

INQUIRY INTO CHILD PROTECTION

Organisation: Women's Legal Service NSW

Date received: 02 August 2016

2 August 2016

The Director
General Purpose Standing Committee No 2
Parliament House
Macquarie Street
Sydney NSW 2000

By email: gpsc2@parliament.nsw.gov.au

Dear Director,

Inquiry into child protection

1. Women's Legal Service NSW (WLS NSW) thanks the General Purpose Standing Committee No 2 for the opportunity to comment on the inquiry into child protection.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. WLS NSW has an Aboriginal Women's Legal Program (IWLP). This program delivers a culturally sensitive legal service to Aboriginal women in NSW. We provide an Aboriginal legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for Aboriginal and Torres Strait Islander women.
4. An Aboriginal Women's Consultation Network guides the IWLP. It meets quarterly to ensure we deliver a culturally appropriate service. The members include regional community representatives and the IWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.
5. This submission will focus on selected terms of reference and particularly focus on issues in NSW for Aboriginal and Torres Strait Islander women, victims/survivors of domestic violence, women in prison and women in regional, rural and remote areas.



6. The term "domestic violence" is intended to include domestic and family violence. We note that some people prefer to identify as victims of violence and others as survivors of violence. When we use the term "victim" this is intended to mean both victims and survivors.

Introduction

Overview

7. The issue of child protection is a complex and serious issue and the large number of children in out-of-home care (OOHC), particularly Aboriginal and Torres Strait Islander children, is concerning.
8. International best practice demonstrates the benefits of serious commitment to early intervention, particularly where mothers have experienced domestic violence; or where trauma, social exclusion and poverty are the causes of child protection concerns.
9. The issue is often raised in Aboriginal and Torres Strait Islander communities that kinship is extensive in Aboriginal and Torres Strait Islander communities, including parents, grandparents, great grandparents, sisters and brothers, aunts and uncles, daughters and sons, nieces and nephews. Furthermore, kinship extends beyond blood relatives within kinship groups. Therefore when the term "grandparent" is used in this submission we intend there to be a wider meaning with respect to Aboriginal and Torres Strait Islander communities.
10. In summary, we recommend:
 - 10.1 Positive engagement with Aboriginal women, particularly those who have experienced domestic violence and intergenerational trauma, to support their capacity to be protective caregivers;
 - 10.2 Adequate funding of early intervention programs which are culturally safe, strength based and trauma informed;
 - 10.3 Implementation of the *Bringing them home* recommendations, including reparations and adherence to the Aboriginal and Torres Strait Islander placement principle;
 - 10.4 Implementation of the Aboriginal Legal Service NSW/ACT and Grandmothers Against Removal recommendation for "*an Aboriginal controlled independent body to review all cases of Aboriginal children in out of home care in NSW*";
 - 10.5 Regular independent assessment of the quality and effectiveness of cultural care plans;
 - 10.6 In sentencing and considering possible diversionary options, greater consideration should be given to primary caregiving responsibilities for a child/ren, any history of violence experienced and any history of mental health and substance abuse. Imprisonment of a primary carer for crimes other than violent offences should be as a last resort.
 - 10.7 Kinship/Relative carers have access to safe and affordable housing and other supports;
 - 10.8 Adequate training and support for foster carers regarding engaging with the biological families or primary caregiver.

- 10.9 Adequate training and support for biological families and former primary caregivers regarding engaging with foster carers.
- 10.10 A long-term cross-departmental NSW Aboriginal Family Violence Strategy driven by Aboriginal communities as recommended by the NSW Women's Alliance;
- 10.11 Better community education about FACS' prenatal caseworkers and expand the number of caseworkers in these roles and ensure prenatal caseworkers are available across all districts;
- 10.12 Adequate funding for early intervention legal services with a greater focus on models that include social workers/support services, parent advocates and early intervention legal services to support parents and children;
- 10.13 Implementing the Australian and NSW Law Reform Commissions *Family Violence – A National Legal Response Report* recommendation 19.3, where a viable carer is identified and FACS refers that carer to the family court, FACS should provide supporting evidence about the reasons for the referral to the family court;
- 10.14 Perpetrators of violence be held accountable for their behaviour;
- 10.15 The NSW Government publish the BoCSaR, Urbis and any other evaluations undertaken regarding "Safer Pathways".

Human Rights Framework

- 11. Child Protection must be considered within a human rights framework.
- 12. It is imperative that the child protection system is consistent with the principles set out in the *Convention of the Rights of the Child* ('CROC'). This includes:
 - 12.1 that the best interests of the child¹ and protecting a child from harm² are of paramount importance;
 - 12.2 that children have the right to participate in decisions that affect them;³
 - 12.3 that children have the right to maintain relations and have contact with their family except if it is contrary to the child's best interests;⁴
 - 12.4 that children have the right to cultural identity, to maintain cultural identity and to participate fully in cultural life;⁵ and

¹ *Convention on the Rights of the Child*, ratified by Australia on 17 December 1990, Article 3(1)

² CROC, Articles 3(2), 3(3), 19.

³ CROC Articles 9(2), 12.

⁴ CROC, Articles 8, 9(3).

⁵ CROC, Articles 30, 31, 20(3), 29(1)(c); *International Covenant on Civil and Political Rights (ICCPR)*, ratified by Australia on 13 August 1980 Article 27; *International Covenant on Economic, Social and Cultural Rights (ICESCR)* ratified by Australia on 10 December 1975, Articles 1, 3, 15; *Declaration on the Rights of Indigenous*

- 12.5 that children have the right to periodic review of their placement in out-of-home-care.⁶
13. CROC defines a child as a person below the age of eighteen years. Where a parent is younger than eighteen years of age, the principles of CROC will apply not only to that parent but also to their child/ren. In these circumstances, it is important to ensure that the rights of both the parent and child are upheld in accordance with CROC.
14. CROC also requires State Parties to "*render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities*"⁷ and the right of the child to benefit from social security.⁸
15. It is also accepted that it is generally in the best interests of the child to be placed with family. In the case of domestic violence, a form of gender violence,⁹ the state has a responsibility to protect victims, namely children and their mothers, and bring perpetrators to account.¹⁰
16. Australia's human rights obligations to eliminate violence against women are outlined in the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) ratified by Australia on 28 July 1983 and *CEDAW Committee General Recommendation No 12 (General Recommendation No 12)* and *CEDAW Committee General Recommendation No 19 (General Recommendation No 19)*.
17. General Recommendation No 19 makes it clear that gender-based violence is a form of discrimination within Article 1 of CEDAW¹¹ and Article 2 of CEDAW obliges state parties to legislate to prohibit all discrimination against women.

Persons (DRIP), Australian Government formally expressed support for the DRIP on 3 April 2009, Articles 3, 5, 8, 11, 12, 14, 15, 31.

⁶ CROC, Article 25.

⁷ CROC, Article 18(2).

⁸ CROC, Article 26.

⁹ Domestic violence is also acknowledged as gendered violence in s9(3)(b) of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*.

¹⁰ *General Recommendation No 19*, para 24(b), 24(t); Due diligence obligations outlined in: Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

¹¹ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

Implementation of the Bringing them home recommendations

Aboriginal and Torres Strait Islander children in out of home care (OOHC)

18. WLS NSW is greatly concerned by the large numbers of Aboriginal and Torres Strait Islander children and young people in OOHC. As at 30 June 2014 there were 14,991 Aboriginal and Torres Strait Islander children in out of home care in Australia.¹² Aboriginal and Torres Strait Islander children are removed at the rate of almost ten times that of non-Indigenous children.¹³
19. As at 30 June 2015 there were 6,427 Aboriginal children and young people in OOHC in NSW.¹⁴
20. We note with concern that the second most common substantiation type is neglect.¹⁵
21. Through our advice and casework, we have seen many examples of the Department of Family and Community Services ('FACS') staff with poor cultural competence and very little understanding of how a child is raised in an Aboriginal and/or Torres Strait Islander community. Placing western standards on Aboriginal and Torres Strait Islander community and family is not appropriate or helpful. There are many things to consider in determining what is best for the child including issues such as identity, belonging, community, country connection and wellbeing. Within the parameters of safety from harm essential for all children, a nuanced approach to judgment about child wellbeing should be applied. Care needs to be given around judging an established culture by a different culture's standard.
22. With the forced removal of children from their families many of these children did not have the opportunity to learn parenting skills from their own parents, aunties, uncles and grandparents. As a result of trans-generational traumas, the cycle of removal of Aboriginal and Torres Strait Islander children from their parents continues and so many children continue to miss out on learning parenting skills from watching and modelling their family members. It is therefore essential that parents have access to strengths-based parenting skills mentoring programs.
23. A number of years ago Mudgin-Gal Aboriginal Corporation developed the "Healthy Family Circle" program in partnership with Relationships Australia. This program had a number of components.
24. One component was to encourage young Aboriginal women from the community to participate in the Playgroup Facilitators Training Course, a certificate course offered through TAFE. This course, run by SDN Children's Services Inc and Connect Redfern, helped build the women's skills and understanding about parenting skills and early childhood development and provided *"positive behavioural modeling for parenting and childcare"* that could be implemented in the

¹² Productivity Commission, *Report on Government Services* 2015, Vol F at 15.13.

