

## **CHILD PROTECTION AND SOCIAL SERVICES SYSTEM**

**Organisation:** Wirringa Baiya Aboriginal Women's Legal Centre

**Date Received:** 24 February 2021



# WIRRINGA BAIYA

## ABORIGINAL WOMEN'S LEGAL CENTRE INC.

Wurringa Baiya provides free legal advice to Aboriginal and Torres Strait Islander women, children and youth who are or have been victims of violence.

18 February 2021

Joint Committee on Children & Young People  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Via email: [childrenyoungpeople@parliament.nsw.gov.au](mailto:childrenyoungpeople@parliament.nsw.gov.au)

Dear Committee members,

**Re: Submission to NSW Inquiry into the Child Protection and social services system**

Thank you for the opportunity to provide a submission for the Inquiry in the Child Protection and Social Services system. Please find **attached** Wurringa Baiya Aboriginal Legal Centre's submission.

Wurringa Baiya highlights the need to implement early intervention measures to address the unacceptably high rate of removal of Aboriginal children.

We hope our submission provides achievable recommendations to address the long-standing issues in the child protection and out of home care system impacting Government's goals.

We would welcome the opportunity to further discuss our submissions. Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact [REDACTED]

Yours faithfully

Wurringa Baiya Aboriginal Women's Legal Centre  
[REDACTED]

Per: Rachael Martin

Principal solicitor

# RESPONSE TO THE INQUIRY INTO THE CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

SUBMISSION COMPILED BY

Wirringa Baiya Aboriginal Women's Legal Centre

February 2021

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## Abbreviations

ACCO	Aboriginal community-controlled organisations
ACCHO	Aboriginal community-controlled health organisations
CLC	Community legal centre
DCJ	Department of Community and Justice
DFV	Domestic and family violence. Any reference to “family violence” or “domestic violence” in this submission refers to a situation where the violence is perpetrated by men against women, as this occurs in the majority of cases and this is the experience of the Aboriginal women with whom we work. We acknowledge that women may also be perpetrators of violence in heterosexual and same sex relationships.
OOHC	Out-of-home care
SEWB	Social and emotional wellbeing

Any reference to “Aboriginal people” or “Aboriginal women” in this submission includes Aboriginal and Torres Strait Islander people or women.



## About Wirringa Baiya Aboriginal Women's Legal Centre

Wirringa Baiya is a not-for-profit organisation providing free and confidential legal advice and representation to Aboriginal and Torres Strait Islander women and children in NSW. We are a gender-specific service sensitive to the culturally diverse needs of Aboriginal and Torres Strait Islander women who have been victims–survivors of violence (domestic violence, sexual assault and child sexual assault).

Our Governing Committee comprises Aboriginal women. We have four Aboriginal identified positions and our legal staff consists of two full-time and three part-time solicitors.

Wirringa Baiya Aboriginal Women's Legal Centre is a state-wide community legal centre (CLC). Over our 24 years of operation, we have given advice and support to thousands of women and children. In addition to daily advice and casework services, we also provide legal advice clinics in several outreach locations, including in women's correctional centres and community centres, and engage in law reform.

Our centre regularly advises Aboriginal women who have been contacted by the Department of Community and Justice (DCJ) with concerns about their children or where their children are in DCJ's care.

We also provide advice to:

- Aboriginal grandmothers and other family members with concerns about the safety and care of young family members or want contact with them
- Aboriginal women who have experienced family violence from their partners
- Aboriginal women who have been sexually assaulted by their partners
- Aboriginal women who are separated from their partners who want to know about suitable arrangements for their children and how to keep them safe
- Aboriginal women whose children have been removed by either their partners or a family member

Wirringa Baiya Aboriginal Women's Legal Centre's views are informed by the Aboriginal women we work with and the clients we support. Where relevant, we have used case studies in this submission to illustrate our points.

## Introduction

Aboriginal children and young people are overrepresented in the child protection system at an unacceptable rate, making up 37% of the total out-of-home care (OOHC) population, but only 6% of the total child population in Australia<sup>1</sup>. The NSW child protection system has been the subject of multiple inquiries, reports, and reviews for over 20 years finding that the system is ineffective and fails to improve long term outcomes for children and in addressing devastating cycles of intergenerational abuse and neglect, with particular poor outcomes for Aboriginal children, young people and families. Recommendations that remain unimplemented have immediate resourcing implications. The deeply entrenched systematic issues are comprehensively understood, however, barriers, either in capacity, authority or will appears to impede implementation of outstanding recommendations<sup>2</sup>.

The alarming rates of removal trigger the legacy of intergenerational trauma and loss affecting the social and emotional wellbeing of Aboriginal people. Social and emotional wellbeing (SEWB) is the foundation for physical and mental health for Aboriginal people, and is a holistic concept which results from a network of relationships between individuals, family, kin and community, and how these affect the individual. The interrelationship of the child protection system, life outcomes and the social determinants of health demands a whole-of-government approach and a need to prioritise early intervention by identifying points of intervention across health, education, social services and justice in the current system.

The removal of children is a serious action taken by the Department of Communities and Justice (DCJ) that ought not to be taken lightly, driven by the objective of protecting children from immediate risk of serious harm. However, the *Family is Culture Review* ('The Review') by Professor Megan Davis, highlights that, in practice, removal is not an action of last resort for Aboriginal families, with concerning findings about the NSW child protection system, including widespread non-compliance with legislation and policy among departmental caseworkers, failures of accountability, misleading evidence provided to the Children's Court and higher rates of harm experienced by Aboriginal children in care. The Review is a unique review of the child protection system because it is led by Aboriginal women and examined the circumstances of every Aboriginal child taken into OOHC between 2015 to 2016. The Review provides a comprehensive and evidence-based roadmap for reform and implementation of the recommendations are a key priority.

