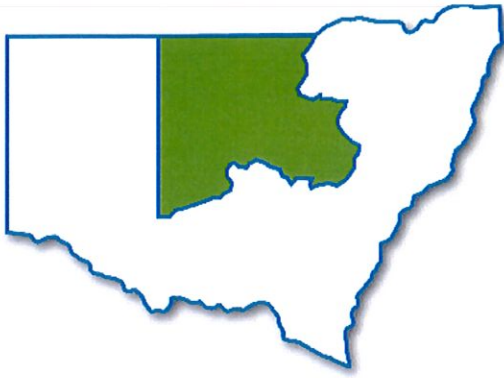


**Submission  
No 64**

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

**Organisation:** Western NSW Community Legal Centre

**Date Received:** 15 January 2021



## Western NSW Community Legal Centre Inc



15 January 2021

The Honourable Mr Matthew Mason-Cox MP  
Chair, Committee on Children and Young People  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

Dear Mr Mason-Cox

### **SUBMISSION TO INQUIRY INTO NSW CHILD PROTECTION AND SOCIAL SERVICES SYSTEM**

Western NSW Community Legal Centre Inc. (**WNSWCLC**) and Western Women's Legal Support (**WWLS**) welcome the opportunity to make a submission to the Committee on Children and Young People (**Committee**) in relation to its inquiry into the NSW Child Protection and Social Services System (**Inquiry**).

#### **1. ABOUT WNSWCLC AND WWLS**

WNSWCLC is a community-based, not-for-profit organisation located in Dubbo NSW that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border to the north, and Bourke and Cobar in the west. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance.

WWLS is WNSWCLC's specialist domestic violence unit. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic violence in the country. WWLS currently employs three lawyers, two domestic violence caseworkers and an Aboriginal support worker and services the same geographic area as WNSWCLC.

The offices of WNSWCLC and WWLS are located on the land of the Tubba-Gah people of the Wiradjuri Nation, who we recognise as its traditional owners and we acknowledge that sovereignty was never ceded. In addition to Wiradjuri Nation, the area of Western NSW which we service spans across the traditional land of the Kamilaroi, Wongaibon, Wailwan, Ngemba, Barkindji, Murrawarri and Yuwaalaraay peoples. We recognise the intergenerational trauma inflicted on these peoples through colonisation and successive government policies of displacement, dispossession and child removal and we acknowledge the continuing impact of these policies on communities throughout Western NSW.

## 2. CHILD PROTECTION IN NSW

*Child protection [in NSW] has been, and is treated as a political football game ... tragically those who should be at the centre of everybody's attention, our vulnerable and neglected children and young people, are caught up in the political gamesmanship.*

...

[The child protection system] *can be characterised as a **manifest failure** of politics.*

The Hon Greg Donnelly MLC, Committee Chair, General Purpose Standing Committee No 2 report into child protection, March 2017.

*Overall, the current NSW system [for children in out of home care] is **ineffective and unsustainable**. The system is not client centred, expenditure is crisis driven and not aligned to an evidence base and the Department of Family and Community Services has minimal influence over drivers of demand and levers for change. Moreover, **the system is failing to improve long term outcomes for children and families** with complex needs, and to arrest devastating cycles of intergenerational abuse and neglect.*

David Tune AO PSM, Independent Review into out of home care in NSW, July 2016.

The NSW child protection system has been the subject of a multitude of inquiries, reports and reviews over the last 30 years. Since 1990, there have been at least seven national inquiries into the effectiveness of child protection systems around Australia, and since

2010 the NSW Government has commissioned at least eight reports into the state's child protection system, including:

- two NSW Ombudsman special reports into child protection (August 2011 and April 2014);
- two consultation reports published by the Department of Families and Community Services (2012 and 2018);
- a report of the Auditor-General into out of home care (2015);
- an independent review, head by David Tune AO PSM, into out of home care in NSW (2015);
- a Legislative Council inquiry into child protection (2017); and
- the independent *Family is Culture* review of Aboriginal children and young people in out of home care (October 2019).

The conclusions drawn across these inquiries have been disturbingly similar: NSW's child protection system is failing the children, families and communities which it is intended to protect. Across the inquiries, the recommendations on actions needed to rebuild the system have also been overwhelmingly consistent, repeatedly identifying an urgent need to:

- fund expansion of early intervention services;
- strengthen independent oversight and accountability mechanisms;
- improve intake and assessment processes and leaving care planning; and to
- build an evidence base for interventions that work to improve outcomes for families.<sup>1</sup>

Despite the same recommendations being made across three decades of successive inquiries, NSW's child protection system remains in disrepair. WNSWCLC and WWLS are sceptical that the outcome of this Inquiry will be any different. The NSW Government has already been provided with answers to the terms of reference which it poses, most recently in the comprehensive and independent *Family is Culture Report*. However, the NSW Government has continually failed to act. It has failed to fully implement recommendations and achieve meaningful change, and it has failed to support families and keep children safe.

