care and protection placements are made, with little or no consideration of how this separation may affect the child's immediate and nuclear family relationships. Even within the Western notion of child rearing, it is not acceptable for siblings to be separated. This dynamic understanding of child rearing is reflected in the best interests principle in international child rights law.[24]

Canadian research has found a direct correlation between lack of continuity in the personal identity in First Nations youth and the high rates of youth suicide in those populations. Importantly, the increased rate of youth suicide falls to zero in communities where cultural connection, practice and self governance factors are present.[25]

Although circumstances of risk may not facilitate placement of a child with its parents, proper consideration to keeping siblings together should remain paramount in all cases. Separation should only occur as a last resort after full and earnest attempts to keep siblings together.

Recommendation 3

The Act should be amended to include a requirement for siblings to be kept together and placed in the same home environment except in exceptional circumstances that prevent it. Keeping siblings together should be the default position of the Act.

4.3 Explore all reasonable foster placements, including parents as foster carers, before placing a child outside the Kinship group.

In many cases it is possible to identify potential family carers on either parents' side that and they are not duly explored as alternatives to foster placements by DCPFS. Despite named individuals being proferred to DCPFS on a number of occasions as suitable.

In a number of AFLS matters children have been placed into care with the paternal family in circmstances of significant domestic violence, in which the paternal family were sympathetic to the perpetrator and possibly involved in the exercise of violence against the mother. This placement made contact between the mother and child problematic and potentially unsafe.

Given the importance of a child maintaining contact with kin and country, failure to explore family possibilities is a serious indictment on the rights of the Aboriginal child as mandated in the Act.

In the experience of the AFLS, often times a mother whose child has been apprehended and who is working towards return of her child, may be in some cases an option as a foster carer. However, this seems to rarely be considered by DCPFS or even understood as a possibility by the parent, given its rarity.

[24] Rutter M (2008) Implications of Attachment Theory and Research for Child Care Policies in Cassidy and Shaver *Handbook of Attachment: Theory, Research and Clinical Applications* London Guilford Press

[25] SNAICC (July 2016) *Achieving Stability for Aboriginal and Torres Strait Islander Children in Out-of Home Care* pg 7

Aboriginal parents engaged with DCPFS often have a history of involvement with child protection over generations, where English is not the first language or where they live in remote and rural areas. Instead of presuming that parenting difficulties result from parental inadequaties, social disadvantage of those parents should be considered and support provided as best practice.

> *"neglect (of a child) should be considered to be a sign that the family is in need of support, rather than as a reason to remove a child."*[26]

Placing children with parents, ideally for reunification and the end of DCPFS involvement, should remain the ultimate aim. As it stands, DCPFS operates more as a watch dog to keep children away from risks and communities it deems unsafe.

This is counter to the Act's mandate to facilitate reunification with parents.

Under the United States model, the State must satisfy the court that "Active Efforts" have been made to provide the services and programs required by a family to enable them to care for the child before the State can remove a Native American child from their family.[27]

"Active Efforts" is a higher standard than "Reasonable Efforts". And inadequate housing, alcohol abuse, and non-conforming to social behaviours are not clear and convincing evidence that a child will suffer damage by remaining with its parents.

It is fair to say that active efforts in this context are not being practiced in WA. In fact, a protocol for children in the CEO's care, between DCPFS and non-government placement agencies, dated December 2013, states;

> *"the Department has the final decision-making authority with regard to the placement of children"*[28]

The AFLS submits that pursuant to the intented meaning of the Self Determination Principle in the Act, this statement is not entirely accurate in relation to Aboriginal children, and in any event, it is the Children's Court and Family Court of Western Australia that ultimately carry that power. The Act needs to clearly reflect the intended meaning, without possibile differences of interpretation.

Recommendation 4

The Act should be amended to make it compulsory for DCPFS to engage in Active Efforts to support a family, without reference to inadequate housing, substance abuse and non-conforming to social behaviours, unless those issues have caused significant harm to the child evidenced by proven facts.