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<sup>1</sup> Joanne Cackett and David Hull, eds., *The Family Matters Report 2020* (Victoria, Australia: SNAICC, 2020) [https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020\\_LR.pdf?mc\\_cid=38b1093983&mc\\_eid=571fa80e1b](https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf?mc_cid=38b1093983&mc_eid=571fa80e1b).

<sup>2</sup> Urbis, *Reviews of the NSW Child Protection System 2008-2019: An Analysis of Key Findings and Degree of Implementation* (Melbourne, Australia: Urbis, 2020), [https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW\\_Final-Report-20201130.pdf](https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW_Final-Report-20201130.pdf).

## The cost of the OOHC system

### *Life outcomes are negatively impacted by interactions of the OOHC system*

Evidence consistently shows the longer a child remains in care, the poorer their life outcomes.<sup>3</sup> This applies over a wide range of indicators including mental health, substance abuse and eating disorders<sup>4</sup> and other personality disorders,<sup>5</sup> lower emotional and mental wellbeing,<sup>6</sup> involvement in the criminal justice system<sup>7</sup>, lower educational attainment,<sup>8</sup> higher housing instability and homelessness,<sup>9</sup> and higher rates of chronic health conditions and morbidity.<sup>10</sup>

### *There is a well-established correlation between OOHC and juvenile justice*

The trajectory of 'cross-over kids' demonstrates the well-known link between OOHC care and involvement in the criminal justice system. The 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found almost half of the deaths of Aboriginal and Torres Strait Islander people examined by the commission had been "removed from their families". A central issue that emerged from data analysis of a

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<sup>3</sup> June M. Clausen, John Landsverk, William Ganger, David Chadwick and Alan Litrownik, "Mental Health Problems of Children in Foster Care," *Journal of Child and Family Studies* 7, no. 3 (1998): 283-296; Laura Gypen, Johan Vanderfaeillie, Skrallan De Maeyer, Laurence Belenger and Frank Van Holen, "Outcomes of Children who Grew up in Foster Care: Systematic-Review," *Elsevier* 76, no. C (2017): 74-83.

<sup>4</sup> Mark Friedman, Michael Marshal, Thomas Guadamuz, Chongyi Wei, Carolyn Wong, Elizabeth Saewyc and Ron Stall, "A Meta-Analysis of Disparities in Childhood Sexual Abuse, Parental Physical Abuse, and Peer Victimization Among Sexual Minority and Sexual Nonminority Individuals," *American Journal of Public Health* 101, no. 8 (2011): 1481-1494, cited in Judith McCoyd and Carolyn A. Walter, *Grief and Loss Across the Lifespan: A Biopsychosocial Perspective* (New York: Springer, 2016).

<sup>5</sup> Annie Guest, "Child Safety Inquiry hears Prevention Limited," PM, ABC Radio, aired August 16, 2012; Michael Rutter and David Quinton, "Parental Psychiatric Disorder: Effects of Children," *Psychological Medicine* 14, no. 4 (1984): 853-880.

<sup>6</sup> Bob Broad, "Kinship Care for Children in the UK: Messages from Research, Lessons for Policy and Practice 1," *European Journal of Social Work* 7, no. 2 (2004): 211-227; Allen Buchanan, "The Internal Legitimacy of Humanitarian Intervention," *The Journal of Political Philosophy* 7, no. 1 (1999): 71-87; Roger Clough, *Residential Work* (London: Macmillan, 1982); Christine Cocker and Sara Scott, "Improving the Mental and Emotional Well-being of Looked after Children: Connecting Research, Policy and Practice," *The Journal of the Royal Society for the Promotion of Health* 126, no. 1 (2006): 18-23.

<sup>7</sup> Kath McFarlane, "From Care to Crime – Children in State Care and the Development of Criminality," Second Australia New Zealand Critical Criminology Conference, Sydney, 19-20 June, 2008.

<sup>8</sup> Michelle Townsend, *Are we Making the Grade? The Education of Children and Young People in Out-of-home Care* (Ashfield: Department of Family and Community Services, 2012).

<sup>9</sup> Jo Dixon, "Young People Leaving Residential Care: Experiences and Outcomes," in *Residential Child Care: Prospects and Challenges*, ed. Andrew Kendrick (London: Jessica Kingsley Publishers, 2008).

<sup>10</sup> Kathleen Kendall-Tackett, "The Health Effects of Childhood Abuse: Four Pathways by which Abuse can Influence Health," *Child Abuse & Neglect* 26, no. 6 (200): 715-729; Elizabeth Fernandez, Jung-Sook Lee, Hazel Blunden, Patricia McNamara, Szilvia Kovacs and Paul-Auguste Cornefert, *No Child Should Grow Up Like This: Identifying Long Term Outcomes of Forgotten Australians, Child Migrants and the Stolen Generations* (Sydney: University of New South Wales, 2016).



2012 study of the Children's Court in New South Wales (NSW) relates to the overlap between the two jurisdictions of the Children's Court.<sup>11</sup> Many of the young people in the juvenile justice system have a history of contact with the statutory department and multiple foster care placements.

The combination of these whole-of-self factors manifests in tragic outcomes, with suicide being the leading cause of death for Aboriginal and Torres Strait Islander children aged 5-17, who account for one-third (32.4%) of all Aboriginal and Torres Strait Islander child deaths.<sup>12</sup> The Black Lives Matter movement in 2020 brought attention to the rates of Aboriginal Deaths in Custody, which is ultimately influenced by the overrepresentation of Aboriginal people in the criminal justice system.

### **Cost-Benefit Analysis (CBA)**

The cost of the Out of Home Care System requires investing resources earlier in the system to divert children from care and ensuring better outcomes for children and families. Investing in early intervention provides long-term benefits by addressing significant costs associated with child abuse and neglect and OOHC.