**WNSWCLC and WWLS endorse the findings and recommendations made in the *Family is Culture Report* and call on the NSW Government to implement each of the recommendations on an urgent basis.**

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<sup>1</sup> Urbis, *Review of the NSW Child Protection System 2008-2019: An analysis of key findings and degree of implementation* (November 2020), available at: [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).

### 3. OVERVIEW OF THIS SUBMISSION

This submission will not revisit the findings of previous inquiries and reports. Instead, it seeks to identify and highlight the key concerns of our staff, clients and community stakeholders on how NSW's child protection system continues to fail children and families in Western NSW.

This submission was prepared in collaboration with a range of Aboriginal community members and stakeholder representatives in the Dubbo region, including Aboriginal elders, representatives of the NSW Department of Communities and Justice (**DCJ**), representatives of NSW Health, members of locally-based organisations and community representatives.

Due to the sensitive nature of this topic and related privacy concerns, we have not individually identified the people who contributed to this submission, but we thank each person for sharing their time, insights, and personal reflections and experiences. We acknowledge the trauma that successive child removal policies have inflicted on you and your communities. This submission is a compilation of your voices. WNSWCLC and WWLS call on the NSW Government to listen.

The issues raised throughout our collaboration process can be broadly split into three key themes, all of which have been raised by previous inquiries. They are:

- the child protection system and Aboriginal and Torres Strait Islander peoples;
- early intervention and support; and
- accountability and oversight.

Each of these themes will be addressed in turn below.

#### 4. THE CHILD PROTECTION SYSTEM AND ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

*It begins, I think, with an act of recognition. Recognition that it was we who did the dispossessing. ... We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. ...*

The Hon Paul Keating, Prime Minister of Australia, 10 December 1992, Redfern.

*... We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country; For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry ...*

The Hon Kevin Rudd AC, Prime Minister of Australia, 13 February 2008, Canberra.

No non-Aboriginal or Torres Strait Islander person will ever fully comprehend the impact of child removal on Aboriginal and Torres Strait Islander communities. Successive government policies of colonisation, dispossession and child removal have inflicted an inescapable trauma on Aboriginal and Torres Strait Islander peoples. This trauma is passed down through generations. It shapes identity, behaviours and responses. It reveals itself through the intergenerational loss of family capabilities and parenting skills – the unquestionable consequence of generations of children themselves brought up without mothers or fathers. The trauma is evident in the continued poverty and disadvantage experienced by Aboriginal and Torres Strait Islander peoples. It can be seen in the faces of Aboriginal and Torres Strait children, terrified of police. It is psychological, spiritual, and physical.

***'It [intergenerational trauma] is the ghost that remains to haunt us. It never leaves'.<sup>2</sup>***

As a result of this trauma, Aboriginal and Torres Strait Islander mothers, particularly those who were in out-of-home care themselves or who have previously had children removed, frequently report fear of child removal from the moment they become aware of their pregnancy. This fear can lead to delays in reporting the pregnancy, obtaining

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<sup>2</sup> Dubbo community member (identity withheld for privacy reasons). Community consultations took place on 16 November 2020, 26 November 2020 and 7 January 2021.

medical assistance and/or pre-natal care. Following birth, this fear of removal only intensifies. For many Aboriginal parents, no-matter what they do, no matter how good a parent they are, threat of child removal is a constant reality. If their child is too scrawny or too chubby, they fear removal; if their child falls over at school or is injured playing sport, they fear removal; if their child gets sick, they fear removal; if their child fails to attend school, they fear removal. For non-Aboriginal or Torres Strait Islander people, each of these events – getting sick, falling over, missing school – is an expected part of a normal childhood. But for Aboriginal and Torres Strait Islander families, they are opportunities for continued government intervention and an excuse for displacement of their peoples and culture which continues to instil constant fear.

***'My mother's mother used to hide the kids in the long grass to stop Welfare getting them. That fear was instilled in my mother and in me.'*<sup>3</sup>**

The continuation of removal policies in the child protection system feeds cycles of intergenerational trauma, compounds parenting anxiety, validates deep-seeded distrust of government systems and prevents long-term recovery and healing. Child removal has a harrowing psychological, social, spiritual and physical impact on Aboriginal and Torres Strait Islander children, families and communities. It must therefore be considered an absolute last resort.

