

**Aboriginal & Torres Strait Islander Women's Legal
Services NQ Inc.**

**Responses to Queensland Child Protection
Commission of Inquiry : Discussion Paper February
2013**

ACKNOWLEDGEMENT

The Aboriginal and Torres Strait Islander Women's Legal Service NQ acknowledges the traditional owners of the Townsville region across whose land we conduct our business, the Bindal and Wulgurakaba people, to whom we pay our respects. We also pay our sincere respects to the Aboriginal and Torres Strait Islander Elders of today and to those who have passed on.

ABOUT ATSIWLSNQ INC

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. ("ATSIWLSNQ") has been incorporated since February 2006. ATSIWLSNQ delivers legal services, advocacy and community legal education including outreach work for Aboriginal and Torres Strait islander women in North Queensland.

The services provided by the ATSIWLSNQ include:

- legal advice, information and representation to Aboriginal and Torres Strait Islander women in NQ
- Community Legal Education
- Outreach work
- Advocacy and law reform submissions

Many of the clients accessing the services of ATSIWLSNQ are parents of children subject to intervention by the Queensland Department of Communities (Child Safety) ("the Department"). ATSIWLSNQ has a special interest in the support and legal representation of these parents and in the reunification of children with their families.

This submission is based on the knowledge and experiences of the ATSIWLSNQ and the women who have entrusted the ATSIWLSNQ with their experiences and legal issues.

Introduction

The Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc. ("ATSIWLSNQ") made a written submission to the Queensland Child Protection Commission of Inquiry ("the Commission of Inquiry") in October 2012. Since making the submission we have had the benefit of reading a number of the written Submissions of other Aboriginal and Torres Strait Islander organisations and agencies, in addition to perusing the February 2013 Discussion Paper of the Commission of Inquiry.

A flawed system and the need for self-determination

We strongly endorse the calls by organisations for Aboriginal and Torres Strait Islander self-determination in the protection of Aboriginal and Torres Strait Islander children. Further we endorse the recommendations of the Aboriginal and Islander peak body, the *Secretariat of National Aboriginal and Islander Child Care* ("SNAICC")¹.

In our October 2012 submission we supported the National Framework for Protecting Australia's Children 2009-2020 in so far as it called for a different approach to child protection – one which emphasised "greater emphasis on assisting families early enough to prevent abuse and neglect"². We continue to support the focus on the provision of services at primary and tertiary levels, but we wish to emphasise the importance of these services being provided in a culturally appropriate way.

We agree with the position statement of the CEO of the Wuchopperen Health Service Ltd, who in her Foreword to the organisation's October 2012 submission stated that:

"It is time to recognise that a system developed and implemented by non-Indigenous people will not effectively respond to the safety and protection needs of our children.

..Aboriginal and Torres Strait Islander individuals, families and communities must be equal partners in determining the best way to keep our children safe and protected..."³

Wuchopperen Health has emphasised that the "numerous and costly reforms of the current system" have failed to reduce the over-representation of Aboriginal and Torres Strait Islander children and we endorse Wuchopperen's assessment that the system is "fundamentally flawed" from a cultural perspective.

¹ *Submission to the Queensland Child Protection Commission of Inquiry March 2013*, SNAICC ("SNAICC submission")

² Submission by ATSIWLSNQ, p.2

³ Wuchopperen Health Service Ltd *Submission to the Child Protection Inquiry* October 2012, Foreword by Debra Malthouse, Chief Executive Officer

Giving effect to the human rights of Aboriginal and Torres Strait Islander peoples

We submit that the starting point for delivering services to Aboriginal and Torres Strait Islander children and families is the right of Aboriginal and Torres Strait Islander peoples to self-determination⁴. We agree with SNAICC that “building the role and capacity of Aboriginal and Torres Strait Islander organisations is not only important for effective service delivery” but also “an important policy objective in its own right in so far as it promotes local governance, leadership and economic participation, building social capital for Aboriginal and Torres Strait Islander peoples”⁵. We endorse SNAICC’s submission that:

“Increasing participation of Aboriginal and Torres Strait Islander communities is ..key to enabling realisation of their human rights.”⁶

Services and the need for consultation

In the interests of giving effect to the principle of Aboriginal and Torres Strait Islander self-determination, we support the urgent consultation with Aboriginal and Torres Strait Islander communities (for example similar to the community consultations which occurred in relation to proposed changes to the Australian Constitution⁷), with the purpose of developing a more holistic model of child protection for Aboriginal and Torres Strait Islander children.

We note that the Canadian model in relation to First Nations children, offers four ways of working with families and children, namely:

1. (Tertiary) Fully delegated agencies authorised under child welfare laws to provide the full range of child welfare processes including investigations;
2. (Secondary) Partially delegated agencies authorised to provide family support services including guardianship and voluntary care agreements but not investigative processes;
3. (Primary and secondary) Self-governing models where agencies provide a range of child welfare services under self-governance agreements;
4. (Primary) Non-delegated agencies which provide services to Aboriginal people.⁸

To avoid any ambiguity, we are not recommending the wholesale adoption of the Canadian model. As stated above, we support community consultation to establish a

⁴ Article 3, *UN Declaration on the Rights of Indigenous Peoples*.

⁵ SNAICC submission, p6 in reference to the comments of the Australian National Audit Office 2012.

⁶ SNAICC submission p.7

⁷ www.youmeunity.org.au

⁸ Canadian Child Welfare Research portal p.6

new model of child protection. The Canadian model is presented as a discussion point since it appears more consistent with self-determination.