The 20 year costs of providing government services after children have left care are estimated at an average cost of \$284,000. About 95% of the 20 year costs result from six service types:<sup>13</sup>

- Child protection (26%)
- Ambulance (22%)
- Time in custody (18%)
- Court appearances (11%)
- Hospital care (10%)
- Public housing (8%)

In the year to March 2020, more than 110,000 children were assessed as at risk of significant harm, with only 29% of these children in this period receiving face-to-face intervention.<sup>14</sup> Simultaneously, the rate of children in OOHC has been

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<sup>11</sup> Fernandez, Elizabeth and Bolitho, Jane and Hansen, Patricia and Hudson, Myvanwy and Kendall, Sacha, *A Study of the Children's Court of New South Wales* (August 19, 2014). Available at SSRN: <https://ssrn.com/abstract=3439191> or <http://dx.doi.org/10.2139/ssrn.3439191>

<sup>12</sup> Australian Bureau of Statistics, "Causes of Death, Australia," October 23, 2020, accessed January 13, 2021, <https://www.abs.gov.au/statistics/health/causes-death/causes-death-australia/2019>.

<sup>13</sup> NSW Government, *Their Futures Matter: A New Approach*, March 2018, [https://www.theirfuturesmatter.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/723606/Their-Futures-Matter-A-new-approach-Reform-directions-from-the-Independent-Review.pdf](https://www.theirfuturesmatter.nsw.gov.au/__data/assets/pdf_file/0006/723606/Their-Futures-Matter-A-new-approach-Reform-directions-from-the-Independent-Review.pdf)

<sup>14</sup> DCJ, *Caseworker Dashboard March 2020 Quarter*, 2020, [https://www.facs.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/784903/Caseworker-Dashboard-March-2020-quarter-final.PDF](https://www.facs.nsw.gov.au/__data/assets/pdf_file/0004/784903/Caseworker-Dashboard-March-2020-quarter-final.PDF).

increasing for a decade, with spending on OOHC significantly outweighing that spent on targeted early intervention services.

## **Background: Recent reviews and inquiries**

### **Identified issues by previous inquiries and reviews**

An independent report<sup>15</sup> analysed the key findings and degrees of implementation of recommendations highlighted recurrent themes that demonstrate shortcomings in the child protection system. Due to the extensive reviews undertaken into the system, a comprehensive analysis should be undertaken to report and monitor recommendations.

Key themes include:

1. The need for independent oversight in the OOHC system;
2. Expanding early intervention services;
3. Strengthening independent oversight;
4. Redesigning/improving intake and assessment processes and practices;
5. Improving leave care planning, support and raising the age for continued support; and;
6. Whole of system reform to reduce entries into OOHC.

### ***NSW Government response to Family is Culture review***

While the NSW Government's response contains positive initiatives, the response falls short of the comprehensive whole-of-government reform needed to improve a child protection system failing Aboriginal families and children. The response of creating an identified Aboriginal Deputy Children's Guardian within the Office of the Children's Guardian does not deliver on the comprehensive system oversight required.

As a starting point, we need to see a genuine commitment to fully implement all recommendations in the Family is Culture report. Over one-third of the report's recommendations relate to changing child protection legislation and court processes, including mandating early engagement with families to prevent child removal. These recommendations will not be considered until a review in 2024, which is beyond the term of the current Parliament. A legislative requirement to support Aboriginal families prior to the removal of their children would help ensure services are provided where they are most needed.<sup>16</sup>

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<sup>15</sup> Urbis, *Reviews of the NSW Child Protection System 2008-2019*.

<sup>16</sup> Ibid., 159.

## Reforms supported by a strong reporting framework

In order to achieve the long-term goals of reporting the child protection system, reform must be supported by a strong reporting framework to ensure accountability.

### **Recommendation 1:**

- i. The NSW Government must immediately commit to implementing all recommendations in the Family is Culture report and expedite legislative reforms outlined in report within the current Parliamentary term.
- ii. The NSW Government must immediately provide an updated detailed response to the Family is Culture report on each of the 125 recommendations outlining whether the recommendation is accepted or rejected, planned actions, allocated funding if it cannot be integrated into existing funding.
- iii. Reforms to be supported by a strong reporting framework optimal use of data to inform decision-making.

**Recommendation 2:** The Department of Premier and Cabinet (DPC) should evaluate the progress of implementation of each recommendation made in previous inquiries about the child protection system in NSW since 2008 and develop a plan to begin reform within the current Parliamentary term.

## Whole-of-government reform

The DCJ holds primary accountability for vulnerable families with little influence over the drivers of vulnerability or levels for change and limited ability to obtain timely services to change the life trajectories of vulnerable children and families.

As emphasised in the Tune<sup>17</sup> review, vulnerable children and families have complex needs that cross-government silos, requiring comprehensive whole-of-government reform to ensure services are seamlessly integrated and made available when they are most needed and in a timely manner. Further, the current system does not hold agencies accountable for achieving whole-of-person outcomes.

## Effectiveness of the Their Futures Matter program

In response to the Tune review, a four-year whole-of-government reform 'Their Futures Matters' (TFM) program was intended to place vulnerable children and families at the heart of services, and direct investment to where funding and programs deliver the greatest social and economic benefits.

In July 2020, the Auditor-General for NSW, Margaret Crawford, examined whether the DCJ had effective governance and partnership arrangements in place to deliver

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<sup>17</sup> Tune, *Independent Review of Out of Home Care*, 3.

the TFM program. The evaluation found that Their Futures Matter lacked mechanisms to secure cross portfolio buy-in and did not have authority to drive reprioritisation of government investment Governance and cross-agency partnership arrangements to deliver the program were found to be ineffective. The reform concluded on 30 June 2020 without a strategy or plan in place to achieve its intent.