¹³ Australian Institute of Family Studies Children and Care Resource Sheet, June 2015 accessed on 26 July 2016 at <https://aifs.gov.au/cfca/publications/children-care>

¹⁴ FACS Statistics, Objective 1 – Improving the lives of children and young people, tab 9 'CYP OOHC' accessed on 27 July 2016 at: <http://www.facs.nsw.gov.au/facs-statistics/objective-1>

¹⁵ Australian Institute of Health and Welfare, *Child Protection*, accessed on 26 July 2016 at: <http://www.aihw.gov.au/child-protection/>

women's "own families and communities". Some of the women gained employment in the area of early childhood.¹⁶

25. We recommend a greater focus on support and genuine help including fostering parenting skills with a view to creating safe families. In addition to programs like Healthy Family Circle such awareness and early intervention and preventative work could take the form, for example, of coffee mornings where Aboriginal mothers could gather together in their local community to yarn about a range of issues in a supportive environment, such as getting their children to preschool and where they can go in the community for help.

26. These recommendations are consistent with a number of the *Bringing them home – National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* Report recommendations.

27. Recommendation 36 states:

That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs.

28. Recommendation 43b relating to self determination includes reference to

Every Indigenous community [being] entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort.

29. Further, the General Purpose Committee No 3 recently released its report following the inquiry into Reparations for the Stolen Generations in NSW. Recommendation 31 states:

That the Department of Family and Community Services, in consultation with Aboriginal organisations and communities, identify strategies to promote early intervention services and programs that aim to prevent Aboriginal children and young people being removed from their family.

30. Many of our Aboriginal clients reflect on the impact of being forcibly removed from their families on their lives, including telling us that they themselves are a member of the Stolen Generations or they have family members who are part of the Stolen Generations.

31. We also believe that it is extremely important to acknowledge that the impact of the Stolen Generations extends not only to those children who were removed but there has been, and continues to be, trans-generational traumas experienced by the children, grandchildren and extended family members of the Stolen Generations.

32. In addition to the trauma experienced as a result of loss of identity, belonging, community, country connection and impact on wellbeing, many have also experienced trauma as a result of

¹⁶ For example, Mudgin-Gal's "Healthy Family Circle" program developed in partnership with Relationships Australia. See Mudgin-Gal Aboriginal Corporation, *Seeding Hope* at 10 accessed on 22 July 2016 at: <http://www.redfernfoundation.org.au/mudgingal.pdf>

sexual and/or physical abuse which occurred following the forced removal of children from their families.

33. There are also concerns expressed by Aboriginal and Torres Strait Islander people that core values, such as sharing, caring and respect have been fractured as a result of dispossession of land and country and forced removal of children from their families.
34. While reparations can never undo the harm caused, the five elements of reparations outlined in Recommendation 5 in the *Bringing them home* report are essential for healing. These include:
- 34.1 acknowledgment and apology;
 - 34.2 guarantees against repetition;
 - 34.3 measure of restitution;
 - 34.4 measures of rehabilitation; and
 - 34.5 monetary compensation;
35. We note the importance and relevance of the General Purposes Committee No 3 report *Reparations for the Stolen Generations in NSW – Unfinished business* to this current inquiry.

Review of Aboriginal and Torres Strait Islander placement principles

36. The *Bringing them home* report called for national standards for Indigenous children. These standards include a presumption that it is in the best interests of the child to remain within his or her Indigenous family, community and culture (Recom 46a) and that best interests considerations are paramount (Recom 47). Further, in determining best interests of an Indigenous child other factors must be considered including the child's need to maintain contact with family, community and culture; the significance of Indigenous heritage and a child's future well-being; the views of the child and his/her family; the advice of an accredited Indigenous organisation (Recom 46b). Removal of Indigenous children from their families and community should only be as a last resort (Recom 48).
37. The Standards also include the Aboriginal and Torres Strait Islander Placement Principle as outlined in Recommendation 51b.

Placement is to be made according to the following order of preference,

- 1. placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal or Torres Strait Islander law,*
- 2. placement with a member of the child's community in a relationship of responsibility for the child according to local custom and practice,*
- 3. placement with another member of the child's community,*
- 4. placement with another Indigenous carer.*

38. Further Recommendation 51d provides:

Where placement is with a non-Indigenous carer the following principles must determine the choice of carer,

- 1. family reunion is a primary objective,*
- 2. continuing contact with the child's Indigenous family, community and culture must be ensured, and*
- 3. the carer must live in proximity to the child's Indigenous family and community.*

Review of Aboriginal and Torres Strait Islander placements & cultural plans

39. On 26 May 2016 the Aboriginal Legal Service (ALS) NSW/ACT and Grandmothers Against Removal called for "an Aboriginal controlled independent body to review all cases of Aboriginal children in out of home care in NSW".¹⁷

40. In mid 2016 in response to concerns expressed about the over-representation of Aboriginal children in out-of-home care (OOHC) in NSW Minister for Family and Community Services, the Hon Brad Hazzard MP announced a review of all placements of Aboriginal children in OOHC since 2014.¹⁸

41. Recommendation 32 in the *Reparations for the Stolen Generations in NSW* report states:

That the Department of Family and Community Services commission an independent audit of adherence to the Aboriginal and Torres Strait Islander Child Placement Principles, with a view to improving compliance and reporting.

42. It is important that the review covers all cases of Aboriginal children in OOHC and is not limited to only a few years. We support the call for an Aboriginal controlled independent body to conduct the review.

43. Recommendation 33 in the *Reparations for the Stolen Generations in NSW* report states:

That the Department of Family and Community Services review the quality and effectiveness of cultural care planning for Aboriginal children and young people placed in out-of-home care.

44. We understand that there has been significant work on the revision of cultural care plans undertaken through the Children's Court Working Party under the leadership of the President of the Children Court, Judge Peter Johnstone with input from a number of Aboriginal community controlled organisations, including AbSec and ALS. We welcome regular assessments of the quality and effectiveness of cultural care plans. These assessments must be independent.

¹⁷ ALS and Grandmothers call for review of child removal on National Sorry Day, 26 May 2016 accessed on 25 July 2016 at: http://www.alsnswact.org.au/news_items/215

¹⁸ Reported at: <http://stopstolengenerations.com.au/23-june-2016-gmar-calls-for-aboriginal-control-of-child-protection-case-review> (accessed on 25 July 2016)

Transferring out-of-home care to non-government organisations

45. The NSW Auditor-General's 2015 report: *Transferring out-of-home care to non-government organisations* found that since the transfer of OOHC to NGOs commenced in 2012 there has been a decline in the number of children returned to their birth families.¹⁹
46. With respect to meeting targets, "1,000 Aboriginal children had been transferred to NGOs against a target of 800, with around 50% placed in an Aboriginal NGO".²⁰ The Auditor-General noted "the sector also needs a clear strategy for increasing the number of Aboriginal NGOs".²¹
47. The Auditor-General also noted that wellbeing measures for children being transferred to NGOs were still to be identified.²²
48. Further, the Auditor-General found that the funding model offered limited incentives to return children to their birth families and "does not provide additional support for cultural considerations or for operations in regional locations".²³
49. The Auditor-General made several recommendations, including:
 - 49.1 Improve how it measures success, including through developing wellbeing outcomes of children in care and targets for outcome measures such as the number of children being adopted or safely returned to their birth family. (Recommendation 2(b) & 2(c))
 - 49.2 Develop, in collaboration with the Aboriginal community, a clear strategy for delivering out-of-home care services for Aboriginal children. (Recommendation 3)
 - 49.3 Restructure the funding model to:
 - a) increase the use of permanency options such as adoption and safely returning children to their birth family
 - b) ensure it covers additional costs, such as those associated with cultural considerations and operations in regional areas. (Recommendation 5)
50. The Secretary of the Department of FACS, Mr Michael Coutts-Trotter, provided a response to the report.
51. The response includes an update on work underway on the development of a quality assurance framework relating to measuring outcomes for children.