In our first submission⁹, we were critical of the department performing conflicting roles in its child protection functions (its “prosecutorial” function taints its capacity to case manage and inhibits its capacity to effect reunification in a timely way). Whether or not the Canadian model provides the four tiers of service provision through different agencies, we support the separation of the investigative and case management functions of child protection in order to avoid conflicts of interest occurring in the manner of service delivery. If the same organisation is delivering these separate services, “chinese walls” and accreditation to a high standard would be necessary components of the model, to ensure that the case management aspects of child protection are not compromised.

The third and fourth tiers of service in the above model are currently offered through Aboriginal and Torres Strait Islander agencies and community organisations, consistent with the “health model” of child protection.¹⁰

We support the first tier of service referred to in the Canadian model, that would place the responsibility for investigating notifications in the hands of Aboriginal and Torres Strait Islander agencies. The rationale, notwithstanding some of the difficulties that this may present in relatively small communities, is the right of Aboriginal and Torres Strait Islander peoples to conduct assessments with the full knowledge of cultural and community information. Such knowledge will, in our view, lead to more balanced decision-making in relation to how to ensure children’s safety.

We are not recommending that a child’s safety should be in any way secondary to cultural or other considerations. We are, however, of the view that an Aboriginal and Torres Strait Islander agency is better placed to assess whether a child is at risk and to make more effective decisions on how to protect a child in a culturally appropriate way. Such an agency, provided it is well grounded culturally and in the community, has the capacity to understand the situation that the child is in, to be seen by parents and the community to have legitimate authority to make decisions for the child’s safety and therefore to produce better outcomes for the immediate safety and protection and long-term wellbeing of Aboriginal and Torres Strait Islander children.

⁹ ATSIWLSNQ submission to the Carmody Inquiry 3/10/2012

¹⁰ In Townsville such services are offered, for example, by the Aboriginal and Torres Strait Islander Health Service (“TATSICHS”); in Cairns by Wuchopperen.

Appointment of an Aboriginal Guardian

Consistent with the second tier of service provision referred to in the Canadian model, we support the introduction of an Aboriginal and Torres Strait Islander Guardian for children placed in out of home care where the child's parents are unable to make decisions for the child. In this respect, we would support, for example, the child having an Aboriginal or Torres Strait Islander guardian appointed *from the child's community and or culture*, who is mandated to make decisions consistent with the child maintaining his or her cultural integrity and family and community connections.

The Victorian Aboriginal Child Care Agency has recently been successful in advocating for the introduction of an Aboriginal Guardian for Aboriginal children in Victoria.¹¹ We note that Queensland has a significantly higher proportion of Aboriginal and Torres Strait Islander peoples than Victoria. Wuchopperen has identified cultural decision making for Aboriginal and Torres Strait Islander children in out of home care as an issue critical to a child's safety and wellbeing. We note that the Queensland Indigenous Family ("QIFVLS") has indicated that 60% of Queensland's out- of-home-care Aboriginal and Torres Strait Islander children are from communities in the far north and western Queensland, which includes Wuchopperen's service area¹².

We recommend that Queensland consult with Aboriginal and Torres Strait Islander representative bodies, through community forums for example, in relation to the introduction of the Aboriginal and Torres Strait Islander Guardians.

In the following section we have endeavoured to respond to some of the questions posed by the Commission of Inquiry, building on our first submission. Where our position has differed from our first submission, this is stated in this response paper and our reasons are given. The foundation for the delivery of services to Aboriginal and Torres Strait Islander children is the need to do so in a way that respects the human rights of Aboriginal and Torres Strait Islander peoples.

Responses to Discussion Paper

Question 2 : What is the best way to get agencies working together to deliver secondary services in the most cost effective way?

The costs of *not* providing adequate supports and services (primary and secondary services) for Aboriginal and Torres Strait Islander children and families in Queensland will be the continuing economic and social costs of an exponential increase in the

¹¹ As reported in snaicc news January 2013, p.6

¹² Queensland Indigenous Family Violence Legal Service *Submission to Child Protection Commission of Inquiry "Court Processes in regional Areas 2013"*

numbers of Aboriginal and Torres Strait Islander children being in out of home care, often removed from their family, community and cultural connections. These costs are well documented and include the disproportionate removal of children from their parents and families¹³, the entrenched poverty, homelessness, poorer educational outcomes for children, sexual and other forms of abuse of children in out of home care and criminalisation of children as they transition from child protection systems into the criminal justice system.

There are a number of existing Aboriginal and Torres Strait Islander health services and other agencies offering social, financial and family support. Provided that these services meet accreditation standards and are locally based and culturally appropriate, we recommend that they would be ideally placed to provide secondary services in a cost-effective way, as many already do.

For Aboriginal and Torres Strait Islander children the initial cost of investing in supporting families through community based organisations and agencies and meeting baseline needs such as housing and education should be considered to be an investment at the primary and secondary levels of support that will be offset by reduced involvement in the tertiary level of child protection intervention with its negative flow-on effects for children, their families and communities.

We do not support funding for Aboriginal and Torres Strait Islander peoples going to predominantly non-indigenous agencies, even if there would be a cost-saving due to existing infrastructure, and even if the organisation has some Aboriginal and Torres Strait Islander clients. We support Aboriginal and Torres Strait Islander clients having the choice to go to a non-indigenous agency, but we emphasise the need for adequately funding Aboriginal / Torres Strait Islander services.

We are of the view that cultural identity is critical in the delivery of secondary services, arising out of the health model, and emphasise the building of skills, knowledge, strengths and networks of support.

In non-indigenous organisations, cultural identity is merely an attribute, a secondary consideration which is tagged onto a generic process designed for non-indigenous clients. Such generic processes are not “neutral”, they are specifically non-indigenous.