Some of the key findings included:

- TFM was not independent of FACS and the child protection and OOHC systems, which the reform was intended to transform
- The governance arrangements were unable to secure support from ministers beyond the FACS portfolio, and the reform struggled for visibility and traction against other government priorities<sup>18</sup>

## **Cross-agency coordination**

Two key government departments play an important role in overseeing the cross-agency coordination of services and should play a stronger role in overseeing Whole of Government reforms.

### **1. Department of Premier and Cabinet (DPC)**

The DPC enhances the lives of the people of NSW by driving priorities, brokering outcomes at a cross-agency level, and delivering programs and services.<sup>19</sup> Two current Premier priorities relate to Keeping Children Safe – protecting our most vulnerable children and increasing permanency for children in OOHC. To achieve these aspirations, an explicit commitment to a measurable system of reforms is required to progress reform priorities.

The Tune report considered cross-agency coordination and recommended establishment of a NSW Family Investment Commission as a statutory authority reporting directly to a Minister.<sup>20</sup> Implementation of this recommendation would ensure the DPC and DAA oversee reform and may lead to greater accountability by reporting on reform directly to the NSW Premier.

### **2. Aboriginal Affairs NSW**

Aboriginal Affairs NSW's role is to lead strategic policy reforms to support the goals and aspirations of Aboriginal people living in NSW. Currently, the three

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<sup>18</sup> Margaret Crawford, *Their Futures Matter* (Sydney, Australia: Audit Office of New South Wales, 2020), 2, <https://www.audit.nsw.gov.au/sites/default/files/documents/Their%20Futures%20Matter%20-%20PDF%20Report.pdf>.

<sup>19</sup> "Our Mission," NSW Government Premier & Cabinet, <https://www.dpc.nsw.gov.au/>.

<sup>20</sup> Tune, *Independent Review of Out of Home Care*, 8, Recommendation 3.1.



key policy priorities are language and culture, economic prosperity, and planning and heritage.<sup>21</sup> We believe the inclusion of Aboriginal overrepresentation in OOHC is a key policy priority that Aboriginal Affairs NSW should oversee by working closely with the DPC, DCJ and other key government departments, such as NSW Health and the Department of Corrective Services NSW. A child protection unit should be established within Aboriginal Affairs NSW to build expertise and capacity within the Department to empower involvement in decision making alongside other key departments.

## Meaningful self-determination

When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.<sup>22</sup>

Any reform to law, practice and policy must respond to the extent of intergenerational trauma that has been caused and compounded by the past Government policies.<sup>23</sup> The NSW Government has not achieved meaningful self-determination in child protection. Self-determination underpins healing and reconciliation and is a central theme in the *Family is Culture*, informed by recommendations in the *Bringing them Home* report.<sup>24</sup> Achieving self-determination involves providing communities with control over their own lives, and having a collective say in the future wellbeing of their children and young people.

Ultimately, self-determination requires consensus on the devolution of power from the state to Aboriginal people in two ways:

1. Building the capacity of Aboriginal Community Controlled Organisations (ACCOs) - organisations that facilitate the involvement of local Aboriginal communities in the design and delivery of services.
2. Closing the Gap is underpinned by the belief that to close the gap and achieve better life outcomes, Aboriginal people must determine, drive and own the desired outcomes, alongside all governments. This requires structural change in the way governments work with Aboriginal people.

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<sup>21</sup> "Policy Reform," NSW Government Aboriginal Affairs, <https://www.aboriginalaffairs.nsw.gov.au/policy-reform/about-policy-reform/>.

<sup>22</sup> "The Uluru Statement from the Heart," From the Heart, <https://fromtheheart.com.au/uluru-statement/the-statement/>.

<sup>23</sup> Davis, *Family is Culture*, 8.

<sup>24</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (Sydney, Australia: Commonwealth of Australia, 1997), 15.

## Building capacity in Aboriginal organisations

To further enhance Aboriginal self-determination within the NSW child and family sector, there is a need to elevate the role of Aboriginal community-controlled health sector (ACCOs) to ensure the best outcomes for Aboriginal children and families by reducing entry into care.<sup>25</sup> The *Family is Culture* review emphasises the need to direct funding to ACCOs to ensure culturally appropriate and effective program design and delivery.

This ACCOs should be empowered to be actively involved in DCJ decision making, including all assessments, case planning, case meetings, home visits, attending court, placing Aboriginal children and young persons in OOH and making restoration decisions.

**Recommendation 3:** NSW Government to provide adequate funding to ACCOs to support involvement in DCJ decision making and in the delivery of early intervention and family support.

## Governance

Local Aboriginal governance processes are a central element of an ACCO, providing a clear mechanism for Aboriginal self-determination. This includes empowering Aboriginal communities to participate directly in the design and delivery of services within their community, defining priorities, outcomes and approaches from an Aboriginal community perspective, as well as ensuring service delivery is directly accountable to the Aboriginal community or communities served.<sup>26</sup>

This includes DCJ having a clearly articulated policy prioritising the role of ACCOs within local service system design, based on the local governance mechanism they represent.

The auditor general evaluation of *Their Futures Matter*<sup>27</sup> found significant deficiencies in the involvement of Aboriginal communities. A significant failing was that key decision makers did not have access to external expertise on Aboriginal community needs and strengths, financial transactions, commissioning, non-government organisation (NGO) service delivery and evaluation. These skillsets were not always represented at Board level.

<sup>25</sup> Davis, *Family is Culture*, 150.

<sup>26</sup> AbSec, "Aboriginal Community Controlled Organisations (ACCOs)," policy brief, <https://www.absec.org.au/images/downloads/AbSec-Policy-Brief-Aboriginal-Community-Controlled-Organisations-ACCOs.pdf>

<sup>27</sup> Crawford, *Their Futures Matter*.

