



1 June 2017

Office of the Royal Commission

PO Box 4215

Kingston, ACT 2604

Dear Commissioners,

Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory's Child Protection Issues Paper

The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) welcomes the opportunity to provide a brief submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory's Child Protection Issues Paper ('the Issues Paper').

The NATSILS is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years of experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role provides NATSILS with a unique insight into access to justice issues effecting Aboriginal and Torres Strait Islander peoples.

NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- Tasmanian Aboriginal Community Legal Service (TACLS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

Our brief submission to the Issues Paper relates to NATSILS' concern regarding the large number of Aboriginal and Torres Strait Islander children in Child Protection Systems across the country.

This brief submission does not endeavour to respond in detail to all questions raised in the Issues Paper. Instead, this submission seeks to make broader comments in relation to the large number of Aboriginal and Torres Strait Islander children in the Child Protection System and the shortcomings of procedures and safeguards presently available to address growing rates of Aboriginal and Torres

Strait Islander children in contact with the Child Protection System, with particular reference to the Northern Territory.

Background

Aboriginal and Torres Strait Islander children are over-represented at every point in the Child Protection System, measured at the national level. Aboriginal and Torres Strait Islander children are more likely than non-Indigenous children to be subject to child protection notifications, investigations and substantiations, to be placed on protection orders and to reside in out of home care (OOHC).¹

From 2015-16, the number of Aboriginal and Torres Strait Islander children in OOHC increased from 15,455 to 16,846, meaning that Aboriginal and Torres Strait Islander children now represent 36.3 per cent of all children in statutory OOHC. The rate at which Aboriginal and Torres Strait Islander children are placed in OOHC is expected to triple by 2035. This is a national crisis that requires a revision of legislation and better collaboration of Government with Aboriginal and Torres Strait Islander communities and organisations.

Aboriginal and Torres Strait Islander Child Placement Principle

The unacceptable number of Aboriginal and Torres Strait Islander children in care must be addressed by a renewed focus on culturally appropriate prevention and early intervention strategies coupled with adherence to the Aboriginal and Torres Strait Islander Child Placement Principle ('ATSICPP').

The ATSICPP was developed over 30 years ago "from an understanding of the devastating effect of the forced removal of Aboriginal and Torres Strait Islander children from their families and communities, which created a legacy of what is now known as the Stolen Generations".²

ATSICPP ensures that Aboriginal and Torres Strait Islander children remain connected to family, community, culture and country. The legislative expression of the ATSICPP varies across jurisdictions; however, in general terms the ATSICPP promotes placement of Aboriginal and Torres Strait Islander children who have been removed from their family, in the following order of priority:

- with extended family or kin;
- with Aboriginal and Torres Strait Islander people in the same community;
- with other Aboriginal and Torres Strait Islander carers; and then
- with non-Aboriginal and Torres Strait Islander carers.

However, as of 2015, only 66 per cent of Aboriginal and Torres Strait Islander children in Australia were placed with family, kin or other Aboriginal and Torres Strait Islander carers.³

In the Northern Territory, ATSICPP is recognised in legislation in the *Care and Protection of Children Act (2007)*.⁴ Currently the Northern Territory has the highest percentile of Aboriginal children placed in OOHC with non-Aboriginal carers. In 2015-16, 65.2 per cent of Aboriginal children in OOHC were

¹ The Family Matters Report, Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal (2016), 9.

² Arney F et al, *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations* (Australian Institute of Family Studies, Child Family Community Australia, Paper No 34, 2015) 2.

³ The Family Matters Report, Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal (2016), 9.

⁴ Care and Protection of Children Act 2007 (NT) s12(2).

placed with non-Aboriginal carers.⁵ Unlike other jurisdictions, the Northern Territory has no current legislative provisions mandating ‘cultural plans’ for Aboriginal children in OOHC⁶ and no provisions for Aboriginal agencies to provide advice on the placement of Aboriginal children.⁷ The lack of legislative safeguards to ensure adherence to ATSICPP denies Aboriginal and Torres Strait Islander children in the Northern Territory the ability to remain connected with family, community, culture and country, all of which exist as protective factors against contact with the justice system.

To better ensure adherence to ATSICPP, NATSILS recommends that urgent efforts be made to progress a stronger and more meaningful measure of compliance with ATSICPP. NATSILS further recommends the implementation of a legislative right of review that ensures Aboriginal and Torres Strait Islander children and families have the capacity to contest decisions of unsuitability of a family member as a kinship carer. At present in the Northern Territory there exists no legislative right of review. The only existing mechanism that is available is through the Territory Families complaints process.

NATSILS raises further concern in relation to the lack of Aboriginal and Torres Strait Islander specific agencies providing OOHC services in the Northern Territory. At present, consultation with an external Aboriginal and Torres Strait Islander agency as part of the child protection decision-making process is not mandated in legislation. Given the increasing rate of Aboriginal children entering care, there is a clear need for improved, culturally safe and responsive service provision. NATSILS recommends that Aboriginal Community Controlled Organisations be utilised not only for the provision of early intervention, prevention services and OOHC services, but also for receiving expert advice about the placement of Aboriginal and Torres Strait Islander children.