The rationale for funding being targeted to Aboriginal and Torres Strait Islander agencies is also that self-determination has been identified a key issue to the health and the

¹³ Queensland Child Protection Commission of Inquiry: emerging issues September 2012, p.4, Figure 1 for example provides a graph demonstrating the dramatic increase in the proportion of Aboriginal and Torres Strait children in out of home care between 2001-11)

success of child protection responses for Aboriginal and Torres Strait Islander children¹⁴. The failure of attempts of the child protection for Aboriginal and Torres Strait Islander children through existing infrastructure, suggests the need for a radically different approach for these children and their families.

The “working together” aspect of this question will require tenders to be given to organisations which are culturally appropriate, have expertise in relevant areas of family and child protection, and have appropriate governance structures. It will involve such organisations partnering through, for example MOU’s between organisations, and with the Department. The Department will need to work differently, recognising that there are different models of child protection and expertise, and that culture is fundamental, not merely an attribute. This differs significantly from the formulaic and centralised approach currently assumed and involves a sharing of responsibility which may be achieved through delegations and appropriate oversight.

Question 7

Is there any scope for uncooperative or repeat users of tertiary services to be compelled to attend a support program as a precondition to keeping their child at home?

Compelling a person to seek support is contrary to therapeutic principles. “Support” cannot be delivered by coercion if it is intended to have a therapeutic outcome. If it is not so intended it is difficult to understand why it is identified as “support”. Hence we do not support any power to compel, whether on the part of the Courts or the Department. We regard as one of the fundamental errors of the current child protection system, its systemic failure to work co-operatively with families and its ready use of coercive powers.

We support families being offered every support by Aboriginal and Torres Strait Islander agencies, including for example, housing, “family intensive support”, and other family support services. In regional areas such as Townsville, transport is often a problem for families experiencing poverty and this may impact on a family’s ability to get children to school or to attend medical appointments. In Townsville, for example, many of these supports are already provided by the Aboriginal and Torres Strait Islander Health Service (“TATSICHS”), among others.

We do support the *Department of Communities (Child Safety) (“the Department”) being compelled to offer parents a referral to legal services and written information to the effect that:*

¹⁴ Wuchopperen Health Service Ltd *Submission to the Child Protection Inquiry* October 2012

- a) When parents are subjected to child protection interventions by the Department they are engaged in statutory interventions;
- b) When parents speak to the Department, the Department may make a record of their version of what the parents have said or done, which may then be used against the parents in the Department's legal case;
- c) Parents have a right to seek legal advice and to have a solicitor or another person advocate on their behalf;
- d) Parents may seek legal advice, if only to better understand the legal process or their legal options – whether or not they decide to engage a solicitor to represent them.

We support an Aboriginal and Torres Strait Islander Agency or organisation (independent of the department) being the first point of contact for parents where a notification is being investigated.

Until and unless this occurs, we support the presence of the Recognised Entity ("the RE") at each departmental face to face encounter with clients. As a proviso we would recommend that the RE be appropriately trained and supported to be able to assess situations and offer assistance *independently of the Department*.

We recommend that the RE be empowered to immediately offer to parents opportunities to attend an information session with a legal service or other independent body, about their rights and the services and supports that may be available to them.

In terms of whether or not the Department should have the power to "compel", we note that not all programs that departmental officers wish to refer parents to are necessarily effective, useful, or culturally appropriate. Giving the Department that power could therefore be a waste of money and be counter-productive to the progress of a matter. The department should not be able to determine how and where parents seek support, although parents should be informed of available and targeted support services which are culturally appropriate.

Case Study 1:

A young parent attending a family group meeting was referred to a program, which was patently inappropriate, given that it had no immediate relevance to her situation. The program was included in the case plan against the recommendation of her Aboriginal support person and the foster carer.

We recommend that the department should be mandated to ensure that parents are informed of their right to legal advice, preferably from a preferred supplier list of solicitors having expertise in child protection matters.

In order to best support the parents having quality legal advice we would recommend that there be an avenue for solicitors to become accredited in child protection, which will require them to do more than merely appear in court, but require them to inform parents about the legal process, their legal options and assist them to access the relevant support services in their area.

Question 9

Should the department have access to an alternative response to notifications other than an investigation and assessment (for example, a differential response model)? If so, what should the alternatives be?

The current model involves notification, assessment, investigation and outcome of the investigation to determine the type of intervention, if any, if the complaint is “substantiated”.

We reiterate that we support the Health model, provided it is delivered by Aboriginal and Torres Strait Islander agencies for Aboriginal and Torres Strait Islander families.

Where the outcome of an investigation is that a complaint is “unsubstantiated” or “substantiated, no further action”, that is that there will be no statutory intervention, we recommend that the family be referred to an independent agency for their *needs* to be assessed. The purpose of such an assessment would be to consider whether the family is experiencing stresses which require support services.

Supports may include assistance with housing, counselling, practical skills such as budgeting and cooking, parenting information, transport, links to mothers’ groups and youth groups.

The present situation is that parents are often referred to support services by the Department as a precursor to children being removed from the home by the Department. In our view this “last minute” assistance is often too late and engenders mistrust of the Department by parents.

Services may also be offered as part of the “addressing parental risks” part of a Case Plan. As such, the services are felt by many parents to be “hoops” that parents have to jump through to “keep the kids” or to get the children returned to their care. The services may not be seen as valuable or helpful in their own right, but rather as a necessary evil and part of the child protection process. There is a coercive element to many of the referrals.

We wish to emphasise that not all services are regarded as lacking any intrinsic value, even if linked to child protection processes.