4.4 Compulsory Independent Children Lawyer

[26] H.Douglas & T.Walsh, *Continuing the Stolen Generations: Child Protection Interventions and Indigenous People* International Journal of Children's Rights 21(2013) 59-87

[27] Ibid

[28] The Department for Child Protection and Family Support and Non-Government Placement Agencies (December 2013) *Concerns for Children in the CEO's Care* pg 2.

In the experience of AFLS, a legal representative for the child in protection cases is rarely appointed.

Section 148 of the Act refers to legal representation for the child. It is discretionary upon the Court to decide if it is necessary.

It is the contention of AFLS that every child before the Court for removal from its parents, because it is considered in need of protection, requires separate representation by a legal practitioner. The competing nature of the parties involved in protection cases requires the interests of the child to be independently represented.

Further, the term "separate legal representation" as referred to in the Act does not clearly specify the sole representation of only the interests of the child. For this reason, AFLS suggests the name of "separate legal representation" for children be changed to "Child Representative"

Furthermore, the Act would greatly assist legal practice by reflecting the basis upon which legal representation for a child is to be instructed. That is, does the lawyer act on instructions or by reference to best practice guidelines.

All legal representation for Aboriginal children should be by lawyers competent in Aboriginal culture, and community complexities.

Recommendation 5

Amend Section 148 of the Act to clarify and require;

1. All children subjected to protection applications be legally represented.
2. Legal representation for children be referred to as " Child Representative"
3. Clarify the basis upon which the legal representative acts; on instruction or best practice guidlines
4. Legal representation for children to be culturally competent for Aboriginal children.

4.5 Monitor out-of-home placements

In the AFLS experience there is no follow up by DCPFS once permanent orders are made about the care placement of the child. It is therefore possible that unmonitored placements end up no better than the environment from which the child was taken.

If children are to be put into out-of-home care, it is the AFLS's position that the placement home must be tangibly better for the child. Equal or less to the care provided by either parent is not acceptable and in such cases, the child should be returned to their most protective parent.

Without monitoring the child after a permanent placement is made, the quality of experience of that child is unknown.

Recommendation 6

Amend the Act to include reference to mandatory monitoring of out-of-home placements with scope for return of the children to their protective parent if the placement does not provide a measurable improvement to the child's home experience.

Consultation Question 4

What Legislative changes might improve the effectiveness of the consulation required of the Department when making a placement arrangement for an Aboriginal Child?

4.6 DCPFS Case Workers need to be educated and sensitive to aboriginal cultures and have adequate expertise and experience to manage complex cases.

If child protection workers are to work effectively with Aboriginal people they must be culturually competent to do so. Three interactive components of cultural competency have been identified by Weaver in comprehensive research:[29]

1. Skills;
2. Knowledge; and
3. Values.

Skills entail general skills such as problem solving and comunication and containment skills (including patience, tolerating silence and listening).

Workers must have knowledge of Aboriginal diversity and their own self awareness of stereotypes, a knowledge of history and culture and contemporary realities.

As to values, workers require self-awareness, humility and willingness to learn, respect and open-mindedness and a clear understanding of social justice.

For a DCPFS case worker to be culturally competent to work with Aboriginal people, we suggest that worker needs to be highly skilled and experienced.

Workers are not always competent to fulfil their role. Lack of competency compromises both the worker and the family and leaves the child potentially vulnerable with the decisions that are made.

[29] H.Douglas & T.Walsh, *Continuing the Stolen Generations: Child Protection Interventions and Indigenous People* International Journal of Children's Rights 21(2013) 59-87

Ideally, workers with a minimum number of years experience and with a proven record of successful reunifications would be situated in DCPFS districts with high Aboriginal populations, such as the Pilbara and the Kimberlies.

The number of protection orders made in 2016 are as follows;[30]

		Aboriginal children	Non Aboriginal children
1	Pilbarra	27	0
2	West Kimberley	72	0
3	East Kimberley	56	0

If competent experience is difficult to source in remote locations, at minimum, less experienced case workers should be monitored and mentored in a way that comprehensively protects Aboriginal human rights.