¹⁹ NSW Auditor-General's Report to Parliament, *Transferring out-of-home care to non-government organisations*, 2 Sept 2015 at 20 accessed on 22 July 2016 at:

https://www.audit.nsw.gov.au/ArticleDocuments/520/01_Out_of_Home_Care_Full_Report.pdf.aspx?Embed=Y

²⁰ Ibid at 2.

²¹ Ibid at 3.

²² Ibid at 3.

²³ Ibid at 3.

52. Mr Coutts-Trotter noted FACS does not support targets for adoption as this runs contrary to "emphasis on reducing entries to care and improving restorations" and may not be in the best interests of children.²⁴ WLS NSW agrees.

53. In response to recommendation 3 Mr Coutts-Trotter states the following:

FACS supports and highlights the work underway with the Aboriginal Child, Family and Community Care State Secretariat (Absec) and other key stakeholders (other Aboriginal OOHC providers, Office of the Children's Guardian, NSW Ombudsman, Department of Premier and Cabinet, and Association of Children's Welfare Agencies) by working together to rethink capacity building for Aboriginal OOHC organisations through the Aboriginal OOHC Co-design Project.

This work has evolved from improving OOHC outcomes to keeping Aboriginal children safe and cared for in their families, communities, connected to culture and on country. It saw OOHC as part of the spectrum of care, prevention, early intervention, and specialist services and the role of prevention and early intervention in reducing the number of children coming into OOHC. Five potential development opportunities were identified:

- Keeping children and young people connected to family, community and culture and on country*
- Providing an Aboriginal voice in policy*
- Transition of the 3,500 Aboriginal children still in FACS care*
- Good practice capacity building*
- Ensuring the sector has the capacity to meet demand Planning and governance arrangements are currently being negotiated.²⁵*

54. We look forward to hearing further about this important work.

55. In response to recommendation 5 FACS said they will introduce

performance measures into the contracts supported by a restructured funding model of support and reward service providers to work towards permanent, stable and safe homes for life for children and young people in their care, whether through prevention of entry into care, restoration to parents, guardianship or adoption.²⁶

56. Given working with families to restore the children to their care can be resource intensive, this should be considered in the restructured funding model.

²⁴ NSW Auditor-General's report, Appendix 1 at 25.

²⁵ Ibid at 26.

²⁶ Ibid.

Women in prison

Over representation of Aboriginal and Torres Strait Islander women in prison

57. The ABS reports a 60% increase in the female prison population from 1999-2009.²⁷
58. In NSW, Aboriginal and Torres Strait Islander women represent 29.4% of women in prison.²⁸ Aboriginal people are incarcerated at 13 times the rate of non-Aboriginal people²⁹ and Aboriginal women are the fastest growing group in NSW prisons. While it is not clear how many Aboriginal women in NSW had children in their care before being incarcerated, based on our experience of working with women in prison, many children would have been removed from their primary caregiver mother for this reason.
59. We are concerned that the over-representation of Aboriginal and Torres Strait Islander women in prison is impacting on the over-representation of Aboriginal and Torres Strait Islander children in OOHHC.
60. As Stathopoulos notes, Aboriginal women generally serve shorter sentences, often for minor offences such as driving infringements and non-payment of fines and are more likely than non-Aboriginal women to be on remand.³⁰ This raises many concerns about the legal system and policing. It is also of great concern that women are being incarcerated because they are poor. As Stathopoulos further acknowledges *"prisoners who are on remand are usually not eligible to participate in programs"*.³¹
61. If there is no statutory risk of significant harm issues for the children and the issue is the absence of the mother when she enters custody, we recommend an alternative pathway than FACS and the Children's Court. This is to reduce the stigma which is associated with Children's Court matters and the stress the mother and children may experience where there are no risk of significant harm issues.
62. We encourage FACS to prioritise their work with pregnant women in custody. This can be a good opportunity to provide meaningful programs and support led by FACS with involvement from Corrective Services. It is also essential that meaningful and appropriate referrals to services are made prior to a mother's release from custody to ensure she and her children have access to safe and affordable housing and other supports, such as drug and alcohol counselling or residential programs.
63. Where a child is unable to remain with their mother in custody we support an assessment of *all* placement options as it is the experience of some of our clients in custody that where there are

²⁷ ABS 2010 cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 at 3.

²⁸ Corrective Services NSW, *Facts and Figure Corrections research, Evaluation & Statistics*, March 2013

²⁹ Corrective Services NSW, *Statistical Profile of Offenders*, 2009.

³⁰ Research cited in Mary Stathopoulos, *Addressing women's victimisation histories in custodial settings*, ACSSA, No 13, 2012 at 3. See also Peta MacGillivray and Eileen Baldry, "Australian Indigenous Women's Offending Patterns", *Indigenous Justice Clearinghouse*, Brief 19, June 2015 at 11 who note "evidence of high levels of charges and court appearances for vehicle and traffic breaches, justice and shoplifting offences".

³¹ Ibid.

no risk of significant harm issues in relation to the mother, the child may be placed with a violent father or a paternal relative who may alienate the children from the mother.

64. There are additional concerns when the mother and children are Aboriginal or Torres Strait Islander and the father is not. The importance of cultural identity and connections are not necessarily given adequate attention.
65. Once the mother is released from custody she often faces significant difficulty in having the children returned to her care.
66. Additionally, courts are not generally well informed about the pathways to prison for women as a result of family violence, including sexual assault. A high proportion of women in prison have been victims of violent crime prior to coming into custody. The *2009 NSW Inmate Health Survey* found that: 66% of female inmates had been involved in at least one violent relationship and 29% of female inmates had been subjected to at least one form of sexual violence.³²
67. Lawrie's 2003 study of Aboriginal women in NSW prisons found that over 75% of Aboriginal women had being sexually assaulted as a child, just under 50% had been sexually assaulted as adults and almost 80% were victims of family violence.³³
68. As Stathopoulos observes, *"the most significant co-occurrence of child sexual abuse sequelae is substance addiction and mental health issues ... [which] is intertwined with mental health problems and pathways to offending"*.³⁴ As Herman explains, drugs are a coping mechanism, providing relief and a form of escape from reality.³⁵
69. Helping women to address their trauma, including trans-generational trauma as a result of the ongoing trauma experienced as a result of the Stolen Generations, is key to reducing recidivism. Reducing recidivism for mothers in prison is important so as to limit disruption to the care of children.
70. When a vulnerable parent is in custody it is an ideal time to offer treatment and support programs and encourage contact between mothers and children in an environment where they are free of fear and offenders. These programs should also be available to those on remand.
71. We also believe that in sentencing and considering possible diversionary options, greater consideration should be given to primary caregiving responsibilities for a child/ren, any history of violence experienced and any history of mental health and substance abuse. This is consistent with the United Nations Bangkok Rules.³⁶ Imprisonment of a primary carer for crimes other than violent offences should be as a last resort.

³² Devon Idig, Libby Topp, Bronwen Ross, Hassan Mamoon, Belinda Border, Shalin Kumar and Martin McNamara, *2009 NSW Inmate Health Survey*, Justice Health, Sydney 2010 at 131.

³³ Lawrie cited in Natalie Taylor & Judy Putt, "Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia," *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology, September 2007 at 2.

³⁴ Mary Stathopoulos, Note 30 at 6.

³⁵ Herman cited in Mary Stathopoulos, Note 30 at 6

³⁶ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, E/2010/30 adopted by the UN General Assembly on 21 December 2010, Rule 41(b)

72. If a mother is imprisoned for a non-violent crime, wherever possible, her children under six years of age should be able to live with her. We note this currently occurs very successfully at Emu Plains Correctional Centre and recommend this be expanded to other prisons.
73. Clients consistently tell us that maintaining a relationship with children while in prison is an important factor that can contribute to reducing recidivism. Similarly, an inability to maintain contact with children contributes to recidivism. Toohey cites several studies which found children's coping skills were also enhanced and "problematic behaviour" was reduced by maintaining contact with their incarcerated parents.³⁷
74. SHINE for Kids is an organisation which supports children with a parent who is incarcerated. They provide transport for children to prison where the child would not otherwise be able to visit their parent and they also facilitate child/parent activity days in prison. It is very important that parents in prison and those caring for the children of parents in prison are aware of this service and that SHINE for Kids is adequately and sustainably funded to continue this work.
75. Upon release from prison it is also important that women are supported to *"transition effectively into the broader community"*.³⁸ The WIPAN pilot mentoring program which was in place from May 2010 to November 2011 is an excellent example of the kind of support required for women leaving prison. In recently evaluating this pilot program it was found that *"82% of the women who were engaged in the program for one year or more did not re-offend or return to prison"*.³⁹ This is significant given that *"93% of these women were recidivists and/or serial recidivists"*.⁴⁰
76. We further note the importance of having safe and secure housing as another factor that helps to reduce recidivism.⁴¹ This is also a relevant factor to children living with their mother once she is released from prison.