Case Study 2:

A young mother expecting her fifth child was the subject of an investigation following a notification to the Department about an allegation made by one of the children. The allegation was one of a “high risk” nature. The mother was very concerned that the department was intending to remove the children. The mother agreed to an interview with the Department with a solicitor present (it should be noted that the department attempted repeatedly to discourage the mother from engaging a solicitor, questioning her motives). Prior to meeting with the Department, we met with the mother to identify current safeguards and protective factors and the mother’s current needs. The meeting with the Department then became an opportunity for the mother to identify her own protective strategies (assistance from family elders and use of formal services). Our service was able to assist by identifying unmet needs and to advocate for the mother’s needs to be met. One of the needs identified was the need for suitable housing. Within weeks the Department was able to place the mother in housing suitable to the needs for herself and her children. The mother has continued to access other support services such as support from family, transport and respite care to assist her to more readily manage the parenting of the children, and is undertaking some courses on her own initiative to enhance her independence from some support services.

Case Study 3:

The Aboriginal and Torres Strait Islander Women’s Legal Services NQ (our service) has also trialled, as an alternative to the Department’s use of coercive powers, a group which supports and mentors Aboriginal and Torres Strait Islander women who are currently in the tertiary child protection system. The program was funded by the Indigenous Co-ordination Centre (ICC). The ATSILWSNQ community development worker, who developed and designed the program, ran a pilot. The program was assessed as supportive and encouraging for the women involved, giving them more information about legal processes, support services, and how to better manage child protection processes. Women reported feeling more confident, and having more hope and more information for dealing with their situation. The process is now being extended through another agency. The program has a strong emphasis on support, not coercion.

The need for support services is critical for many Aboriginal and Torres Strait Islander families because of entrenched poverty, and social disadvantage.

We agree with the Wuchopperen submission that a change in the child protection model is needed, to placing the responsibility for child protection in the hands of Aboriginal and Torres Strait Islander agencies involved in the local community.

Unlike the existing process, we would support the proposal that notifications in relation to Aboriginal and Torres Strait Islander children be referred to an independent Aboriginal and Torres Strait Islander agency with delegated authority to investigate the child's situation holistically. (We acknowledge that there may be situations in which a child is in imminent danger, in which case emergency responses may need to be implemented as with any other emergency.)

Irrespective of whether such a model is ultimately adopted in Queensland, we recommend that the emphasis should be on identifying family and community supports to give children the best opportunity for a healthy upbringing and educational opportunities, in a context in which cultural and community integrity is respected.

Question 11

Should the Child Protection Act be amended to include new provisions prescribing the services to be provided to a family by the chief executive before moving to longer-term alternative placements?

We refer to our comments above in Question 9.

Question 13

Should adoption, or some other more permanent placement option, be more readily available to enhance placement stability for children in long-term care?

We recommend that decisions about adoption or long-term placement should be options of last resort. Before being implemented, careful consideration needs to be given to planning how a placement fits with the child's culture, connection to community and family, and the attitude of the adoptive or long term placement parents to the biological parents.

Case Study 4:

An woman with an intellectual disability, had her child placed in long-term guardianship after she had not been able to engage with the child for a variety of reasons. The child was placed in the long-term guardianship of family members who not only resided in another town but who were also hostile towards her. Due to a number of complicating factors the woman was not able to participate in or challenge the decision. It is questionable whether the choices made in relation to the child were in his best interests, and the decision will continue to have negative repercussions for the mother and the child's long-term wellbeing.

Aboriginal and Torres Strait Islander Guardians

It is for reasons of supporting the child's connection with culture, family, including the parents, that we support the introduction of an Aboriginal and Torres Strait Islander Guardian system in Queensland. We would envisage that an Aboriginal / Torres Strait Islander guardian would oversee the decision-making about the child's long-term placement, to ensure cultural appropriateness in decision-making and the maintenance of the child's family and community integrity.

Question 15

Would a separation of investigative teams from casework teams facilitate improvement in case work? If so, how can this separation be implemented in a cost-effective way?

In our first submission to the Commission, we submitted that a fundamental flaw in the current system is the Department's conflicting roles in relation to prosecuting cases, case managing and promoting children's reunification with their families. At no time in the process are the child's family and cultural connections front and centre.

We support the delegation of authority for case management to an Aboriginal and Torres Strait Islander agency independent of the Department or other agency whose role it is to investigate notifications. Irrespective of whether this model is adopted, we remain strongly of the view that unless the investigative function and case management are separate, case management will continue to be compromised by evidence-gathering and the mistrust and antipathy which parents often express towards the department will remain entrenched.

There are a number of Aboriginal and Torres Strait Islander agencies such as the Aboriginal and Islander Child Care Agencies ("AICCA's) and regional organisations (such as TATSICHS and Wuchopperen) established to provide support services to Aboriginal and Torres Strait Islander children and families. Many of these organisations already have accreditations, have a high standard of governance, are well respected in Aboriginal and Torres Strait Islander communities, and are case managing clients in relation to matters such as health and social wellbeing, counselling, and child protection. These agencies would be, in our submission, well placed to effectively case manage parents under statutory child protection processes, if resourced to do so.

We anticipate that an increased investment in support services and effective case management will result in savings on expensive litigation, and inefficient involvement by departmental staff.