Three key recommendations were made by the Auditor-General's :

1. Ensuring Aboriginal representation in relevant governance arrangements and all key decision points<sup>28</sup> (Recommendation 1(h))
2. Developing and implementing a plan in partnership with Aboriginal services, families and children to address the areas for improvement identified by the Tune review and other relevant reviews (recommendation 1(j))
3. Enhancing the capability of the TFM Implementation Board – or alternative governance entities established in its place – to include external expertise from Aboriginal leaders, finance professionals, the funded NGO sector, the evaluation and data field, and experienced commissioners (recommendation 2(c))

### Alternative models – Care Circles

The Care Circle pilot draws on similar principles to the New South Wales circle sentencing program for Aboriginal offenders in the criminal justice context, “Koori courts.” It empowers Aboriginal families and the community by reducing barriers between the courts and Aboriginal people.

The Care Circle pilot attempts to reverse the colonial pattern of excluding Aboriginal people and their values from important decision-making functions with respect to child welfare. Instead, it invites Aboriginal community representatives to actively participate in decisions related to the care and protection of their children. The pilot emerged out of various reviews and inquiries, including the Woods report, which recommended the Nowra Care Circle pilot should be monitored and evaluated. If successful, consideration should be given to its extension to other parts of the state with significant Aboriginal communities.

The DCJ should proactively explore alternative models, such as the introduction of Aboriginal community led Care Circles in resolving concerns about child neglect and abuse, with a strong emphasis on Aboriginal community led responses, which have demonstrated success.

**Recommendation 4:** The DCJ should proactively explore alternative Aboriginal models to involve ACCOs in decision making at all stages, including assessment, placing Aboriginal children and young persons in OOHC and making restoration decisions.

<sup>28</sup> Ibid., 5, recommendation 1(H).

## Early intervention

The best way to prevent Aboriginal children entering the OOHC system is through providing appropriate support to Aboriginal families, particularly when children first come into contact with the child protection system.<sup>29</sup>

'Early' intervention means intervening early in a child's life – from birth to school age. Children's early years are a critical time affecting the foundations for healthy development, wellbeing and coping skills across their lifespan.

Support should be readily available at key transition points as a form of early intervention, which include starting and leaving school. For parents, they include family planning, pregnancy and childbirth and their children starting school.

The objects of the *Children and Young Persons (Care and Protection) Act 1998* stipulates that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

The NSW Government should fund successful and Innovative models demonstrating successful early intervention approaches.

## Early childhood

Accessibility of early childhood is critical in improving outcomes for Aboriginal children. The Federal Government's \$1.6 billion relief package for the childcare sector, which operated from April to October due to the Coronavirus pandemic in 2020, led to a surge of attendance among disadvantaged, vulnerable and Aboriginal children, including from 22% of children deemed at risk of abuse and neglect.<sup>30</sup>

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<sup>29</sup> Davis, *Family is Culture*.

<sup>30</sup> Fergus Hunter, "They are Thriving': Free Childcare Boosted Access for Disadvantaged and Indigenous Kids," *Sydney Morning Herald*, June 12, 2020, [https://www.smh.com.au/politics/federal/they-are-thriving-free-childcare-boosted-access-for-disadvantaged-and-indigenous-kids-20200611-p551ne.html?fbclid=IwAR2IYxCBkyRuJr7Ixt6djYshRKNrucMW334b9f\\_rblD81OFrVNOG4cCSqRw](https://www.smh.com.au/politics/federal/they-are-thriving-free-childcare-boosted-access-for-disadvantaged-and-indigenous-kids-20200611-p551ne.html?fbclid=IwAR2IYxCBkyRuJr7Ixt6djYshRKNrucMW334b9f_rblD81OFrVNOG4cCSqRw).



### **Ursula**

Ursula has accessed support from our service as a domestic violence survivor to seek advice on Victim's Services recognition payment. Ursula is unemployed, receives a government benefit and expressed the desire to gain financial independence by undertaking studies to support her four children. We supported Ursula to seek additional support available. As a single mother of four, accessing free childcare would have a significant impact to her and her children attending care. For Ursula, it enables her to pursue activities to achieve longer term financial independence and improve living standards for her children. For her children, it provides them with a safe environment to counter the negative impact of witnessing domestic violence.

We echo calls by the Aboriginal and Torres Strait Islander children's advocacy body SNAICC that accessibility ensures Aboriginal children attend centres that are safe places, enabling them to thrive, interact with other children and engage with culture and identity. A return to the previous funding model, which combines government subsidies and fees from families, would undermine the Closing the Gap strategy by reducing access to early education, a foundation for future success<sup>31</sup>.

The NSW Premier's announcement of a \$120 million package to provide an extra year of free preschool is welcome.<sup>32</sup> However, this funding is restricted to approximately 700 state-funded community preschools and 38 mobile preschool services that provide care for three- to five-year-olds only. We urge the NSW Government to extend this funding to all Aboriginal children and families, and work closely with the federal government to implement long term reforms to improve outcomes for Aboriginal children.

**Recommendation 5:** NSW Government should extend preschool program funding to all Aboriginal children and families and work closely with the federal government to implement long term measures to the child care system including:

- A minimum of 30 hours per week of free or 95% subsidised child care for all Aboriginal and Torres Strait Islander children to meet Closing the Gap targets in ECEC attendance and outcomes.
- An end to the activity test that excludes vulnerable children and families
- A dedicated funding program for Aboriginal ECEC services that recognise their unique role to provide culturally strong integrated supports to children families and communities.