ToR E: The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers

Relative/kin carers

77. Relative/kin carers may include, for example, aunts, uncles, sisters, brothers, grandparents and cousins. We refer to paragraph 9 which highlights that kinship is extensive in Aboriginal and Torres Strait Islander communities.
78. In *Kinship Care in NSW – Finding a Way Forward*, relative/kinship carers speak of the desire to have *"parity with foster carers in terms of the supports available to them"* and the importance of resources available *"to assist them to assist the children to flourish"*.⁴² They also speak of the

³⁷ Julie-Anne Toohey, "Children and Their Incarcerated Parents: Maintaining Connections – How Kids' Days at Tasmania's Risdon Prison Contribute to Imprisoned Parent-Child Relationships," *Changing the Way We Think About Change*, The Australian and New Zealand Critical Criminology Conference 2012 at 33.

³⁸ *The Report: The Pilot WIPAN Mentoring Program 2009-2011*, WIPAN, August 2012 at 6.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ See, for example, WIPAN, *Dreaming of a safe home - Consumers and community workers' perspectives on housing and support needs of women leaving prison in NSW*, August 2012.

⁴² Ainslie Yardley, Jan Mason, Elizabeth Watson, *Kinship Care in NSW – finding a way forward*, University of Western Sydney, November 2009 at 39.

challenges when DoCS, as they were then called, and Centrelink are unable to provide accurate responses to questions about entitlements and support services.⁴³ They also raise the issue of the need for training, but being advised they are not eligible for such training or it was on at times that they were unable to attend.⁴⁴

79. We acknowledge that where guardianship orders are in place, relative/kin carers can access financial support like foster carers. It is our understanding this is not the case with informal relative/kinship care.
80. Under Article 25 of the CROC children have the right to periodic review of their placement. Failure to provide such reviews amount to breaches of Australia's international human rights obligations.
81. The NSW Auditor-General found that during 2013-14 annual review of placements for children in out of home care took place in only 54% of cases.⁴⁵ In 2014-15 while this increased to 76.5% of cases, it still falls well short of the requirement.⁴⁶
82. It would be helpful to better understand the review process. For example, does FACS speak with the child? Is there an opportunity to consider restoration to parents? Is there an opportunity to review the effectiveness of the cultural care plan? Consideration should be given to the reviews being conducted independently of FACS.
83. There is a risk that as children get older or with less contact from FACS that the relative / kinship carers and the children they are caring for feel they have been forgotten.
84. In the 2013 Discussion Paper regarding NSW Child Protection Legislative Reforms the Department of Family and Community Services suggested "*limit[ing] intrusion of Community Services in stable relative and kinship placements*".⁴⁷ We believe the issue is less about the review itself and more about how the review is undertaken.
85. Good quality reviews can be helpful and play an important role in validating the important role of the relative carer, promoting a collaborative approach by carers and FACS and responding to any issues the child wishes to raise. *Kinship Care in NSW – Finding a Way Forward*, also supports this view.⁴⁸ It is important therefore that reviews are carried out by experienced staff with good training and supervision and knowledge of the issues relevant to the particular placement.

⁴³ Ibid at 40.

⁴⁴ Ibid at 41.

⁴⁵ NSW Auditor-General's Report, *Financial Audit Focusing on the agencies in the Family and Community Services cluster*, Volume Nine, 2014 at 34 accessed on 22 July 2016 at:

http://www.audit.nsw.gov.au/ArticleDocuments/344/01_Volume_Nine_2014_Full_Reportb.pdf.aspx?Embed=Y

⁴⁶ New South Wales Auditor-General's Report *Financial Audit Family and Community Services*, Volume Eight 2015 at 6 accessed on 22 July 2016 at:

https://www.audit.nsw.gov.au/ArticleDocuments/589/01_Volume_Eight_2015_Family_and_Community_Services_Full_Report.pdf.aspx?Embed=Y

⁴⁷ NSW Government, *Child Protection Legislative Reform Discussion Paper*, November 2012 at 32.

⁴⁸ Ainslie Yardley, Jan Mason, Elizabeth Watson, *Kinship Care in NSW – finding a way forward*, University of Western Sydney, November 2009 at 36-48, 52.

Housing

86. Issues with housing are a common theme raised amongst grandparent carers. We are aware of grandparents who have been charged more rent due to taking on the care of their grandchildren despite the fact they receive little or no additional financial assistance for taking on the primary care of their grandchildren.
87. In other circumstances, grandparents have been threatened with eviction due to allegations of overcrowding.
88. It is concerning that grandparents are at risk of being evicted or being charged more rent in circumstances where they take on the primary care of children and receive little or no additional financial support for doing so.

Financial support for other family members to provide respite

89. All carers, including informal relative/kin carers, need a break from care duties from time to time. We submit there needs to be an acknowledgement that seeking a brief break from full-time care duties is acceptable and recommended to ensure the longevity of the care arrangements.
90. Grandparent carers are typically part of the ageing population and may be more likely to suffer some health issues that may have an impact on the full-time care of their grandchildren.
91. We note the life expectancy at birth for Aboriginal and Torres Strait Islander males is estimated to be 69.1 years, and 73.7 years for females. There is a gap of 10.6 years for males and 9.4 years for females between Aboriginal and Torres Strait Islander life expectancy and non-Aboriginal and Torres Strait Islander.⁴⁹
92. To increase the sustainability of the care arrangements, it is therefore particularly important that grandparents are supported and have the opportunity to have a break without the fear that they may be deemed no longer able to care for their grandchildren.
93. There is an intergenerational fear amongst Aboriginal and Torres Strait Islander communities of having children taken.
94. We understand that some grandparents are reluctant to disclose health issues for fear their grandchildren will be assumed into care.
95. Support can come in a variety of forms, including other family members or members of the kinship group taking on this caring role for a short period. Financial support should be available for this.

⁴⁹ Australian Bureau of Statistics, "Life Tables for Aboriginal and Torres Strait Islander Australians, 2010-2012", 'Life Expectancy at Birth of Aboriginal and Torres Strait Islander Australians' (2013) accessed on 27 July 2016 at: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/A80BD411719A0DEECA257C230011C6D8?opendocument>

Foster carers

96. We identify a need for training and support particularly for foster carers regarding engaging with the biological families or primary caregiver. Similarly biological families and former primary caregivers would benefit from training and support about how to engage with foster carers.
97. We understand that over the past few years FACS has worked on the development of a common contact framework. The focus is now on developing revised child centred contact guidelines.
98. When WLS NSW and other community legal centres became aware of this work we sought to provide input and meet with FACS to inform them of issues for clients in practice. We would welcome the opportunity to provide feedback on the draft child centred guidelines.
99. Children have the right to contact with their birth family unless contrary to the best interests of the child.
100. In 2016 the Australian Institute of Health and Welfare released a report entitled *The views of children and young people in out-of-home care*. The findings are based on surveys of 2,083 children aged 8-17, approximately a third of whom were Aboriginal and/or Torres Strait Islander children.
101. When children were asked is there anything you would like to change about contact with your family 32% stated more contact and only 3% said less or no contact.⁵⁰
102. Research undertaken by Sen and Broadhurst concludes that "*foster placements tend to be more stable where parental contact is encouraged and there are positive relationships between birth parents and social workers*".⁵¹
103. For children under two years of age, bonding with primary carers is important and can affect the child's personal development. Studies have shown if a mother is able and supported to maintain significant time with her child during the initial time of removal and care planning, this increases the chance of successful restoration.⁵²
104. Many of our clients who have had their children removed from their care report resistance from foster carers, many NGOs and some FACS workers to their having ongoing contact with their children.
105. There are many reasons why children may be unsettled or distressed by contact with a parent. For example, younger children in particular may simply be tired or hungry; they could

⁵⁰ Australian Institute of Health and Welfare, *The views of children and young people in out-of-home care*, 2016 at 11 accessed on 22 July 2016 at: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554764>

⁵¹ R Sen and K Broadhurst "Contact and children in out-of-home placements" *Child & Family Social Work*, 2011, 16, 298-309 at 301 (*Discussion Paper*, Note 47 at footnote 124)

⁵² Child Welfare Information Gateway, *Family reunification: What the evidence shows*, Issue Brief June 2011 at 8 accessed on 26 July 2016 at

www.childwelfare.gov/pubs/issue_briefs/family_reunification/family_reunification.pdf ; See also details of Parent Partner Programs in Child Welfare Information Gateway, *Supporting reunification and preventing reentry into out-of-home care*, Bulletin for Professionals February 2012 at 6 accessed on 26 July 2016 at https://www.childwelfare.gov/pubs/issue_briefs/srpr.pdf

be over-excited; they may have been inadequately prepared for the purpose of the contact and had their hopes raised that they would be reunited with the parent only to find they are returning indefinitely to out-of-home-care; they may have heard the carer complaining about having to drive them to contact and feel guilty about causing inconvenience; or they might feel intimidated or scared by a child unfriendly environment, such as a sterile government building or institution.