Question 16

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

Problems with the implementation of the child placement principle, which our service has identified in conjunction with prior consultation with other agencies, include :

- a) Community perceptions that departmental staff demonstrate a poor understanding of cultural issues and often assume knowledge which they do not possess in relation to local communities or Aboriginal / Torres Strait Islander culture generally;
- b) Departmental staff fail to consult or liaise appropriately about community views and options;
- c) Departmental staff do not liaise appropriately with the RE whose staff are connected with community including a failure to consider the views of the RE independently of the wishes of the departmental officer;
- d) Community perceptions are that the department 'reads down' the child placement principle to a token gesture;
- e) Community have been critical of the department's approach to culture which often fails to recognise connection with family as a cultural issue, and has an over-reliance on symbolic gestures such as NAIDOC day.

At the heart of the problem, in our submission, is the treatment of aboriginality as an "attribute" and not as central to the child's identity and their connection with family and culture.

Our service maintains that if Aboriginal and Torres Strait Islander agencies and/or an Aboriginal and Torres Strait Islander Guardian have control of a child's placement, they will give effect to the child placement principle and will do so with knowledge and understanding of placements that will support the child's connections to family, community and other aspects of the child's culture.

While we support departmental staff having cultural training, we do not believe that this is a safeguard against misunderstandings and oversights in placement decisions and other decisions which affect Aboriginal and Torres Strait Islander children culturally.

We recommend that until placement decisions are made by an independent Aboriginal and Torres Strait Islander agency, departmental caseworkers could best give effect to the child placement principle by being required to delegate the decision to the Recognised Entity (or another Aboriginal and Torres Strait Islander representative body).

Question 17

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

As outlined in our first submission, many children in foster care have bad experiences that leave them unsupported, or they have not been able to find families that they fit into. We therefore support these children having access to a residential care option where they can live semi-independently and be supported and monitored by appropriately qualified and monitored house-parents.

Our service has seen a number of examples of unsupported transitions by the Department for children who have been in out-of-home care and we are of the view that the department generally undertakes this process very poorly and has limited skills in dealing with older children.

We note the submission by Queensland Youth Services in Townsville, recommending the transition to independence from out-of-home care be outsourced to local community organisations.¹⁵ We support the model of outsourcing transition services to community organisations provided that there is proper planning and through-care for children going through the transition process.

We recommend that among the services available, there be funding for Aboriginal and Torres Strait Islander agencies who propose to offer cultural support. This view is supported by other programs which have had success in dealing with issues such as family violence through cultural support.¹⁶

Question 18

To what extent should young people continue to be provided with support on leaving the care system?

In our first submission, we were critical of the lack of planning and lack of support for children exiting the child protection system. We provide two examples:

Case Study 5:

Two girls that we have worked with have situations which highlight some of the problems. Neither girl was given any support in developing life skills in preparation for leaving care. There does not appear to have been any planning in how to transition them out of care. They were not informed of the supports, including material support,

¹⁵ Queensland Youth Services “Transition to Independence Program” 3rd October 2012

¹⁶ For example the “Red Dust Healing” program which was formerly run from James Cook University in Townsville, addressed men’s domestic violence by supporting cultural understanding.

to which they may have been entitled. One girl on leaving care, lost all of her property, and the department eventually reimbursed her for some things. The other girl had a young child by the time she left the department's care. The child had been removed from her as a baby. The department offered no support for the girl in a range of areas which were critical to the girl's adult life. By way of example, she had had no support to obtain housing, was not supported in any way to maintain her own family relationships, was not assisted to develop the skills she needed to parent her own child.

Although in our first submission, we recommended a specialist team within the department to plan and prepare children for transition out of care, on reflection we are not confident that this is the best, most appropriate or supportive way to achieve the best outcomes for the children. In our first submission we also failed to take into account the resistance of many adolescent children and young adults to the continuation of departmental involvement. Many perceive the Department's techniques of questioning and its processes as coercive, irrelevant and not engaging. We saw this resistance first hand in a family group meeting.

Case Study 6:

In a family group meeting, the department continued to question, infer and accuse the adolescent girl about what she had done, what she had not done, whether she was drinking too much and her failure to engage with the department. The girl demonstrated a total indifference to nearly all of the comments and later commented on her dislike for the woman questioning her. This was clearly not a helpful outcome for the girl.

Having read the submission of Queensland Youth Services and having had the benefit of further consultation, we support the outsourcing of transition services to accredited organisations and make the following further recommendations:

- a) That the organisation provide specialist youth services dedicated to transitioning children out of care;
- b) That referral to the transition program begin early, so that the child is well-prepared for transition by the time it occurs;
- c) That transition services include psychological and/or counselling support by referral to age appropriate agencies¹⁷;
- d) We recommend that children at risk be identified and provided with an adequate level of ongoing and intensive support beyond the usual transition phase, and

¹⁷ For example, "Headspace"

- e) That government financial support for the child be continued into early adulthood, if required, until the child achieves stability (stable employment; sufficient skills to continue to manage at a tertiary level of training or education).

Question 19

In an environment of competing fiscal demands on all government agencies, how can support to young people leaving care be improved?

We recommend that:

- a) Transition services be outsourced for the reasons outlined in the preceding questions;
- b) Funding be given to services which demonstrate appropriate standards and infrastructure sufficient to support the proposed transition program on a long-term basis.
- c) Existing services for Aboriginal and Torres Strait Islander youth be given priority to provide youth services, subject to suitable standards of governance and other suitability criteria.

Question 20

Does Queensland have the capacity for the non-government sector to provide transition from care planning?

We refer to our responses to Questions 17 and 18. Without providing an economic analysis of Queensland's capacity, we wish to say first, that outsourcing to NGO's should create savings in departmental expenses. The government sector has proven a cumbersome, inefficient and ineffective mechanism for child protection in any event.¹⁸ Second, for Aboriginal and Torres Strait Islander agencies, partnering funding arrangements between State and Commonwealth Government could prove more cost-effective, given that the Commonwealth already funds indigenous agencies extensively. This model assumes the capacity of Commonwealth and State governments to co-operate.