<sup>31</sup> SNAICC, "Rapid Return to Child Care Subsidy to Leave Aboriginal and Torres Strait Islander Children and Families Vulnerable," media release, June 10, 2020, <https://www.snaicc.org.au/rapid-return-to-child-care-subsidy-to-leave-aboriginal-and-torres-strait-islander-children-and-families-vulnerable/>.

<sup>32</sup> NSW Premier, "\$120 Million Extra for Free Preschool Program to Help Parents," media release, November 8, 2020, <https://www.nsw.gov.au/media-releases/120-million-extra-for-free-preschool-program-to-help-parents>.

## System intervention opportunities

Early intervention can be achieved by identifying opportunities for touchpoints and transitions in the system.

### Health – Antenatal care

Aboriginal women are less likely to access antenatal care in the first trimester of pregnancy when many risk factors could be addressed. A number of barriers to accessing health services exist including cost, cultural appropriateness and distance from health services.<sup>33</sup>

Aboriginal women have concerns about discriminatory treatment received in the maternity health system.<sup>34</sup> Culturally safe and community-centred models of care in partnership with Indigenous communities in rural, remote and urban settings has been identified as a key need by the Indigenous Perspectives Forum.<sup>35</sup>

Wirringa Baiya wants to see decreased barriers for Aboriginal women to access culturally safe antenatal care services for the safety of pregnant woman and their children, as well as address risks of DCJ intervention. Cultural safety acknowledges that health consumers feel safest when health professionals have considered power relations, cultural differences and individuals' rights.

We fear, if a pregnant woman was to report to their midwife or other health worker about their concerns for their unborn baby, they would be treated with discrimination and viewed as the cause of any problems with the pregnancy.

The removal of a child at birth from an Aboriginal woman is a severe form of intervention causing immediate intensity of loss and grief when considered in light of the significant physiological and practical challenges in the post-natal period combined with historic experiences of trauma from the Stolen Generations.

In Marsh et al.'s study, in depth interviews with seven Australian women who had experienced the removal of their infant at birth revealed the impact of deep-felt grief,

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<sup>33</sup> The Department of Health, "3.2 Indigenous," in *Improving Maternity Services in Australia: The Report of the Maternity Services Review* (Canberra, ACT: Commonwealth of Australia, 2009), <https://www1.health.gov.au/internet/publications/publishing.nsf/Content/msr-report~msr-report-keyissues~msr-report-inequality~msr-report-indigenous>.

<sup>34</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report 2020* (Sydney, Australia, Australian Human Rights Commission, 2020), 19.

<sup>35</sup> The Department of Health, "3.2 Indigenous."



guilt and shame.<sup>36</sup> This led to further social isolation and reliance on problematic coping strategies, such as substance misuse.

Prioritising the cultural safety of maternity services will help develop a culture of trust to support early intervention during the key point of intervention at pregnancy and birth. This can be achieved through a collaborative approach between the tertiary NSW Health system, the Aboriginal community controlled health sector (ACCHOs) and Aboriginal health workers.

**Recommendation 6:**

NSW Health should prioritise the delivery of culturally safe Aboriginal maternity services through:

- (i) Expand culturally safe models of care including care provided by Aboriginal Medical Services (AMS) and the Aboriginal Maternal and Infant Health Strategy (AMIHS)
- (ii) Improve cultural competencies for maternity healthcare staff and midwives'

Current culturally safe models of care includes initiatives include the Aboriginal Maternal and Infant Health Strategy (AMIHS), which is a community-based maternity service that includes a midwife working in partnership with an Aboriginal Health Worker or Aboriginal education officer to provide care to pregnant Aboriginal women, new mothers and their babies in a culturally safe environment.

Aboriginal Medical Services play a key role in addressing gaps in cultural safety by providing holistic and culturally appropriate health services to meet the needs of the local community.

## **Advocacy support**

The *Family is Culture* review raised concerns about the power imbalance between Aboriginal families and child protection workers and recommended an Aboriginal Child Protection Advocacy Program be established in NSW. Such a coordinated advocacy service would enable advocates to assist families at all stages of the process.<sup>37</sup> Volunteer led organisations, such as Grandmothers Against Removals, have been performing these functions without resources and should be funded as part of an advocacy program.

Wirringa Baiya has consistently advocated for provision of funding to parents (particularly Aboriginal parents) to access 'parent advocates' who are trauma

<sup>36</sup> Marsh et al., "Making the Hidden Seen: A Narrative Analysis of the Experiences of Assumption of Care at Birth," *Women and Birth* 32, no. 1 (2019): e1-e11, <https://doi.org/10.1016/j.wombi.2018.04.009>.

<sup>37</sup> Davis, *Family is Culture*, 165.

informed, non-legal advocates, at the first instance of a notification and investigation.

The parent advocate (while keeping in mind the safety and best interests of the child) will be positioned to assist the parent in better understanding the Department's obligation to ensure the safety of all children in NSW, while providing support to parents to better protect their children and with the goal of reducing re-reporting and removals.

In our view, pairing an Aboriginal parent with a parent advocate would create an opportunity for effective, honest and respectful dialogue and engagement.

**Recommendation 7:** The NSW Government must immediately expand funding for community-based Independent legal and non-legal advocates for Aboriginal parents and caregivers navigating the child protection system.

### **Legal advice and advocacy**

The *Family is Culture* review notes resourcing early intervention child protection legal services is necessary to prevent Aboriginal children entering and remaining in OOH. Our service has continued to play an important role to support women and provide appropriate advocacy.

From 2015 to 2019, Wirringa Baiya was involved in the Care Partner Program with Legal Aid NSW and 21 other CLCs. As a Care Partner, we were invited to provide specialised legal assistance and casework to parents or primary care givers who required to respond to (limited) early intervention approaches from the DCJ.