106. Additionally, research suggests that barriers to effective contact include a lack of supportive assistance for carers,⁵³ unsuitability of the venue and the training of caseworkers/supervisors.⁵⁴ Additional reasons include: that the child(ren) are not accompanied by the same worker,⁵⁵ children not understanding why their visits are supervised and being upset by notetaking during visits.⁵⁶
107. In the absence of paediatric assessment as to the catalyst of the so called "disruptive or problematic behaviour" it is essential to proceed cautiously and not make assumptions as to the cause of a child's distress after spending time with a parent. It is natural to be sad after seeing a parent and then saying goodbye to them. It is vital that carers are trained in supporting children through the contact process with particular emphasis on developing awareness of their own agenda in the carer role, especially if they are hopeful of achieving permanency with the child in their care. We note that there is clearly potential for conflict of interest if the person reporting that contact is distressing to a child is also the person who wishes to retain the child permanently.

ToR G: Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

108. An important part of the work of our Indigenous Women's Legal Program (IWLP) is in community development and community legal education. A key component of this is focused on raising awareness within the Aboriginal community about the importance of early access to free legal advice. This is particularly important in the child protection context.
109. For example, where a viable carer is available a matter could be diverted to the family law courts rather than waiting for the matter to escalate to the Children's Court and the removal of a child from their family. The benefit in these circumstances is there is an increased likelihood that the child will stay with family members instead of going into "care". The IWLP team play a vital role in conveying this message to communities.
110. It is significant that at a time when there is general agreement about the need for a greater focus on early intervention, community legal centres, such as Women's Legal Service NSW, are facing potential commonwealth funding cuts through the Community Legal Services Program.

⁵³ F E Mennen and M O'Keefe, "Informed decisions in child welfare: The use of attachment theory", *Children and Youth Services Review*, 2005, 27 at at 587; See also: Morrison, F Mishna, C Cook and G Aitken, "Access visits: Perceptions of child protection workers, foster parents and children who are Crown wards" *Children and Youth Services Review*, 2011, 33(9) at 1477.

⁵⁴ G Schofield and J Simmonds "Contact for infants subject to care proceedings", *Adoption & Fostering*, 2011, 35(4) at 74. See also Morrison et al, Note 53 at 1479 -80

⁵⁵ Morrison et al, Note 53 at 1479.

⁵⁶ Morrison et al, Note 53 at 1480.

While IWLP community access workers are funded through the Commonwealth Indigenous Advancement Strategy the lawyers are funded through the Community Legal Services Program. Continuing uncertainty inhibits service planning and reduced resources will lead to a reduction in client services.

111. Furthermore, consistent with the Australian and NSW Law Reform Commissions recommendation, where a viable carer is identified and FACS refers that carer to the family court, FACS should provide supporting evidence about the reasons for the referral to the family court.⁵⁷ We argue this should include a mother who has been the victim of domestic violence and who is taking protective action through the family courts, for example, by applying for no contact or supervised contact orders.
112. We submit that in many cases this could result in reduced acrimony within the family, safer arrangements for children, reduced trauma (noting the trauma associated with a child's removal) and is a better use of state and federal resources as opposed to the costs of removing a child from his/her family and assuming him/her into care.
113. Access to plain English publications is also important. In responding to the need in the community for accessible information about what to do when your child is removed from your care we produced a booklet – *10 things you need to know when DoCS/FACS removes your child*. This booklet, which is currently being updated, provides practical tips including how to ask FACS to consider placing the child with another family member and explains the court process.
114. We submit more funding is required for such meaningful early intervention legal services and support, including community legal education.
115. We would anticipate such investment would have significant social benefits, including protecting children from harm while simultaneously allowing them to remain with people they know. It would also allow Aboriginal and Torres Strait Islander children continued opportunities to foster their cultural identity.
116. As discussed above, given many Aboriginal people have been denied modelling of good parenting due to the ongoing impacts of the Stolen Generations, it is imperative that culturally safe, strength based, trauma informed support is available.
117. We submit that programs that support parents can also have the effect of supporting children.
118. Consistency in access to a support service and a FACS caseworker is also important. For example if children are removed from their parents the parents should still be able to access support services.

⁵⁷ ALRC and NSWLRC, *Family Violence – A National Legal Response*, ALRC Report 114, October 2010, Recommendation 19.3.

119. Research from the United States *"found that the number of caseworkers was associated with timely permanence and may even be more important than the number and type of services provided to a child and family"*.⁵⁸
120. Additionally, research shows that family restoration is facilitated by more frequent contact with the caseworker, particularly where that parent feels that *"their involvement in case planning and services is valued and respectful of their potential to keep their children safe, provides them with the information they need to successfully advocate for themselves and their children, and enables them to access the services and resources they need to achieve reunification"*.⁵⁹
121. Another common concern raised, which is not limited to Aboriginal families, is access to safe housing. Mothers are caught in a catch 22 where without their children they are ineligible for housing with multiple bedrooms to accommodate their children yet they will not have their children returned to their care without adequate housing.
122. We recommend greater flexibility in the application of Housing NSW policies to remove this barrier. We understand that women are being able to successfully access safe housing through the NSW Safer Pathway Safety Action Meetings (SAMs) discussed below. These currently operate in 6 sites around NSW and will roll out to a further 19 sites over the next 12 months.
123. This is positive but SAMs are not universally available to women across NSW who need safe housing; nor should a SAM be required as a way to access safe housing in all cases.
124. We refer to the NSW Women's Alliance submission in response to the Blueprint for the domestic and family violence response in NSW. Recommendation 9 calls for action to:

Develop and implement a long-term cross-departmental NSW Aboriginal Family Violence Strategy driven by Aboriginal communities. The Family Violence Strategy must intersect with a strong, well-resourced Aboriginal Family Violence Network to develop consistent and evidence-based best practice initiatives that are community driven and reflect diversities and intersectionalities in our Aboriginal and Torres Strait Islander communities.

A NSW Aboriginal Women's Advisory Group with members having expertise in sexual assault and domestic and family violence should also be established and meet regularly with relevant Ministers and Departmental Secretaries to ensure Aboriginal people have ongoing opportunities to contribute to the development and implementation of the NSW Aboriginal Family Violence Strategy and any other strategies or policies relating to the women of NSW. Regional networks within Aboriginal communities also need to be established to ensure ongoing conversations about sexual assault and DFV which will feed through to the NSW Aboriginal Advisory Group.

125. We repeat the calls for this recommendation to be implemented.

⁵⁸ C Potter and S Klein-Rothschild, "Getting home on time: Predicting timely permanence for young children", *Child Welfare*, 2002, 81(2) at 135.

⁵⁹ Child Welfare Information Gateway, *Family reunification: What the evidence shows*, Issue Brief June 2011 at 6-7 accessed on 26 July 2016 at www.childwelfare.gov/pubs/iissue_briefs/family_reunification/family_reunification.pdf

Early engagement with families

126. It has been the experience of clients that there is often inadequate consultation with families and communities affected by the removal of children both before the removal and after.
127. We are contacted by mothers who have been unaware that they have been monitored by FACS until after their child has been removed from their care. See, for example, the case study below.

Case study 1

Jacquie (not her real name) is under eighteen and had just given birth to a healthy baby who she was breastfeeding. When she was younger and living in another state she had to live with a relative for a while because of safety concerns in her family.

The day after she gave birth FACS came to the hospital and told her they were placing the baby in the care of the Minister and that she could not take her baby with her when she was discharged. FACS indicated that they had no concerns about her capacity as a mother, but they did have safety concerns about her family.