¹⁸ Statistics provided in the Commission's own Issues Paper demonstrate the failures in child protection for Aboriginal and Torres Strait Islander children in particular.

Question 21

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

We recommend:

- a) increasing funding to existing Aboriginal and Torres Strait Islander services through partnering of Commonwealth and State funding, since these services have the infrastructure and expertise to support an extension of their family wellbeing services;
- b) that existing services work co-operatively under a peak body of Aboriginal and Islander Child Care agencies.

Question 22

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

We refer to our preceding responses.

We would add that consideration must be given to management structure and the extent to which Aboriginal and Torres Strait ownership is reflected in the management, vision and philosophy of the organisation. We would envisage that the involvement on the management board or reference group of local elders or elder groups, Aboriginal and Torres Strait Islander professionals and strongly grounded community people, would be a positive indicator of indigenous ownership of the organisation.

Question 24

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

We refer to our introductory comments in relation to the four tier model of service delivery and we reiterate the importance of community consultation with Aboriginal and Torres Strait Islander communities.

We note that Aboriginal and Torres Strait Islander agencies already provide Family Intensive Support services and other primary and secondary services (this relates to the second tier).

We support the continuation and extension of funding to primary and secondary services such as family wellbeing services (primary) and family intensive support services (secondary) as a cost effective way of reinforcing the role of such agencies.

We further recommend that in a trial of a delegation of functions, that the following additional functions be delegated:

- a) Decisions about where children will be placed when in out of home care;
- b) Youth Transition services;
- c) Case management of families with less complex needs.

Ultimately we support full delegation of authority for case management of all cases, and delegation of investigation and assessment functions, leaving the department with a limited role in child protection, for example, powers to litigate on instruction from case management agencies to do so.

Such a proposal is a radical departure from the existing structure, and we acknowledge that any transition may need to be effected in stages, so as not to set agencies up to fail. At the transitional phases we recommend that there be a period of genuine partnership of decision making.

To avoid any ambiguity, we are not proposing that the department be permitted to “train” agencies in techniques for child protection as this would entrench the errors currently embedded in the child protection system and would be counter-productive to achieving culturally appropriate services.

Further, in any joint decision-making, we are opposed to the department providing a model to be followed by the agency, since this would be akin to outsourcing the Department’s modus operandi and perpetuating existing poor outcomes for Aboriginal and Torres Strait Islander peoples.

Question 26

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

Tertiary qualifications should be preferred as a means of building a better knowledge base. However, it is a truism that tertiary qualifications do not of themselves produce better decision-making or outcomes for children and families. In addition to any tertiary qualifications, there needs to be a strong emphasis on life experience and attitudes, much as now occurs in relation to acceptance of students into medical degrees.

Question 27

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

We support services being outsourced and delegated to Aboriginal and Torres Strait Islander agencies rather than bringing Aboriginal and Torres Strait Islander workers into a system that is currently failing. We are not persuaded that having more Aboriginal and Torres Strait Islander workers in a dysfunctional system will improve outcomes, since it is the system itself which is the problem.

Where there is not a complete delegation of authority to an Aboriginal or Torres Strait Islander organisation, we support statutory “partnering” of services. By partnering, we mean independent decision-making by Aboriginal and Torres Strait Islander agencies.

We strongly support Aboriginal and Torres Strait Islander services being sufficiently resourced and structured to be independent of the Department. Resourcing could ideally include specific vocational training, provided that this is provided in a culturally appropriate model.

In cases where Aboriginal and Torres Strait Islander agencies have delegated authority to make decisions or have a statutory consultative role, we would recommend that they not be bound by Departmental processes, preferences or service models, that they not be compromised by financial dependence on the Department or other structural compromises, such as currently occur in relation to the RE.

Question 28

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

We support improved cultural training for departmental staff but do not regard this as an alternative to self-determination by Aboriginal and Torres Strait Islander peoples.

We support the further following specific training, where we have observed problems:

- a) Training on the facts of Aboriginal and Torres Strait Islander dispossession as a foundation to understanding the generational trauma and displacement which has resulted in the current over-representation of Aboriginal and Torres Strait Islander children in the child protection system.
- b) Training on statutory obligations and legal issues such as evidence, presentation of evidence and the difference between fact and opinion.

- c) Awareness-raising about addiction, poverty and other issues affecting families to better understand how case planning can support parents rather than setting them up to fail.
- d) Training on long-term planning.

Question 30

How can Child Safety improve the support for staff working directly with clients and communities with complex needs?

We support the provision of regular debriefing and professional development programs for departmental child safety staff and for staff within NGO's which provide services under a delegated authority or supplementary services to the Department.

Aboriginal and Torres Strait Islander staff should be afforded cultural support to attend cultural events and allow for appropriate levels of bereavement leave in order to strengthen their own cultural links.

Question 31

In line with other jurisdiction 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?

We strongly support increased Aboriginal and Torres Strait Islander targets in situations where their employment is *independent of the department* (for example through the use of Aboriginal agencies).

We support the employment of Aboriginal and Torres Strait Islander staff within the Department generally but have concerns that any cultural input they may offer may be overridden by the overarching departmental culture. We refer to our response in relation to Question 27.

We also have concerns that Aboriginal and Torres Strait Islander departmental staff may be pressured into consenting to decisions which they do not support as culturally appropriate. In this respect we believe that they risk becoming scapegoats for departmental decisions in frontline services, as has happened in some cases with Police Liaison Officers.

Question 32

Are the department's oversight mechanisms - performance reporting, monitoring and complaints handling – sufficient and robust to provide accountability and public confidence? If not why not?