The children referred to in this submission comprise part of the above mentioned statistics. It is easy to lose sight of the plight of individuals when cases are presented as numbers.

Recommendation 7

The Act should include reference to a special requirement for DCPFS competence when intervening in Aboriginal families, with competence to include understanding of skills, knowledge and values relevant to the Aboriginal experience.

4.7 Exernal Body to Monitor Care & Protection Cases

At present and as afore mentioned, there are no steps in place to externally monitor or even review the current practices of DCPFS, other than the Court at first instance. However, as also canvassed, the findings of the Court at first instance are not publishable.

There is no current system in place for persons external to a case to know if children subject to care and protection order are managed according to current legal requirements as stated in the Act.

It would be useful for WA to look to Manitoba in Canada. Manitoba has enacted signfificant changes to it's child protection laws, specifically to address issues surrounding First Nation difficulties, legislating for proper representation and cultural understanding.

The *Child and Family Services Authorities Act (2003)* created four new departmental authorities to administer protection to the children of Manitoba.

1. First Nations Authority of Northern Manitoba,
2. First Nations Authority of Southern Manitoba,
3. Metis Authority and
4. General Authority

[30] Department for Child Protection and Family Support (2015 – 2016) Annual Report pg 123

These separate departments oversee services, disperse funds and ensure that culturally appropriate services are delivered by their respective agencies consistent with *The Child and Family Services Act* and *The Adoption Act (1999) of Manitoba*.[31]

Ideally an entirely separate branch of DCPFS might be legislated to take over management of Aboriginal protection issues similar in the way to the Manotaba experience.

Failing that, at least an external body to the existing DCPFS department, to monitor and decide appropriate care for Aboriginal children.

Recommendation 8

The Act be amended to include express provision for regional external bodies, groups or organizations separate to DCPFS to be appointed to review and monitor all Aboriginal out-of-home care cases and for and the body group or organization to consist of Aboriginal members with cultural connections to country and kinship.

4.8 Negotiated Placements

Division 4 of the Act provides for DCPFS to negotiate out-of-home placements for children. It is the AFLS experience that placements are regularly negotiated for Aboriginal children in rural WA and consent orders are duly presented to the Court.

Usually the child is not legally represented and it is common for at least one of the parents to have no legal advice.

This practice is of concern to the AFLS, as cases often lack comprehensive independent evidence for the Court to consider when presented with a consent application.

Negotiated placements without legal representation leave both the parents and the child vulnerable. Research has shown that people who repeatedly experience negative events over which they have no control may start to assume it is not possible to control situations.[32]

Many Aboriginal people see themselves as powerless to oppose to DCPFS intervention, partly because of generations of their families being taken and likely because they were removed as children as well.[33]

> *"With Indigenous parents…. Ive noticed that a lot (of them) think that once child safety becomes involved that's the end of it for them, they can't do anything more, they can't challenge the process. They don't understand that they can try and negotiate with the department to seek some different orders, If orders are indeed necessary"*[34]

[31] Canadian Child Welfare Research Portal
http://cwrp.ca/sites/default/files/publications/en/MB_final_infosheet.pdf

[32] H.Douglas & T.Walsh, *Continuing the Stolen Generations: Child Protection Interventions and Indigenous People* International Journal of Children's Rights 21(2013)

[33] Ibid

[34] Ibid pg 64

The AFLS considers it necessary for a legal representative to be appointed in negotiated placements if one of the parents is not legally represented, idealy for the child. The aboriginal voice must be heard before orders are made

Recommendation 9

Amend the Act to include provision for the Court to be fully informed about the best interests of a child when presented with an application for consent orders for negotiated settlement by appointing legal representation for the child if one or both parents are not represented.

4.3 Consultation Question 5

Are any changes required to increase the effectivenenss of the principles set out in sections 13 and 14?