Jacquie had not had any contact with FACS prior to this time and nor had she been referred to early intervention services throughout her pregnancy. Further, no one had ever told her that they were concerned about where the baby would be living.

128. Women continue to tell us of incidences where FACS do not contact parents to offer support and early intervention assistance and the opportunity to address issues of concern prior to the sudden removal of a child. It is particularly traumatic when babies are removed from their mother's care in hospital immediately after birth. While in some cases babies are restored to their families, this would likely have an impact on attachment.
129. We note that FACS have some dedicated prenatal caseworkers in at least three districts in NSW who engage and support mothers during their pregnancy. Where there has been positive engagement with the programs we have found them to be both responsive and proactive in assisting our clients. We welcome supportive programs that are strength based. However, little is known about this program and there is a real fear, particularly within Aboriginal and Torres Strait Islander communities, that by engaging with services children will be removed from their parents' care. We recommend that there be better community education about these programs, that they expand the number of caseworkers in these roles and that prenatal caseworkers are available across all districts.

ToR H: the amount and allocation of funding and resources to universal supports and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people

Early intervention

Investment

130. There needs to be much greater emphasis on early investment. In the 2014-15 Senate inquiry into Out-of-home Care the Senate Standing Committee on Community Affairs considered the Productivity Commission's data on state and territory expenditure for family intensive family support and family support programs. We note with concern that *"in 2013-14, combined real expenditure on intensive family support and family support programs was \$6.7 million, compared to \$2.1 billion for out-of-home care services"*.⁶⁰
131. We note the NSW Government announced increased funding in the NSW Budget 2016-17 including *"\$560 million over four years in new funding to deliver services and reform child protection and OOHC through targeted earlier intervention, intensive family preservation and restoration programs and adoption initiatives"*.⁶¹ We seek further information about this.
132. There is a moral, social and economic imperative for investing further in early intervention particularly in the area of child protection. In research commissioned by the Benevolent Society they found an initial investment of US\$15,166 in a preschool program in Michigan in the United States designed to support children and their parents resulted in an economic return to society of US\$244,812 when participating children reached the age of 40 years.⁶² This preschool program included classes 5 days a week for children aged 3-5 years and weekly home visits with the preschool teacher, mother and child.⁶³ The greatest economic benefits over the three decades came from crime reduction.⁶⁴
133. Child Protection reform should not occur in isolation. It is imperative that it is part of a holistic response which includes: a focus on justice reinvestment; alternatives to custody for women offenders, particularly women who commit non-violent offences;⁶⁵ supporting parents suffering from the effects of trans-generational traumas and disenfranchised grief; and the *National Plan to Reduce Violence against Women and their Children 2010-2022 (National Plan)*

⁶⁰ Productivity Commission cited in the Senate Community Affairs References Committee, *OOHC Report*, August 2015 at paragraph 5.22

⁶¹ FACS, "Reforms key to record \$6.3 billion FACS budget (Media Release), 21 June 2016.

⁶² Schweinhart cited in Moore, T.G. and McDonald, M. (2013). *Acting Early, Changing Lives: How prevention and early action saves money and improves wellbeing*. Prepared for The Benevolent Society. Parkville, Victoria: Centre for Community Child Health at The Murdoch Children's Research Institute and The Royal Children's Hospital, 2013 at 18 accessed on 22 July 2016 at:

<http://www.benevolent.org.au/~media/Benevolent/Think/Actingearlychanginglives%20pdf.ashx>

⁶³ Ibid at 24.

⁶⁴ Ibid at 18.

⁶⁵ See *Corrective Services NSW Women's Advisory Council submission in response to the NSW Law Reform Commission Review Crimes (Sentencing Procedure) Act 1999 Special categories of offenders – Women*, October 2012 accessed on 26 July 2016 at: http://www.womenslegalsw.asn.au/downloads/law-reform/2013_WAC_LRCNSW_Specialcategoryofoffenders_Women.pdf (WLS NSW is a consultant member of the Corrective Services NSW Women's Advisory Council and contributed to this submission).

and the NSW jurisdictional plan, *It Stops Here*, as well as the *NSW Domestic and Family Violence Justice Strategy* and the Department of Family and Community Services Domestic and Family Violence Strategy.

Intersection of domestic violence, child protection, family law and housing

134. While there is acknowledgment of the intersection of domestic violence and child protection this is not always clearly articulated or addressed.
135. In 2011 the NSW Legislative Council conducted an inquiry into Domestic Violence trends and issues in NSW. We welcome the NSW Government's acceptance in principle of Recommendation 37 from the *Domestic Violence Trends and Issues in NSW Report*. This recommendation required Women NSW and the Department of Family and Community Services ('FACS') to develop a joint plan for addressing the tension between child protection interventions and those for domestic violence, including *"promot[ing] practices that harness the strengths of victims and children in order to move on from violence, and seek to build the relationship between them"*.
136. In September 2014 a short-term Working Group of government and non-government organisations was formed in NSW to assist in setting the direction of the integration of domestic violence responses and child protection. Objectives and actions were developed. The intention was for this work to be fed up to the NSW Domestic and Family Violence Reforms Delivery Board, a board of NSW government representatives. WLS NSW commended this initiative and the important discussions that took place in this working group.
137. This working group was only ever intended to be short-term and disbanded in February 2015. To our knowledge there has been no feedback to NGOs as to the extent to which the actions have been implemented. We seek further information about the ongoing monitoring and evaluation of this work and for improved mechanisms to ensure ongoing engagement with NGOs is inclusive and meaningful.
138. There needs to be more work undertaken regarding the intersections between domestic violence, child protection, family law and access to safe and affordable housing.

ANROWS Research

139. We welcome the Australia's National Research Organisation for Women's Safety (ANROWS) research focus on the intersections of child protection, domestic violence and family law.
140. The PATRICIA Project: PATHways in Research In Collaborative Inter-Agency working is focused on these issues. The project has included a state of knowledge paper and participatory action research project.
141. The participatory action research component has drawn on David Mandel's "Safe and Together" Model. This model seeks to make the perpetrator both visible and accountable.

Rather than blaming the mother for so called "*failing to protect*" the model promotes "*domestic violence-informed child protection policy and practice*".⁶⁶

142. We commend FACS for a Research to Practice Seminar: Home truths Rethinking our response to domestic violence organised in April 2014 and recommend further ongoing professional development in this area for both FACS and NGOs.
143. We also welcome ANROWS research into the tactics perpetrators of domestic violence use to disrupt the mother-child relationship.⁶⁷

NSW DFV Reforms

144. The NSW jurisdictional response to the *National Plan to Reduce Violence against Women and their Children 2010-2022* ('*National Plan*'), called *It Stops Here*, was launched in February 2014. A key component of this strategy is the *Safer Pathway* which was launched in two sites in September 2014: Orange and Waverley and a further four sites in mid 2015: Parramatta, Bankstown, Broken Hill and Tweed Heads.
145. The 2016-17 NSW Budget includes funding for a further 19 Safer Pathway sites across the state.
146. As part of the Safer Pathway, NSW Police undertake a risk assessment and refer all victims of domestic violence to a central referral point. Victims are then contacted by their local co-ordination point where a further risk assessment is undertaken and support services are offered.
147. If a victim is assessed as at serious threat by either the Police or local co-ordination point in one of the areas with a safety action meeting mechanism, s/he is referred to a safety action meeting which is attended by local government and non-government organisations who share information about the victim and perpetrator with the aim of discussing and, where the victim agrees, implementing a co-ordinated response to the violence.⁶⁸
148. We understand that two evaluations have occurred. The first was a report by the NSW Bureau of Crime Statistics and Research provided to Government in mid 2015. We understand the second report was undertaken by Urbis on behalf of Women NSW. Neither report has been made publicly available.

⁶⁶ See for example, No to Violence, *Strengthening Perpetrator Accountability within the Victorian Family Violence Service*, June 2015, Appendix 4 at 80-90 accessed on 25 July 2016 at:

<http://www.rcfv.com.au/getattachment/E771CDC5-4D7C-4638-B3EE-546EA32871F1/No-To-Violence;-Men's-Referral-Service-->

⁶⁷ For example the Australian National Research Organisation for Women's Safety (ANROWS) project led by Dr Rae Kaspiew: Domestic and family violence and parenting: mixed method insights into impact and support needs and ANROWS Research Topic list 1.8: The impact of domestic violence on parenting, with particular attention to the tactics a perpetrator may use to disrupt the mother-child relationship and what helps to heal or strengthen this relationship, accessed on 26 July 2016 at <http://anrows.org.au/research-program/research-program-2014-16>

⁶⁸ NSW Government, *It Stops Here Safer Pathway Overview*, 2014.