We do not regard these mechanisms as sufficient, but are unable to offer a comprehensive answer to this question due to time constraints and lack of full knowledge of the performance of departmental oversight mechanisms. Without detracting from our position of calling for self-determination, some examples of current problems from our own experience, include:

- a) Caseworkers appear to struggle with their caseloads and this impacts on their capacity to offer effective case management;
- b) Caseworkers appear to have insufficient knowledge of the legal processes and this results in problems such as a failure to inform solicitors about issues affecting clients (it is not uncommon for caseworkers to arrange a family group meeting without informing the solicitors; to fail to serve solicitors with legal documents even where a solicitor has been consistently involved in a case over a period of time; to prepare affidavits that are a mixture of opinion, hearsay and fact, and containing irrelevant material).
- c) Where complaints are made to branch managers it is not unusual to get no response, or delayed and vague responses.
- d) There does not appear to be a clear link between complaints and an improvement in processes.

The examples appear to indicate problems in performance and complaints handling.

Although many workers are new (there appears to be a high turnover) and inexperienced, in most cases we acknowledge that workers may be doing their best with a flawed system. With very few exceptions, we do not regard the individuals as the problem but the departmental system of child protection, including a lack of appropriate training, support, oversight mechanisms and the lack of a culture which promotes change and improvement.

Question 37

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?

We support judicial oversight of processes but note that this currently occurs, particularly where there appear to be delays in the progress of a matter. We support a reconsideration of how child protection courts and the children's courts judiciary can develop a child protection specialist approach which is child and family friendly and culturally appropriate.

Question 38

Should the number of dedicated specialist Children's Court magistrates be increased? If so, where should they be located?

We strongly support the appointment of dedicated specialist Children's Court magistrates.

We support consideration being given to implementing a new model of Children's Court having regard to some of the models in overseas jurisdictions, for example in Canada and in parts of the United States.

We further support:

- a) Children's Court magistrates having the capacity to speak with children individually in an informal way, either within a child-friendly court or out of court.
- b) Children's Courts more readily promoting a positive atmosphere for children and families by being located in a family-friendly environment with the precincts being child-friendly and culturally appropriate.
- c) The appointment of Aboriginal and Torres Strait Islander magistrates to the Children's Court where they have a specific interest in this area of law.
- d) We support the use of Aboriginal and Torres Strait Islander cultural consultants and liaison officers to assist the Magistrates when the child, subject of the intervention, is an Aboriginal or Torres Strait Islander child.
- e) We would support Children's Courts which deal with child protection matters being separate from the courts complex, where this is feasible.

Question 39

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

We support the use of child experts and Cultural Consultants, similar to the model of Family Consultants and Cultural Liaison Officers in the Family Law Courts.

We recommend that cultural liaison officers be involved in all legal proceedings, meetings and cases where an Aboriginal or Torres Strait Islander child is the subject of the legal proceedings.

We recommend that the Children's Court have the capacity to order Cultural Consultants and Child Consultants to:

- a) Meet with the children to conduct assessments and obtain the children's views;
- b) In the case of Cultural Consultants, to make recommendations to the court based on their knowledge of the child's culture and community and offer guidance on the views of the community as to the "best interests of the child", particularly if it relates to questions such as a child's placement or a decision involving the child being placed in a long-term "out of home care" arrangement;
- c) Meet with the immediate and extended family of the child;
- d) Prepare comprehensive reports for the court and also to refer or delegate this function to an appropriately qualified expert where the consultant lacks expertise in a relevant area.

We support the appointment of Independent Children's Lawyers (or "separate representatives") as deemed appropriate by the Children's Court using clear guidelines for the appointment of children's lawyers.

Question 40

Should certain applications for child protection orders (such as those seeking guardianship or, long-term guardianship until a child is 18) be elevated to consideration by a Children's Court judge or a Justice of the Supreme Court of Queensland?

We recommend the appointment of an **Aboriginal and Torres Strait Islander Guardian** for all cases seeking guardianship of an Aboriginal or Torres Strait Islander child.

The Guardian should have Ombudsman-like powers to oversee decisions, such as placement, education, cultural support, connections with family and community, long-term out of home care and other significant decisions.

Question 41

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

We strongly support the use of FGM facilitators who are independent experts in mediation. We would recommend that FGM facilitators, should not have ever worked for the Department and must declare conflicts of interest in this respect or with respect to other associations with any of the parties.

In our experience, while some existing facilitators demonstrate skill and attentiveness in managing FGM's there are some who appear to have a poor understanding of their role, and who fail to provide an effective mechanism for participation.

Having facilitators who are employed by the Department, inevitably taints the independence of the FGM facilitation in any event.

Case Study 7:

At an FGM the facilitator demonstrated a hostile attitude to the legal team, prior to the meeting repeatedly interrupting discussions between the legal team and client. Throughout the meeting the facilitator attempted to shut down any questioning and comments by the legal team. She failed to engage the client in the case planning process at all, and her style of running the meeting actually inhibited the client from voicing any views without prompting and encouragement from a family member and the legal team.

For Aboriginal and Torres Strait Islander families, we strongly support the appointment of an Aboriginal or Torres Strait Islander facilitator, or if there is no indigenous facilitator available, we support co-facilitation by an independent facilitator and an Aboriginal or Torres Strait Islander person who has relevant experience (for example an experienced and trained worker from the RE, or from the local community justice group).

We support the holding of FGM's in culturally friendly environments. While most FGM's are held in the clinical environment of a departmental meeting room, this can be off-putting and/or disempowering for parents and family support people, particularly where the department has already taken the children.