The initial program covered an 18-month period from 1 January 2015 to 30 June 2016 and ended in 2019. The scope of work was limited to only providing advice and casework in regard to parental responsibility contracts, parent capacity orders and section 86 contact Alternative Dispute Resolution.

Following a review of the program in early 2016, the participating CLCs were reduced from 22 to 12 and funding was reduced to \$408,975 with the scope of the work extended to include all early intervention advice and casework assistance.

Unfortunately, due to funding cuts from Legal Aid NSW, Wirringa Baiya is no longer able to deliver provide comprehensive advice and support as a Care Partner. Reinstating funding would enable our service to deliver essential advocacy support.

**Recommendation 8:** NSW Government must immediately expand funding for child protection legal services and reinstate the Legal Aid Care Partners Program to allow services, such as Wirringa Baiya Aboriginal Women's Legal Centre provide early support.



## Health Justice Partnerships

To address the power imbalance between the parents of children involved in the child protection system and caseworkers, opportunities to provide outreach support in the healthcare system is a constructive initiative that ought to be explored, designed at a system level and funded.

The Health Justice Partnership (HJP) between Redfern Legal Centre (RLC) and Sydney Local Health District (SLHD) is a NSW-first model which provides access to justice to vulnerable patients.<sup>38</sup> This innovative model brings legal support within the hospital, to ensure the most vulnerable people have access to legal help when they need it most. The RLC solicitor trains hospital staff to identify legal issue for patients so they will know when to refer patients to HJP and assists patients to solve their legal issues and advocate for them to improve their situation.

**Recommendation 9:** NSW Government to incorporate health justice partnerships into the NSW Health maternity model of cares and fund the delivery of the program on a state-wide basis by Legal Aid NSW and Community Legal Centres, including Wurringa Baiya Aboriginal Women's Legal Centre.

## Specialist rehabilitation accommodating mothers and their children

Key early intervention services can avoid child removals through the availability of adequate residential inpatient mental health and drug and alcohol rehabilitation clinics to accommodate mothers and infants. Rehabilitation residential programs are essential to help mothers recovering from drug or alcohol addiction to build an emotional attachment with their babies. When the DCJ considers or puts a birth alert on a health record, it should actively engage with the woman to address concerns to prevent removal.

Early identification of women who need residential rehabilitation to stay with their babies is critical to build a secure attachment necessary for the emotional wellbeing of children. The longer a mother is separated from her baby, the more difficult it is to be successful with restoration due to the lack of a bond with the birth mother, who is typically prevented from being a primary caregiver. The resourcing of culturally appropriate rehabilitation centres is critical alongside emphasis on proactively referring pregnant women at risk.

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<sup>38</sup> Redfern Legal Centre, "A Holistic Approach to Wellbeing: The Health Justice Partnership," n.d., <https://rlc.org.au/holistic-approach-wellbeing-health-justice-partnership>.

An interview with a counsellor at Kamira Centre, a mother and infant rehabilitation centre, Christine Watson states fewer children have attended the facility in the last several years because child protection authorities have removed them before they enter treatment.<sup>39</sup>

The end result is that the mums are in here without their children and trying to deal with the grief and loss as well as deal with their issues underpinning their substance abuse.<sup>40</sup>

There is also a lack of rehabilitation beds for women exiting custody and insufficient assistance and processes for women going from custody to rehabilitation. These services need to be funded appropriately to address complex long-term drug and alcohol dependency issues.

**Recommendation 10:** NSW Health and DCJ should prioritise the early identification and referral of pregnant women and mothers requiring residential rehabilitation.

## Inpatient mental health services for mums and babies

Women are more likely to experience anxiety and depression during the perinatal period (pregnancy through to when the child is three years old) than any other time in their lives. However, early intervention services for mothers are limited, preventing access to treatment in a suitable environment to enable the development of a secure bond with a child.

In August 2020, NSW Premier Gladys Berejiklian announced the first public purpose-built Mother and Baby Unit at Royal Prince Alfred Hospital to address this unmet need. The unit is expected to open at the end of 2021 and a second unit at Westmead Hospital is in the planning phase.<sup>41</sup> While this is a welcome and overdue project, more specialised services are urgently needed across the state. Currently, St John of God Hospital, a private facility, is the only specialist inpatient program in NSW for mothers and babies up to 12 months of age.

**Recommendation 11:** The NSW Government should adequately resource culturally appropriate and specialised drug and alcohol rehabilitation services to accommodate mothers and their children.

<sup>39</sup> Jason Om, "Ice Addiction: Mothers and Babies in Rehab," ABC, <https://www.abc.net.au/news/2016-04-04/ice-addiction:-mothers-and-babies-in-rehab/7297844?nw=0>.

<sup>40</sup> Ibid.

<sup>41</sup> "Mothers and Babies Cared for Together in New Specialised Mental Health Unit," NSW Government Health, August 2, 2020, [https://www.health.nsw.gov.au/news/Pages/20200802\\_01.aspx](https://www.health.nsw.gov.au/news/Pages/20200802_01.aspx).



## **Criminal justice system**

The criminal justice system and prisons are key points of intervention because they have the potential to provide an opportunity for positive change and mothers may be considerably more motivated to succeed in prison-related services, such as educational and substance misuse programs, if allowed to engage in their role as primary caregivers.

The rate of Aboriginal women in custody is increasing at a faster rate than non-Aboriginal women. When mothers remanded to custody are pregnant or are the primary caregivers of young children, there are concerns that removing children from their care may involve placement in OOHC and lead to poor long-term outcomes. A focus on early intervention would see that custody is an option of last resort for women who are primary caregivers or pregnant and provided appropriate early intervention referrals.