4.9 Section 13 – Principle of Self Determination

Section 13 of the Act has the principle that Aboriginal and Torres Strait Islanders should be

"allowed" to participate in the protecton and care of their children with as much self determination "as possible".

The wording in this section 13 effectively makes the section meaningless. The inclusion of "allowed" and "as possible" reduce and potentially nullify the importance of the entire section.

Consultation pursuant to section 13 is not apparent. Aboriginal people are not being "allowed" based on it not "being possible".

For this section of the Act to have application, it needs to be reworded to make consultation mandatory.

The right to self determination might include;

1. a requirement that Government recognises Aboriginal peoples are distinct groups with their own group identity;
2. that Government engages in relationships with these groups based on mutual respect and equality.

A group of people exercise the right to self determination when they can make choices about their lives and feel like they have the power to make these choices.[35]

Recommendation 10

Amend section 13 of the Act by making changes that effectively have the meaning of the word "Allowed" to be removed and changed to the meaning of "Must" and amend "with as much self-determination as possible' to "with self-determination". The amendments need to reflect that it is not discretionary for the application of the self determination principle as at present. Make it mandatory.

4.10 Section 14 – Principle of Community Participation

As already canvased above, Community Participation does not always occur in Aborignal cases and often without explanation as to why.

It is the AFLS position that in administration of the Act, a kinship group, community group or representative organization must always be given opportunity and assistance to participate in the decision making process under the Act, and that such assistance is appropriate for every Aboriginal case. The application of Section 14 should not be discretionary. It must be mandatory.

Unless respect and recognition are provided to Aboriginal communities, so they might make their own decisions about controlling the welfare of their own children, the current crisis in child care will likely continue.

Recommendation 11

Amend section 14 of the Act to make it mandatory for an Aborignal kinship group, community group or representative organization to participate in decision making under the Act, for every child.

4.11 Allow for Different Attachment to Care Givers in the Aboriginal Context

Attachment theory is a psychological model that attempts to describe the dynamics of long-term and short-term interpersonal relationships between humans. The theory underpinning permancy planning is attachment theory; the sooner an enduring attachment with a carer is established, the more stable the child and the better the outcome for the child.

Studies on Aboriginal child rearing practices have found this approach inconsistent with Aboriginal child rearing practices.[36]

[35] Australian Human Rights Commission (2010) *The Community Guide to the UN Declaration on the Rights of the Indeigenous Peoples.* Paragon Australiasia Group

[36] Department of Family and Community Services (2002). *Warrki jarrinjaku jintangkammanu purananjaku = Working together everyone and listening : Aboriginal child rearing & associated research : a review of the literature.* Dept. of Family and Community Services, Canberra

> *"The nuclear family is not the most common residential form; it is the extended family that is the norm (ed. Smith 2000). Typically, an Indigenous household consists of a small, multi-family, multi-generational core of kin with a highly mobile fringe of transient members. The responsibility for child care and rearing is distributed widely amongst a range of kin (Daly & Smith 1999), making any Western notion of 'primary carer' meaningless"*[37]

It is inappropriate for DCPFS to continue to use attachment theory as a guide in determining what is in an Aboriginal child's best interests for placement. To do so is paternatistic and ignores the importance of culturally relevant Aboriginal child rearing practices.

> *"An aboriginal child's identity is determined by their parents. A child is born into their tribal/clan practices, customs and law. In traditional Aboriginal communities, this may determine who they can marry and what they can eat, and identifies the part of the country for which they are responsible. This also includes their religious practices and laws to abide by. The child's kinship system determines this."*[38]

Recommendation 12

Amend the Act to include express recognition of Aboriginal Attachment to the extended family as different to the Notion of Western Attachment to the nuclear family

4.12 Strict adherence to Legislated Timelines

Subsections 3, 4 and 7 of the Act refer to periods of time that limit applications for protection orders.

Additionally section 88I refers to time requirements for care plans or provisional care plans. Not more than 2 workings days after placement and to include steps or measures designed to reduce the likelihood of the child being placed in a secure care facility again.