Case Study 8

At an FGM (not one held in Townsville), the FGM was held at an Aboriginal and Torres Strait Islander organisation. The meeting was supported and attended by elders from the cultural group. Participants sat in a circle and the meeting began with a welcome to country and a request that participants each be required to say something about the parents' strengths and the changes they had made prior to discussing the ongoing case planning. A community nurse working with the parents was part of the group and was able to provide positive feedback about some relevant issues. Coming from an independent expert, this was helpful guidance for the case planning. The result was that the meeting was a positive experience in which the parents were left with a clear sense of how far they had come and what other issues remained to be dealt with.

We have read the submission of J Ward of the South West Brisbane Community Legal Centre and we note that he has endorsed the participation of young people in the case planning process.¹⁹ We particularly note his observations that often a young person has started to positively engage in the process only after having an opportunity to participate in the decision making process.²⁰

Although it has not been our experience that there is a demand for young people to participate in case planning meetings that we have been involved in, we support the participation of adolescent children where the parents and children are appropriately supported.²¹

To avoid any ambiguity, we do not support the department using a child's participation in a family group meeting as an opportunity to call it a "family visit".

Our only other comment about FGM's is that we are strongly opposed to the methodology and form of the "Case Plan" model currently used by many in the department. At the front of the Case Plan is a section entitled "Summary of Concerns". This is frequently used by departmental officers to cite extensively from the most negative features of the department's Affidavits (usually in the form of "cut and paste" from the affidavit).

Such a process, appearing at the front of a Case Plan is in our view counter-productive. Parents often misunderstand case plans as just another tool which the Department may use to tell them that they are "bad parents". We would recommend that a simple

¹⁹ South West Brisbane Community Legal Centre, *Submission to the Queensland Child Protection Commission of Inquiry* by J Ward

²⁰ Ibid p.7

²¹ We are aware of some cases in which adolescent children and parents were experiencing considerable antagonism and therefore would regard the involvement of children only in so far as it is not likely to be damaging to the children or the parent-child relationship.

generic description of the nature of the issue is sufficient. The specific detail is contained in affidavit material and there is no point in reiterating it. This will allow the remainder of the Case Plan to speak to future planning to address issues, instead of being a recitation of the parents' "wrongdoings".

Question 42

What, if any, changes should be made to court-ordered conferences to ensure that this is an effective mechanism for discussing possible settlement in child protection litigation?

Our experience of the court-ordered conference process has been generally positive. The fact that co-ordinators are independent of the Department and that there is scope for involvement of parties and support persons has been a positive.

We recommend that a cultural consultant be appointed by the Court where the child is an Aboriginal or Torres Strait Islander child.

We would add that it should be mandatory that parents be advised to obtain legal advice, and that legal aid should be made available for that purpose. If parents are unwilling to accept legal representation, we would recommend that they be encouraged to bring a support person.

Question 43

What, if any, changes should be made to the compulsory conference process to ensure that it is an effective dispute resolution process in the Queensland Civil and Administrative Tribunal proceedings?

We support the presence of an Aboriginal or Torres Strait Islander co-facilitator.

Question 44

Should the Children's Court be empowered to deal with review applications about placement and contact instead of the Queensland Civil and Administrative Tribunal, and without reference to the tribunal where there are ongoing proceedings in the Children's Court to which the review decision relates?

We strongly support the Children's Court being empowered to deal with review applications about placement of children and contact.

Having regard to the increase in Child Protection matters and the flow-on social and economic costs to children, their families and the community when child protection fails, we strongly support the Children's Court developing its own expertise.

We further submit that a court is better placed to hear and assess submissions, and that the court should readily encourage the views of self-represented parents, without an emphasis on formality.

Question 45

What other changes are needed to improve the effectiveness of the court and tribunal processes in child protection matters?

We refer to our responses to the preceding questions.

Question 46

Where in the child protection system can savings of efficiencies be identified?

We are of the view that the multi-function nature of the department has rendered it inefficient and that this has been exacerbated where it has failed to draw on the expertise of other agencies. We support the outsourcing of functions to community agencies as we have outlined in our responses.

Question 47

What other changes might improve the effectiveness of Queensland's child protection system?

This response paper supports some significant changes in the child protection system for Aboriginal and Torres Strait Islander children, particulars of which are contained in the paper.

We strongly recommend that any changes that impact on Aboriginal and Torres Strait Islander children specifically, be introduced after consultation with communities, rather than mere selection of a "best model" or the most "cost effective" model. While we acknowledge that economic constraints are a real limitation, we believe that too much is at stake (the future of children) for it to be the main driver of change in the system.

We recommend that a child's culture be recognised as fundamental to the child's identity and that it is a strength for the child to be connected to her or his culture.

We recommend that the current 'bad parent' model be replaced by strengths-based practice, since being a bad parent does not lend itself to parents moving forward towards the development of healthy parenting practices.

We recommend that recognition be given to the need for parents to have access to legal advice and that children have the right to an Independent Children's Lawyer as appropriate.

In order to best support the parents having quality legal advice which has regard primarily to how to address the issues, rather than being court process driven, we would recommend that there be an avenue for solicitors to become accredited in child protection.

It is our view that far too little regard has been had to children's human rights, including their connections to their family and culture in the process of child protection. Far too often children in the child protection system in Queensland have been treated as if they are isolated entities which, if fed the right formula of care, will grow up happy and developmentally sound. This is contrary to the provisions of the UN *Convention on the Rights of the Child* to which Australia is a signatory. We refer in particular to Article 3:

1. In all actions concerning children, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, *taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her*, and, to this end, shall take all appropriate legislative and administrative measures.