However, although the principle of removal as a last resort is codified in legislation, the practical implementation of the principle must be questioned. Based on consultations, we can anecdotally report that approximately 10 children in Dubbo are being removed each week and placed in care. Across the region, up to 100 kids are believed to have been removed across remote towns (including Lightning Ridge, Walgett and Goodoga) in a single week (in 2019/2020), and the community understanding is that such removals were done to 'complete quotas' and keep DCJ 'workers in jobs' and not as a last resort.

***'What we are seeing is another stolen generation – Aboriginal kids being taken, and families torn apart.'*<sup>4</sup>**

In Western NSW, in particular, Aboriginal mothers are being punished by the child protection system for engaging in cultural practices and failing to conform to 'white' child-birth and child-rearing expectations. For Aboriginal women who live in remote towns, up to 400 kilometres from a regional hub, the availability of regular, formal pre and post-natal care services can be extremely limited. (In Western NSW, one midwife

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

can be providing pre-natal care to up to 50 expectant mothers at one time.) Instead, many of these women will receive informal care through their pregnancy from their own mothers and community elders. However, the NSW child protection system fails to recognise this type of care as approved pregnancy care. As a result, Aboriginal and Torres Strait Islander women often find themselves subject to a pre-natal 'risk of significant harm' (**ROSH**) report about their unborn child on the basis of 'inadequate preparations for birth'. This failure to recognise the community-led and culturally-appropriate care solutions to difficulties caused by remoteness and lack of resources is just one example of how the child protection system continues to discriminate against Aboriginal and Torres Strait Islander families.

Another example is the lack of support for Aboriginal and Torres Strait Islander women to give birth on country. For Aboriginal and Torres Strait Islander women and their children there is a huge cultural significance of giving birth on country; the country a child is born on is central to their cultural identity. However, the lack of health services and facilities available in rural and remote areas often means that an Aboriginal or Torres Strait Islander woman must travel off country to give birth in a hospital with appropriate obstetrics facilities. If the woman decides not to give birth in hospital, but instead remains on country to give birth, she is punished for her cultural practice through the making of a ROSH report.

The lack of health services on country and lack of understanding of cultural practices within the care and protection system become even more apparent in cases where there are complications in a pregnancy. During our consultations we heard several reports of expectant mothers, around 30 weeks pregnant, travelling several hundred kilometres from remote towns to regional hubs, such as Dubbo, for specialist pregnancy care. After receiving a check-up, the mother is told that due to complications and the lack of specialist health services available in her home town she will need to stay in Dubbo (or another regional hub) until the child is born which could be six to ten weeks. The mother has been provided with no prior warning of the prolonged stay and, in many cases, has left other children behind in her home town. If the woman decides to leave hospital and return home, which may be for a variety of legitimate reasons including existing carer obligations or financial circumstances (i.e. cannot afford a prolonged stay away from home), she is once again punished for that decision through the making of a pre-natal ROSH report.



***'White people are dictating how black people should live their lives through the ever-present threat of child removal if we do not conform.'*<sup>5</sup>**

Finally, in NSW, the Aboriginal Child Placement Principle (**ACPP**) is intended to enhance and preserve Aboriginal and Torres Strait Islander children's sense of cultural identity by ensuring that, where possible, children and young people remain within their communities. However, the practical implementation of the ACPP in Western NSW and other regional, rural and remote areas is limited and there is no accountability when the ACPP is considered too difficult to follow.

Following removal, children from towns in Western NSW, including Dubbo, Bourke, Brewarrina, Walgett and Lightning Ridge, are frequently relocated off country to Newcastle, Sydney or Armidale, between 400 and 800 kilometres away, where they are placed with non-Aboriginal or Torres Strait Islander carers. The distance involved means that the children's families are unable to travel for visitation. This again may be for a variety of legitimate reasons, including lack of transport, carer obligations for other children and/or not being able to take regular time off work. However, DCJ often fails to look at the holistic circumstances of a family and will suggest that the lack of visitation demonstrates a lack of commitment by the parent and potentially provides a reason against restoration.

In remote towns, where there is no DCJ office, there is also little to no understanding of community structures and connections. DCJ will often only undertake preliminary enquiries for placement of the child in the community, before looking at placement alternatives outside of it. No consultation with family or community elders takes place and options which should be explored under the ACPP are frequently overlooked. To discharge its obligations under the ACPP, DCJ must work with the families and communities and ask, *'who in the family can take this child'*; bearing in mind that for Aboriginal and Torres Strait Islander peoples, *'family does not simply mean Mum, Dad and a couple of kids – it is kinship and could go on for miles'*.<sup>6</sup> In the majority of cases, the community will find an appropriate solution.