It is the AFLS experience that time frames are often not met by DCPFS. Given the gravity of removing a child from its parents, we support the return of a child to its parents in the event DCPFS is unable to comply with the legislated time restrictions.

With respect to Subsections 3, 4 and 7, it is common for DCPFS to apply to the Court for extensions in time, which is often forthcoming. Altough we appreciate delays are sometimes unavoidable, the frequency of applications for extensions in time are not rare. The AFLS does not agree to extending applications beyond the specified time frames in the current climate of child protection. It adds to the uncertainty surrounding children waiting placement outcomes and undermines the intention of the Act.

As to section 881, and the requirement of a plan being prepared within 2 days, we consider it is the parents right to know what has happened with their child and details of the reasons why the child was removed.

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[37] Department of Families, Community Services & Indiginous Affairs (2004) *Occasional Paper 15 – The Growing Up of Aboriginal and Torris Islander Children: A literature Review.* Pg 25

[38] SNAICC (2011) *Growing up Our Way: Practice Matrix* pg 65 Op cit

Given Aboriginal populations in northern WA are on average having English as a second language, poor and often wary of DCPFS given intergenerational child removal, failure to properly adhere to time restriction stated in section 88I is an issue with Human rights.

Recommendation 13

Amend the Act to include express provision for DCPFS to return children to their parents in the event legislated time frames are not maintained and remove the discretion of the court to grant extensions in time.

4.4 Consultation Question 6

What further Amendments might improve the effectiveness of the Act in protecting children from family and domestic violence while keeping them safe with a protective parent?

4.15 Repeal Care & Protection of Unborn Aboriginal Babies

The over representation of Aboriginal people in State care has existed since the 1930s.[39] Because of this tradition, Aboriginal families may be disproportionately placed under surveillance by DCPFS. The history is a significant trigger for attention on Aboriginal families.[40]

> *"…..the loss of identity experienced by Stolen Generation children continues to be experienced by many Indigenous children who are removed from their families and placed in foster care, often far away from their communities. This loss further compounds the inter-generational problem, paving the way for yet another generation of institutionalized children."*[41]

Sections 33A and 33B are relied upon by DCPFS to focus on Aboriginal women about to give birth. Even unborn babies can be investigated by DCPFS under the Act. This, used in combination with Sections 28(2) where the test is "likely to suffer" harm, provides individual case workers a tool to arrange child care consistent with their own child rearing framework and in some instances, possible biases.

In fact, the wording in section 33B permits;

a) a DCPFS case worker to decide if an unborn child is "likely to suffer" harm after birth even if the mother has no history of harming a child in the past; and

b) for the case worker to meet with an authorized 3rd party to develop a plan for the care for the child (removed from the mother);

c) take the baby into care immediately after birth and place the baby in foster care.

[39] H.Douglas & T.Walsh, *Continuing the Stolen Generations: Child Protection Interventions and Indigenous People* International Journal of Children's Rights 21(2013) 59-87

[40] Ibid

[41] Ibid pg 63

In at least one instance known to AFLS, a young Aboriginal mother giving birth to her first child, was not informed of DCPFS intentions, even though a case worker was waiting at the hospital for the baby to be born. In that case, the mother was herself a State ward and known to DCPFS. This was the reason she was under surveillance by DCPFS.

The attention to Aboriginal families even before harm to a child has occurred, may possibly explain, in part, why such a significantly high proportion of Aboriginal children are taken into care comparative to non-Aboriginal children.

Recommendation 14

Amend Section 28(2) of the Act to be the exlusive decision of a kinship group, community representative or Aboriginal organisation before a new born baby is taken into care based on "likely" to suffer harm.

4.16 Support the Non Abusive Parent in Domestic and Family Violence Families

The correlation between child abuse and domestic violence is well recogised. Children growing up exposed to family violence are vulnerable to abuse, such as;

1. physical abuse – approximately 60% occurs in families where there is domestic violence
2. child sexual abuse – perpetrators use violence against the protective parent to conceal their abuse of a child
3. neglect – over 80% of child deaths in WA revealed family violence as a contributing factor.