### **Case study – Tanya**

We met Tanya at a LEAP outreach at Emu Plains Correctional Centre. Prior to going into custody, she was homeless and couch-surfing with her 7 year old daughter. She has a lengthy history of drug abuse, mental health issues and homelessness. When she went into custody, her daughter was in care with friends.

She received papers from the DCJ while in custody, believing them to be for a guardianship arrangement with the friends. We liaised with the local DCJ worker and found out the DCJ had initiated proceedings to take the child into care. The people looking after the child had gone to the DCJ saying they could not assist any more. The child was removed and placed into temporary care and the DCJ was seeking orders allocating PR to the minister. We discovered the next court date was in less than 2 weeks.

We were able to have several conversations with Tanya very quickly. We arranged for a solicitor to appear for her at the next court date. We completed a Legal Aid application form with her for ongoing representation (Legal Aid sent her two copies while she was in custody but did not provide any assistance for a lengthy 16 page form requiring knowledge of the matter.

Tanya is still on remand with no known release date. She wants her daughter back in her care when she is released and is hoping to be released to a six-month residential rehab program. However, she does not have any childminding support. This is a tragic case of the disproportionate consequences of the incarceration of mothers, with her daughter potentially being under the care of the minister until she reaches the age of 18.

## Prison nurseries

Prison nurseries operate in Australia and internationally as a strategy to maintain the primary caregiver relationship while mothers are in prison. A study looking at whether the mother retains custody of the child or their caregiving role after leaving prison reported higher levels of continued caregiving by mothers who resided with their children in a prison nursery

In NSW, Jacaranda Cottages at Emu Plains Correctional is the only prison with a mothers and children's program. The purpose-built cottage houses up to 40 families, who live in single rooms inside five-room houses. Mothers receive assistance from nurses and learn to care for themselves and their children. The programs are effective in supporting women to address long term drug and alcohol addiction issues and gain valuable parenting skills.

There are insufficient beds available and this model needs to be expanded to meet the increase of women in prison and the issues affecting the care of their dependent children.<sup>42</sup>

## Barriers to visitation

Measures to improve contact for women in prison is necessary. Some of the barriers preventing prison contact and visits include limited visiting hours and spots, transport cost and distance, and child protection staff not finding prison a suitable place or a priority, or that incarceration is too traumatic for children.

**Recommendation 12:** Corrections NSW should expand mothers and children prison residential programs to women prisons in NSW.

**Recommendation 13:** Corrections NSW should provide training for judiciary and DCJ workers on the importance of continued contact between women in custody and their children.

## Housing and wraparound services

To address experiences of homelessness triggering DCJ actions to remove children, comprehensive housing support needs to be provided to vulnerable families. Alternative housing models that have demonstrated success should be explored. For example, Common Grounds in Camperdown is a purpose-built facility based on the world-renowned Common Ground model of supportive housing, which

<sup>42</sup> Aron Shlonsky et al., *Literature Review of Prison-based Mothers and Children Programs: Final Report* (Australia: Victorian Department of Justice and Regulation, 2016), 4, [https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren\\_programs.pdf](https://assets.justice.vic.gov.au/corrections/resources/b5ef4e77-10e5-4a27-bbfd-9a5c3e9cdb69/mothersandchildren_programs.pdf).



began in New York in 1990, where facilities needed by formerly homeless people are provided in the building in which they live. This model can be adapted for specific vulnerable groups at risk of homelessness, such as women fleeing domestic violence, women who require community based mental health and/drug and alcohol rehabilitation services, and women exiting prison to address risks of homelessness leading to recidivism. Such a facility can play a crucial role in encouraging stability with a wraparound service model to address underlying issues.

#### **Common Ground in Camperdown**

Common Ground in Camperdown provides a stable, safe and secure environment to vulnerable homeless clients. It has 104 apartments, medical rooms, computer training areas, an art room, kitchens to teach sustainable living skills and exercise facilities. The Food Pantry is co-located at the site to offer low cost and free rescued and fresh food and meals. The project was funded by the Federal and New South Wales Governments and is managed by Mission Australia Housing.

**Recommendation 14:** NSW Government should explore purpose-built housing complexes targeting vulnerable families co-located with medical services, playgroups, child and family health centres, childcare centres, community gardens and healthy food services.

## **Conclusion**

The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future. A future where we embrace the possibility of new solutions to enduring problems where old approaches have failed.<sup>43</sup>

As the nation recently commemorated the 13th anniversary of the national apology to the Stolen Generations, we were invited to reflect on the “blemished chapter in our nation’s history.” In the spirit of “moving with confidence to the future,” a proactive effort is required to address long standing issues, so that these blemished chapters do not seep through to subsequent pages of history.

Urgent whole-of-government action and implementation of recommendations of successive reviews are needed to address the pressing issues triggering grief and loss and continuing to hinder the overall social and emotional wellbeing of Aboriginal children. Prioritising expenditure on early intervention will address complex issues

<sup>43</sup> *Apology to Australia's Indigenous Peoples*, The Hon Kevin Rudd (author and signatory) (born 1957), Gemma Black (calligrapher) (born 1956), Gifts Collection, Parliament House Art Collection, Canberra ACT, 2008, [https://www.aph.gov.au/Visit\\_Parliament/Whats\\_On/Exhibitions/Custom\\_Media/Apology\\_to\\_Australias\\_Indigenous\\_Peoples](https://www.aph.gov.au/Visit_Parliament/Whats_On/Exhibitions/Custom_Media/Apology_to_Australias_Indigenous_Peoples).

underlying DCJ involvement being addressed while reducing the growing expenditure on tertiary expenses, including the OOHC and criminal justice systems with the trajectory of “cross-over kids.”

Comprehensive inquiries into the child protection system and a comprehensive roadmap for reform should be matched by immediate action to implement recommendations made in the *Family is Culture* report and committing to legislative reform in the current parliamentary term.