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

***'The [Aboriginal Child] Placement Principle is the one thing in our [Aboriginal peoples'] corner but it's not being followed. And there are no consequences for when it is not followed.'*<sup>7</sup>**

WNSWCLC and WWLS call on the NSW Government to:

### **Recommendation 1**

Restate its commitment to the removal as a last resort principle, particularly in respect of Aboriginal and Torres Strait Islander families, and introduce measures to ensure that the principle is implemented in practice across NSW.

### **Recommendation 2**

Fund Aboriginal and Torres Strait Islander birthing centres on each country in NSW to respect the cultural rights of Aboriginal and Torres Strait Islander mothers to give birth on country.

### **Recommendation 3**

Amend pre-natal ROSH reporting procedures and policies. Policies must acknowledge the trauma and anxiety experienced by Aboriginal and Torres Strait Islander families in accessing pre-natal care, the difficulty in accessing care in regional and remote areas and the cultural considerations which may affect decision-making of Aboriginal and Torres Strait Islander parents and expectant parents. Before a pre-natal ROSH report is made, DCJ must offer early intervention support to expectant parents and work with them to address any ongoing concerns.

### **Recommendation 4**

Restate its commitment to the Aboriginal Child Placement Principle and ensure that all options for placement within an Aboriginal or Torres Strait Islander community are exhausted before an Aboriginal or Torres Strait Islander child is removed from their community.

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<sup>7</sup> Ibid.

## 5. EARLY INTERVENTION AND SUPPORT

*... These bills make the needs of children, young people and their families the central focus of the legislation ... Our children, our young people and our families need the support of us all. ... We want to encourage parents to come forward and seek assistance ... This will not be taken as a sign of failure, but instead a realistic assessment of where help is needed to assist them and strengthen their ability to care for their family*

The Hon Faye Lo Po MP, Minister for Community Services, Minister for Ageing, Minister for Disability Services and Minister for Women, NSW Legislative Assembly, 11 November 1998, Second Reading Speech of the Children and Young Persons (Care and Protection) Bill.

As the above extract from the second reading speech of the Children and Young Persons (Care and Protection) Bill 1998 confirms NSW's child protection system was set up to support families, help parents in their '*difficult parenting tasks*' and improve long-term outcomes for children.<sup>8</sup> The system was intended as a support mechanism, a way for the NSW Government to work with parents to provide a safe and secure environment where their children could flourish.

However, in the years since, the NSW child protection policy has taken a dramatic shift – punishing families for their perceived failings. In too many cases, parents and families are not given the early intervention and support required; instead, knee-jerk removals take place before parents are given the opportunities or tools necessary to improve their situation.

***'They are not doing enough to help families. Kids and families are simply being set up to fail'.<sup>9</sup>***

This shift away from early intervention and support is evident in relation to prenatal reporting and newborn removal policies. Section 106A of the *Children and Young Persons (Care and Protection) Act 1998* (the **Act**), introduced in 2006, transfers the onus of proof from DCJ to prove the need for care and protection, onto mothers who have previously had children in care to prove that their subsequent child is **not** in need of protection. This shift undermines the purpose of the child protection system, the

<sup>8</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 11 November 1998, 9760 (Lo Po, Minister for Community Services).

<sup>9</sup> Dubbo community member (identity withheld for privacy reasons). Community consultations took place on 16 November 2020, 26 November 2020 and 7 January 2021.

rights of new born parents to raise their children, and the rights of children themselves. The child protection system must be realigned with its intended aims of early intervention and support.

***'The onus is [now] on us as mothers to prove we are good enough, not on the Department [DCJ] to prove that we are not'.<sup>10</sup>***

A tragically common example of this is evidenced through the lack of communication between NSW Government departments. Too frequently, we see clients having children removed because of the risk of domestic violence in the family home. The mother is instructed by DCJ that to have the children restored to her care she must leave the relationship. The mother does so by escaping to a women's refuge or seeking support from family or friends, only then to be told by DCJ that her children cannot be restored due to unstable or inappropriate housing. DCJ offers no assistance or support to the woman in securing housing. Instead, she is left on her own, without support, to negotiate with NSW Housing. Due to a lack of communication between government departments, the woman can then become entrapped in a cycle of not being able to get an appropriately sized social housing property because the children are not in her care, but being told by DCJ that restoration of the children is not possible because she does not have an appropriately sized house. As at 30 June 2020, the waiting time for social housing with three or more bedrooms in the Dubbo zone was five to ten years. By that time, the children have turned 18 and/or are viewed by DCJ to have bonded with their carers and restoration becomes impossible.