149. It is important that the findings from the different "Safer Pathway" evaluation reports are considered and incorporated as the "Safer Pathway" continues to be rolled out across the state.
150. Of particular relevance to this inquiry are the *Safer Pathway Domestic Violence and Child Protection Guidelines*. These guidelines explain when agencies must make a mandatory notification to FACS and when other options are available. The guidelines also state that where there is domestic violence in addition to mandatory notification of significant risk of harm to children to FACS, the adult victim should be referred to a Central Referral Point or a Local Co-ordination Point.

*The high incidence of domestic violence victims with children in their care creates an intersection of processes and responses between Safer Pathway and the child protection response. For this reason, the emphasis must be placed on the two systems working together in a consistent and integrated manner to ensure that both adult and children victims are assisted and can access the support they need to be safe.*⁶⁹

151. In the interests of transparency and accountability and to build confidence in the "Safer Pathway" we recommend these evaluation reports be published immediately.

Support for parents

152. The 2008 *Special Commission of Inquiry into Child Protection Services in NSW* ('Wood Inquiry') found that the key to reducing risk to children is "sufficiently resourcing flexible prevention and early intervention services so as to reduce the numbers of children and young people who require the state to step in to keep them safe".⁷⁰ For decades advocates have been calling for better resourcing of child protection.⁷¹
153. The *Wood Inquiry* also found

A range of complex and often chronic factors characterise many of the families coming into contact with the child protection system such as low income, unemployment, substance abuse, limited social supports, imprisonment, domestic violence, and mental health issues. Many of these factors are inter-related. The elimination or reduction of each of these factors

⁶⁹ NSW Government, *Safer Pathway Domestic Violence and Child Protection Guidelines*, September 2014 accessed on 25 July 2016 at:

http://www.domesticviolence.nsw.gov.au/__data/assets/file/0015/301524/intersection_guidelines.pdf

⁷⁰ The Hon James Wood, *Report of the Special Commission of Inquiry into Child Protection*, November 2008, Executive Summary at i.

⁷¹ Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, ALRC Report 84, November 1997 at 17.6. See also the recently released report Australian Child Rights Taskforce, *CRC25: Australian Child Rights Progress Report – A report on 25 years of the UN Convention on the Rights of the Child in Australia*, June 2016 at 34. The value and importance of investing in early intervention is also well documented in the research commissioned by the Department of Family and Community Services as part of the Targeted Earlier Intervention Reforms. Australian Research Alliance for Children and Youth (ARACY), *Better Systems, Better Chances: A review of research and practice for prevention and early intervention*, 2015 accessed on 22 July at: http://www.community.nsw.gov.au/__data/assets/pdf_file/0008/335168/better_systems_better_chances_review.pdf

would significantly lower the number of children and young people reported as being at risk of harm.⁷²

154. Further, in cases where parental substance abuse has been identified as a contributing factor it is important to recognise that substance dependency may arise from past trauma and violence. Every effort should be made to develop a range of accessible treatment programs to provide parents with a genuine opportunity to address their alcohol and/or drug misuse, including any underlying catalysts. A key component of this is identifying parents as "in need of services/support" rather than viewing them as perpetrators or bad parents.⁷³ Research clearly identifies that a significant obstacle for parents to enter into and complete treatment programs is motivation.⁷⁴ If there was a cultural shift towards support rather than surveillance and punishment, parents are likely to feel more able to engage with treatment services. In some areas we are beginning to see this shift.
155. Where research about mothers' experiences with caseworkers has been undertaken, it highlights that positive interaction and support of parents by experienced caseworkers who show empathy, trust and respect decreases removal and increases the likelihood of restoration of children to a parent.⁷⁵ It is therefore important that caseworkers receive the necessary training, supervision and support to undertake their work and efforts be made to retain and support competent casework staff.⁷⁶

Access to support services

Keep Them Safe Evaluation

156. The *Keep Them Safe Evaluation*, an evaluation of the first 5 years of the NSW Government's Keep the Safe child protection policy developed in response to the 2008 *Wood Inquiry*, found that many families with children at risk of significant harm "continue to be provided with fragmentary services or in some cases, no service at all".⁷⁷
157. The evaluation also found that there are gaps in service provision, "particularly outside metropolitan areas" and there is a continued urgent need for safe affordable housing.⁷⁸

⁷² Wood Inquiry, Note 74 at i-ii.

⁷³ Northern California Training Academy, *The importance of family engagement in child welfare services*, June 2009 at 6-7 accessed on 26 July 2016 at <http://academy.extensiondlc.net/file.php/1/resources/LR-FamilyEngagement.pdf>

⁷⁴ Ibid at 8.

⁷⁵ Festinger cited in C Potter and S Klein-Rothschild, "Getting home on time: Predicting timely permanence for young children", *Child Welfare*, 2002, 81(2) at 127; K Dawson and M Berry, "Engaging families in child welfare services: An evidence-based approach to best practice", *Child Welfare*, 2002, 81(2) at 302-303. J Thomson and Ros Thorpe "Powerful partnerships in social work: group work with parents of children in care", *Australian Social Work*, 2004, 57(1) at 46-56.

⁷⁶ C Potter and S Klein-Rothschild, Note 75 at 146.

⁷⁷ Social Policy Research Centre, *Keep Them Safe Evaluation: Final Report*: NSW Department of Premier and Cabinet, June 2014 at 55(57) accessed on 26 July 2016 at: http://www.keepthemsafe.nsw.gov.au/__data/assets/pdf_file/0006/166281/KTS_Outcomes_Evaluation_Final_Report.pdf

⁷⁸ Ibid at 84(86).

Further "A relatively small amount of KTS expenditure was devoted to early intervention services and this tended to be in the form of small pilots".⁷⁹

158. While recognising the value of pilot programs and the importance of building the evidence through evaluation of such programs it is vital that there is long-term, sustainable funding for early intervention services so that more than a few people can benefit from effective programs.
159. Additionally mothers who had experienced domestic violence reported a decrease in depressive symptoms after escaping the violence, but also a decrease in self-esteem, suggested to be connected to a lack of psychological and social supports and financial security.⁸⁰ This clearly demonstrates the necessity of providing appropriate supports including counselling, safe and secure housing, financial independence and treatment programs once a mother removes herself and her children from a violent relationship.
160. The lack of access to services is exacerbated for women in regional, rural and remote areas. See case study 2.

Case study 2

Sarah (not her real name) lived in a regional area. She had experienced significant violence in her life both as a child and an adult. She had a physical disability and a history of substance abuse. She was a single parent, but seeing a man who, unbeknown to her, had been previously investigated by FACS. After experiencing severe anxiety and depression she self referred for psychological assistance. As a result of the mental health intervention she was admitted into a facility that was some distance from her children who had been placed in out of home care. Sarah was unable to see the children regularly or attend the court proceedings about the children. As a result, she initially had infrequent and disrupted contact with the children which caused significant distress to both Sarah and her children.

After discharge, in addition to contact visits and legal appointments, Sarah was required to attend a range of treatment programs addressing substance abuse, mental health and protective behaviours, all located in different parts of her region and mostly not directly accessible by public transport, thus requiring multiple forms of transport. The cost of getting to appointments created financial stress and the process of travel aggravated her physical impairment. Despite the obstacles, Sarah worked hard to meet these requirements, but it still took more than a year for her children to be returned to her full time care.

161. We acknowledge and welcome programs implemented in response to the *Wood Inquiry* such as Intensive Family Support Services.
162. The Newpin program conducted by Uniting (formerly called Uniting Care Burnside in NSW) provides an intensive, therapeutic program for parents and children who have potential or

⁷⁹ Ibid.