The AFLS maintains that victim safety and perpetrator accountability is necessary to achieve positive change for children exposed to family violence. It should not however, penalize a protective parent from caring for their child.

In situations where a parent has engaged with DCPFS, was caring for the child at the time the matter came to the attention of DCPFS, and the concerns in relation to safety relate to the other parent, the parent who is fulfilling their responsibility should be able to retain parental responsibility.

The Victorian legislation has already addressed this issue, referred to as a Family Preservation Order, pursuant to Section 280(1)(c) *Children Youth and Families Act 2005.*

"the child to be placed in the day to day care of one or both of the parents"

In WA however, there does seem to be some ambiguity, as Section 50 appears to create confusion on this issue.

ALFS supports amending section 50 of the Act to clearly state that orders should be made in favour of one parent in situations of family and domestic violence to preserve the protective parents responsibility for care of a child, and restrict the other parent from exercising their responsibility.

Recommendation 15

Amend the Act to clarify the appropriate placement of a child with a protective parent in cases where the protective parent is the victim of domestic and family violence.

4.17 Never Place a Child with the Family of a Perpetrator of Domestic Violence

The AFLS does not agree with placement of children with perpetrators of family violence or their families in the Aboriginal context.

Aboriginal women, the same as non Aboriginal women, want domestic violence to stop. Domestic and family violence is a real concern in Aborigninal communities.[42]

In the experience of the AFLS some case workers approach to domestic violence is sometimes lacking in cultural competency. Often times mothers are told to "leave" their violent partner before the children will be returned.

However, in addition to the same risk factors that non-aboriginal women face when leaving violent partners, Aboriginal women also carry an additional consideration. Often times an Aboriginal woman is focused on rehabilitation of the offender and restoring relationships within the family and community because to leave often means having to move a long way away from the community. This puts pressure on the victims of violence within the community setting in ways often unique to Aboriginal victims of violence.

It is not unusual for a woman to become the target of hostility from the perpetrator's family if she leaves the relationship, and particularly if the perpetrator is imprisoned.

Placement of a child with the perpetrator's family may effectively prevent the mother from having contact with the child or put her at risk from the perpetrators family. It also causes the child to be at risk of contact with a person known to be violent without adequate supervision.

Recommendation 16

Amend the Act to prevent a child from being placed with the perpetrator of domestic or family violence or his family.

4.18 Procedural Fairness - Frank disclosure of documents and all things related to protection proceedings between the parties.

Family Law Rules 2004 chapter 13 requires all parties to proceedings to provide full and frank disclosure to the other parties. There is no equivalent in the Act before the Children's

[42] Department of Families, Community Services & Indiginous Affairs (2004) *Occasional Paper 15 – The Growing Up of Aboriginal and Torris Islander Children: A literature Review.*

Court. In fact the Act is silent on this issue. There is not even provision in the Act for respondent parents to obtain orders for information to be provided by DCPFS.

Given the intended non-adversarial approach in protection matters, the omission of procedural fairness to parents who face losing their children is of concern.

ALFS proposes inclusion in the Act for positive obligations to be imposed on all parties to protection applications. In particular, the DCPFS, in disclosing to all parties concerned all information relating to the child the subject of a protection application without exception other than the identity of anyone who has made a report of abuse to DCPFS.

Recommendation 17

The Act be amended to enact full and frank disclosure of all information related to a protection application unless expressly prohibited by the Act and for such disclosure to be required within specified time frames.

4.19 Interpreters

In WA there are many diverse Aboriginal groups that live within there own distinct and often remote countries and have different languages specific to each. Often English is not the first language of people living in remote areas. This results in parents not necessarily understanding what they are told by case workers.

When dealing with Aboriginal in remote areas and communities where English is a second language interpreters should be made available for discussions with case workers.

Recommendation 18

The Act be amended to include a requirement for an interpreter fluent in the language of that specific community/country and/or region.