The need for further investment in early intervention and support, specifically for Aboriginal and Torres Strait Islander families, was highlighted in Chapter 9 of the *Family is Culture Report*. The Report made 20 specific, evidence-based recommendations on the need for early intervention and the type of support required. As at the date of this submission, the NSW Government has not implemented any of those recommendations.

The NSW Government must do more to keep children with their families. WNSWCLC and WWLS call on the NSW Government to:

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<sup>10</sup> Ibid.

### **Recommendation 5**

Realign the child protection system with its intended aim of supporting vulnerable children, young people and families in need of assistance by increasing its financial investment in early intervention and support mechanisms, with the ultimate goal of preventing children from entering the out-of-home care system.

### **Recommendation 6**

Urgently implement the recommendations of the *Family is Culture Report* relating to early intervention support.

## **6. ACCOUNTABILITY AND OVERSIGHT**

*'This Review has found that the accountability mechanisms in the child protection space are weak and require improvement, including transparency, to restore the faith of Aboriginal families in the system and its decision-making.'*

Professor Megan Davis, Chairperson, Independent Review into Aboriginal out-of-home care in NSW, *Family is Culture – Final Report*, October 2019.

The issue of accountability and oversight in the child protection system has been raised countless times over the last three decades of successive inquiries and reviews, however in NSW nothing has changed. The NSW Government must follow the lead of other Australian jurisdictions and introduce an independent child protection oversight commission to hold DCJ to account and oversee complaint handling.

Central to almost all our clients' complaints about the child protection system are the issues of communication and accountability: DCJ is failing to effectively communicate with families about child removals, and families do not feel like they have an effective avenue to voice a complaint. Parents are not told why their children are being removed or, in many cases, that a removal is taking place at all. Frequently, DCJ will remove children directly from school and place them in foster care without communicating with the parents or providing support to the child and/or family. In many cases, removal takes place before allegations giving rise to a ROSH report have been fully investigated or corroborated. When allegations prove to be false, and a child returned to their family, there is no apology and no-one is held to account for the trauma that the removal has inflicted. Families are helpless in the process.

***'No reasons are being provided for child removal. There is no communication. Families are being traumatised and there is no-one to complain to, no-one to hold responsible'.<sup>11</sup>***

WNSWCLC and WWLS are also aware of several cases where a child (child B) has been in need of removal. A family member, who has previously been approved by DCJ as a carer for another child (child A), has put up their hand to care for child B in the same community. However, DCJ has informed the carer that despite the fact that child A is currently in their care, they must go through the approval process again for child B. In the meantime, child B is relocated off country and/or placed with a non-Aboriginal carer.

The requirement that a carer is separately approved for each child is not appropriate and is increasingly resulting in children before removed from kin and community which has prolonged psychological impacts on the child and family. WNSWCLC and WWLS accepts the necessity of a rigorous approval process to ensure children are placed in a safe environment with appropriate capacities. However, once a person has been approved as a carer in respect of one child that approval should carry forward and apply for other children, at least for a period of time (i.e. three years). Simple adjustments such as this to child protection processes would achieve better outcomes for children and families, particularly for those living in regional, rural and remote communities.

***'It [the child protection system] is a washing machine of bureaucracy.' 'Internal red-tape is preventing kids from being kept in community and no-one is taking responsibility'.<sup>12</sup>***

WNSWCLC and WWLS call on the NSW Government to:

**Recommendation 7**

Introduce an independent child protection oversight commission to hold DCJ to account and oversee complaint handling.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

## 7. CONCLUSION

This submission has sought to give a voice to the communities of Western NSW on the continued failings of the NSW child protection system. None of the issues raised are new; they have all been canvassed extensively in a multitude of previous government inquiries and reports. The NSW Government must now listen and implement meaningful change. WNSWCLC and WWLS call on the NSW Government to recognise the catastrophic state of child protection in NSW, and rebuild the system in accordance with the recommendations of previous inquiries and reports.

For any questions or to discussion this submission further please contact Hannah Robinson, Generalist/Law Reform Solicitor at WNSWCLC, on [REDACTED] or at [REDACTED]

Yours faithfully

**Western NSW Community Legal Centre Inc**  
**Western Women's Legal Support**

Per:

[REDACTED]

Hannah Robinson  
Solicitor

On behalf of

Patrick O'Callaghan  
Principal Solicitor