⁸⁰ G Holden et al, "Parenting behaviours and beliefs of battered women", in G Holden, R Geffner and E Jouriles (eds), *Children exposed to marital violence*, APA Press, Washington, 1998 at 323.

actual child protection issues. Newpin works from a "strengths based" framework and families attend Newpin a minimum of 2 days a week for up to 18 months.⁸¹

163. Of particular importance this program offers support post restoration of children to the care of their parents.
164. We understand this program is offered at Bidwell, Doonside, St Mary's, Ingleburn and Wyong and that *"it is anticipated a further four centres will open across NSW over the next three years"*.⁸² Demand exceeds capacity. Such intensive, therapeutic programs need to be provided universally across the state and to be resourced appropriately.
165. We understand there is a parent advocacy/support program called Family by Family operating in Mt Druitt.⁸³ It works by connecting families who have *"been through tough times and come out the other side"* with families who are going through tough times and looking for peer support. It is a strengths-based program and includes family coaches who *"coach the families to grow and change together"*.⁸⁴ It was first piloted in South Australia in 2010. The pilot in Mt Druitt began in January 2014. The Australian Centre for Social Innovation (TASCI) developed this program through a co-design process with parents. There does not yet appear to be a published evaluation of the Mt Druitt pilot.
166. While supportive of these initiatives, in addition to intensive early intervention support and parent advocates, legal advocacy is also required.
167. For example, the Cornerstone Advocacy approach developed by the Center for Family Representation (CFR) in New York City involves intensive advocacy in the first 60 days following removal. Once a child is removed each parent is provided with a lawyer, a social worker and a parent advocate.⁸⁵ This approach recognises the complexity of matters where children are removed and the importance of an immediate and appropriate response to ensure that state intervention does not create further barriers between parent and child.
168. We believe this model would be highly successful where implemented prior to removal of a child with a view to supporting and working with families to remain intact. We understand

⁸¹ Uniting, Newpin - *Supporting restoration of children to their parents*, (leaflet) accessed on 22 July 2016 at: https://uniting.org/_data/assets/pdf_file/0008/137438/Uniting-Newpin-Supporting-restoration-of-children-to-their-parents-Feb16.pdf

⁸² See: <https://uniting.org/our-services/for-children-and-young-people/newpin/locations-nsw> accessed on 22 July 2016

⁸³ See: <http://familybyfamily.org.au/our-people-families/mt-druitt-nsw/> and <http://tasci.org.au/project/family-by-family/> accessed on 26 July 2016

⁸⁴ See: <http://tasci.org.au/project/family-by-family/> accessed on 26 July 2016

⁸⁵ The Cornerstone Advocacy model is described further on their website: "The CFR lawyer provides quality legal representation in court. The social worker gets to the root of the problem and helps the client access stabilizing services, such as housing, employment training, drug treatment, and domestic violence counseling. Finally, the parent advocate, a trained professional who has experienced the child welfare system and can empathize with the struggles vulnerable families face, provides emotional support and helps the client engage in services, ensuring follow through." accessed on 26 July 2016 at <http://www.cfrny.org/our-work/team-model/>

that CFR also engages with families prior to removal of children and they report such work resulting in 50% of their clients' children remaining out of foster care.⁸⁶

169. Research has found that parents who were partnered with an advocate or mentor who has successfully achieved restoration themselves were more than four times likely to be reunified with their children.⁸⁷
170. As emphasised elsewhere in this submission it is vital when children are in care to actively involve birth parents in decision-making, encourage communication and interaction between the birth parent and carers and increase contact between children and their birth parents to assist to increase the likelihood of successful restoration.⁸⁸
171. Similarly the Cornerstone Advocacy approach recognises that it *"is not natural for a parent to visit with a child"*.⁸⁹ Alternatively, CFR argue for inclusive parental involvement in activities that are normal for children, such as attending sporting events or helping with homework. Crucially, CFR recommend that parents must be supported, prepared and debriefed. The approach outlines models including Visit Coaching, which focuses on training workers and carers as coaches.⁹⁰
172. CFR have achieved some significant results. For example, children under their model spend less than an average of 5 months in care compared with an average of 11.5 months in New York City. Additionally CFR services cost an average of US\$6,500 per family compared with US\$30,000, which is the average cost of keeping a child in care per year.⁹¹

Early free legal advice

173. Based on the experience of our clients, there is a need for earlier intervention in matters involving child protection concerns. Parents and/or primary caregivers should be informed of child welfare authority concerns and referred for free legal advice at an early stage.
174. In NSW, following the 2014 legislative amendments to the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* ('the Safe Home for Life reforms'), the NSW Treasury funded Legal Aid NSW to provide early legal advice to parents and primary caregivers.
175. Legal Aid NSW has been working with Community Legal Centres in NSW as well as the Aboriginal Legal Services NSW in a project called Care Partners to provide such services. The

⁸⁶ CFR 2014 *Report to Community*, accessed on 26 July 2016 at: <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>

⁸⁷ Child Welfare Information Gateway, Note 70 at 8; See also details of Parent Partner Programs in Child Welfare Information Gateway, Supporting reunification and preventing reentry into out-of-home care, Bulletin for Professionals February 2012 at 6 accessed on 11 February 2013 at https://www.childwelfare.gov/pubs/issue_briefs/srpr.pdf

⁸⁸ Child Welfare Information Gateway, Note 59 at 4.

⁸⁹ CWCIP Best Practice Bulletin, Cornerstone Advocacy in the first 60 days: Achieving safe and lasting reunification for families, June 2011 at 4 accessed on 11 February 2013 at www.courts.state.ny.us/ip/cwcip/Publications/CIPBBulletin6_11.pdf

⁹⁰ Ibid at 4.

⁹¹ CFR 2014 *Report to Community*, accessed on 26 July 2016 at: <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>

focus is on legal advice for parent responsibility contracts, parent capacity orders and alternative dispute resolution ('ADR') processes for contact disputes, all elements of the Safe Home for Life reforms. Of those CLCs which were funded, most were provided funding for one day a week for this service.

176. This is an excellent initiative to engage families with early intervention legal services. Access to early free legal advice is particularly important in the context of the move towards permanency planning within legislated timeframes.
177. However, although an excellent initiative its execution has been less than ideal for a range of reasons. Only small amounts of funding were available over an 18-month period – a short timeframe for establishing early intervention strategies. Constraints were imposed early in the project such that CLCs were limited in their ability to promote their individual service as there was a requirement that the referral pathway be to a single advertised central number at Legal Aid NSW. FACS local district offices did not seem to be aware of the initiative nor did they seem to promote the use of early intervention tools, such as parent responsibility contracts (PRCs) and parent capacity orders (PCOs) discussed below at paragraph 187.
178. It is disappointing that there were not opportunities to review and improve the use of the early intervention tools with FACS and discuss training opportunities with FACS prior to the withdrawal of some of the Care Partners funding.
179. Some CLCs had undertaken preliminary work, building relationships of trust in the community, creating an expectation they would be able to provide the service. Some of these CLCs have not received ongoing Care Partners funding.
180. Further, we anticipate through the regular meetings with FACS and other initiatives such as piloting the intensive use of PRCs in some local district areas discussed below there will be a rise in referrals. We recommend the decision to cut funding to some geographically based CLCs be reconsidered.

South Western Sydney FACS and NGOs co-design

181. In addition to access to free legal advice about PRCs, PCOs and contact ADR there is also great value in parents and primary caregivers being able to access free legal advice following their first interaction with FACS or a non-government organisation child protection service, that is, at an earlier stage than is currently happening.
182. The purpose of such legal advice would be to help the parents/primary caregivers understand the reason for the contact with the child protection service, identify issues that need to be addressed and discuss what the parent/primary caregiver can reasonably do to address these issues – including ensuring the service(s) with whom they engage are accessible, available and affordable.
183. If the intervention happens early enough we submit this may reduce the number of children being removed from their families and prevent the trauma that would otherwise be experienced by the child, family and FACS workers when such an action is required.

184. WLS NSW along with South West Sydney Community Legal Centre participated in the South Western Sydney (SWS) co-design process with FACS and local NGOs which commenced in October 2014 and has focused on improving child protection services in SWS.
185. A concrete action arising from the co-design process was the development of a flyer promoting early legal advice and free legal services in the SWS area. An Aboriginal and Torres Strait Islander flyer and a general flyer which has been translated into a number of different languages have been produced.
186. WLS NSW has been working with FACS and NGOs about how they can promote these flyers and provide them to clients on first contact.
187. WLS NSW, like other community legal centres (CLCs) has been concerned that there has been little use of the early intervention tools by FACS. These tools include parent responsibility contracts and parent capacity orders. We fear this has been in part because FACS is unable to offer a parent responsibility contract where corresponding support services are not available and accessible.
188. We have raised this issue with FACS and are now meeting regularly with FACS, the Aboriginal Legal Service NSW/ACT, other CLCs and Legal Aid to discuss the implementation of the Safe Home for Life Reforms. This model of collaborative engagement is a positive one.
189. Intensive use of PRCs is being piloted in a couple of FACS district areas.

If you would like to discuss any aspect of this submission, please contact Liz Snell, Law Reform and Policy Coordinator or Dixie Link-Gordon, Senior Community Access on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Janet Loughman
Principal Solicitor