4.20 Case Workers to include Legal Representatives acting behalf of parents or children in discussions related to the protection application

In the experience of the AFLS, it is common practice for case workers to insist on speaking directly with parents even though the person is legally represented.

Further, such legal representatives are often denied entry to discussions with their clients when care plans and other related topics are discussed by case workers.

As many parents are intimidated by DCPFS intervention and therefore unable or unsure how to speak and negotiate with caseworkers, it is unreasonable and unjust for them to be expected to discuss care plans without legal assistance where possible.

Recommendation 19

A case worker must not confer or deal directly with a parent or other non DCPFS party in a protection application if that person is represented by a legal practitioner unless the legal practitioner has previously consented in writing.

4.21 Final Orders

When a final order are made not all proposal take into account contact with natural parents.

Recommendation 20

Final orders need mandatory condition of contact for natural parents. Carers cannot take a child out of the jurisdiction, interstate, inter region, international without bringing the matter back to court.

Case Studies

Case Study 1

An Aboriginal mother living in remote town has a 9 year old child.

The mother had a alcohol problem. The child was taken into care by DCPFS and placed into a group home in another town. The mother was not permitted time with the child and has not had contact with the child since he was taken into care. There was no provision made for contact over the Christmas period.

Since the child was taken, the mother has complied with requirements for her to address her drinking problem. She has undergone rehabilitation and regularly sees an alcohol counsellor. Additionally, she now holds a job teaching in her community. The mother is doing well.

The AFLS lawyer with conduct has requested DCPFS make provision for reunification between the mother and child. However, without disclosure for reasons, this has been denied to date.

The child is outside his country and far removed from the kinship network.

It is unknown if DCPFS complied with section 14 of the Act, providing a kinship group, community representative or organization an opportunity to participate in the decision making of this child's intervention. Neither is it known if sections 8, 9, 10 or the placement principles in section 12 were followed.

DCPFS has not considered the mother as the foster carer as an alternative to removal from home and country.

Case Study 2

An Aboriginal mother with 3 children in her care. Living in remote area. The Children were cared for by extended family in the traditional Aboriginal child rearing practices of the region. Mother did have an alcohol problem but was rehabilited last year in 2016.

All 3 children taken into care early March 2017.

Whereabouts of children unknown. No care plan has been provided as yet. No support provided to the mother to address what might be the case worker's concerns. No disclosure from DCPFS as yet as to why the children are considered to be at risk.

5. Conclusion

Working at the front end of legal support for families in contact with both child protection and family law proceedings requires meaningful collaboration, streamlined information sharing processes and clear timelines. And above all it needs to have discipline. It needs to understand these elements in order to ensure the "best interests of the child" principle is put into practice.

There is strong and plentiful evidence about the needs of Aboriginal children.

The development of a sense of belonging and self may be severely compromised when raised out of one's own family. The circumstances of the removal, the quantity and quality of ongoing contact with parents and the ability to adapt to the new living situation will impact on the child's development. The child's ability to meet developmental milestones will be challenged and almost certainly impaired by the trauma of the removal and any consequent placement shift – as well as from the predisposing circumstances of abuse and trauma. Traumas associated with removal from family can include individual, cultural, community, family and economic.[43]

Childhood trauma and the resultant impact on development lead to poorer outcomes in adulthood across all spheres – relationships, education, health (physical, cultural, spiritual), employment, and economic independence.

> *"The absence of ongoing support can lead not only to poor outcomes in existing cases, but can contribute to an inter-generational perpetuation of the dynamics that lead to child removal."*[44]

Overall access to legal services for Aboriginal Australians is problematic and this is no different for family courts. Involvement with the CCWA through the growing and disproportionate number of Aboriginal children subject to care and protection orders means it is imperative for the issue of culturally secure practice to be considered in the recommendations of this inquiry.

[43] SNAICC (2014) Family Matters: Kids safe in culture, not in care, Western Australian Issues Paper
[44] Allison, F, Schwartz, M, Cuneen, C (2014) Indigenous Legal Needs Project WA, James Cook University p 188