National Target to address the overrepresentation of Aboriginal and Torres Strait Islander Children in OOHC

Whilst NATSILS recognises the importance of a Northern Territory specific response to child protection, NATSILS acknowledges the role of the Federal Government in addressing the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC. The escalating rate of removal of Aboriginal and Torres Strait Islander children is a national crisis that requires a coordinated national response, with State, Territory and Federal Governments working together.

An integrated approach across all levels of government is necessary to redress the complex causes of child removal practices that are influenced by diverse federal and state powers including family support; inadequate housing and homelessness; social security; family violence; drug and alcohol misuse; health and mental health; early childhood education and care; and child protection.⁸

⁵ Office of the Children’s Commissioner, *Annual Report 2015-2016*, (31 October 2016).
<<http://www.childrenscommissioner.nt.gov.au/publications.html#ar>>.

⁶ See for example s 176 of the Victorian Children Youth and Families Act 2005.

⁷ See for example s13 of the Victorian Children, Youth and Families Act 2005.

⁸ The Family Matters Report, *Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016), 21.

The Coalition of Australian Governments (COAG) has noted the imperative for co-ordinated approaches to early intervention efforts and the benefits of collaboration across jurisdictions.⁹ The United Nations Special-Rapporteur on the Rights of Indigenous Peoples has also called for the urgent implementation of a national strategy that prioritises community-led early intervention and family support programs, in order to prevent Aboriginal and Torres Strait Islander Children coming into contact with the child protection systems.¹⁰

NATSILS recommends that COAG establish a national target to eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC by 2040, supported through a national strategy developed in partnership with Aboriginal and Torres Strait Islander peoples.¹¹ As part of the national target, NATSILS calls for the implementation of appropriate and adequately resourced national frameworks for monitoring and reporting on compliance with ATSI CPP.

Access to Justice for Aboriginal and Torres Strait Islander people

The higher levels at which Aboriginal and Torres Strait Islander peoples experience legal issues across all areas of the justice system are well documented.¹² From significantly higher rates of imprisonment and involvement with child protection systems,¹³ to vast unmet need for civil and family law services, access to justice directly impacts upon Aboriginal and Torres Strait Islander peoples' physical, emotional and social wellbeing.

The Productivity Commission has recognised that our people face vast unmet need. They have highlighted what we have known for a long time: that a lack of adequate funding for civil and family law services is a major issue that leads to involvement with child protection systems and experiences of violence. The Productivity Commission also found that the "inevitable consequence of these unmet legal needs is a further cementing of the longstanding over-representation of Indigenous Australians in the criminal justice system".¹⁴

NATSILS raises concern in relation to the lack of funding ATSI receive to ensure adequate ability to provide legal assistance in child protection matters. The ATSI are currently drastically underfunded to deliver legal services in child protection matters. This is particularly apparent in the Northern Territory, where the North Australian Aboriginal Justice Agency (NAAJA) and Central Australian Aboriginal Legal Aid Service (CAALAS) lack appropriate funding to ensure legal services are able to meet the needs of families in remote Aboriginal communities.

⁹ Council of Australian Governments, *COAG meeting Communiqué, 9 December 2016*, <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communicu%C3%A9-9-december-2016>

¹⁰ United Nations Human Rights Office of the High Commissioner, *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia* (3 April 2017)

<http://www.natsils.org.au/portals/natsils/Final%20statement%20SR%20IP%20Mon%203%20April.pdf?ver=2017-04-04-115415-617>

¹¹ The Family Matters Report, *Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal* (2016) 21

¹² For more on this issue see the publications of the Indigenous Legal Needs Project: <https://www.icu.edu.au/indigenous-legal-needs-project>.

¹³ In 2014, Aboriginal and Torres Strait Islander children were 9.2 times more likely to be in out of home care than their non-Indigenous peers. Child Family Community Australia, *CFCA Resource Sheet: Child protection and Aboriginal and Torres Strait Islander children* (Australian Institute of Family Studies, September 2015).

¹⁴ Productivity Commission, *Access to Justice Arrangements*, Inquiry report, Volume 2, 784.



As such, NATSILS recommends that in order to address the child protection matters effecting Aboriginal and Torres Strait Islander children, adequate resources be provided to the ATSILS to ensure families and children are provided with access to culturally safe and competent legal assistance.

In addition to NATSILS' Submission, we wish to endorse the Submissions made by NAAJA and CAALAS, acknowledging the expertise each respectively holds in relation to child protection matters in the Northern Territory.

Please do not hesitate to contact NATSILS' Executive Officer, Karly Warner on 0423 610 587 or via email at kwarn@vals.org.au should you require any further information or clarification.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Wayne Muir".

Mr Wayne Muir

Co-Chair

National Aboriginal and Torres
Strait Islander Legal Services

A handwritten signature in black ink, appearing to read "Cheryl Axleby".

Ms Cheryl Axleby

Co-Chair

National Aboriginal and Torres
Strait Islander Legal Services