

ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC)



**SUBMISSION IN RESPONSE THE DEPARTMENT FOR CHILD PROTECTION AND FAMILY
SUPPORT DISCUSSION PAPER ON EARLIER INTERVENTION AND FAMILY SUPPORT
STRATEGY**

31 March 2016

ABOUT THE ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA

ALSWA is a community based organisation which was established in 1973. ALSWA aims to empower Aboriginal peoples and advance their interests and aspirations through a comprehensive range of legal and support services throughout Western Australia. ALSWA aims to:

- Deliver a comprehensive range of culturally-matched and quality legal services to Aboriginal peoples throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal peoples as the First Peoples of Australia;
- Ensure that Government and Aboriginal peoples address the underlying issues that contribute to disadvantage on all social indicators, and implement the relevant recommendations arising from the Royal Commission into Aboriginal Deaths in Custody; and
- Create a positive and culturally-matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal peoples as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform.

ALSWA is a representative body with executive officers elected by Aboriginal peoples from their local regions to speak for them on law and justice issues. ALSWA provides legal advice and representation to Aboriginal peoples in a wide range of practice areas including criminal law, civil law, family law, child protection and human rights law. Our services are available throughout Western Australia via 14 regional and remote offices and one head office in Perth.

EARLIER INTERVENTION AND FAMILY SUPPORT STRATEGY

Background

The Department for Child Protection and Family Support (DCPFS) has published a Discussion Paper in relation to its proposed *Earlier Intervention and Family Support Strategy* ('the Strategy').¹ DCPFS are seeking submissions in response to this Discussion Paper by 31 March 2016. ALSWA's has considerable experience in relation to the formal child protection system as distinct to the design and operation of early intervention and support strategies. Therefore, ALSWA does not provide a response to every issue and question raised in the Discussion Paper. Instead, the focus of this

¹ Department for Child Protection and Family Support, *Earlier Intervention and Family Support Strategy*, Discussion Paper (February 2016).

submission is the critical need for additional resources for early intervention and family support strategies for Aboriginal families and the essential requirement that those strategies are developed and led by Aboriginal people, communities and Aboriginal community-controlled organisations.

The Discussion Paper

The Discussion Paper states that the Strategy is intended to coordinate how DCPFS and other government and non-government agencies 'work with families whose children are most vulnerable to poor life outcomes, including being removed from their parents' care and/or entering the youth justice system'.² The Discussion Paper acknowledges that:

[B]y the time families with complex problems come to the attention of the child protection system, their service-use is usually crisis driven. Responding to these issues by taking more and more children into care is a costly and unsustainable approach. This Strategy reflects the Department's recognition that earlier and more intensive intervention before problems become entrenched, provides the best opportunity, value and benefit to individuals and families as well as long-term savings to the community.³

ALSWA strongly agrees with this observation and urges greater investment in effective early intervention and prevention strategies to minimise the risk that Aboriginal children are removed from their families and/or become enmeshed in the criminal justice system. As ALSWA highlighted in a recent submission to DCPFS, the overrepresentation of Aboriginal children in care in Western Australia is disturbing. The proportion of Aboriginal children who are subject to care and protection orders in Western Australia (51%) is considerably higher than the national figure (31%).⁴ Moreover, the proportion of Aboriginal children under the care of the CEO of DCPFS is continuing to increase each year. As at 30 June 2011, Aboriginal children comprised 45% of children under the care of the CEO of the DCPFS – by June 2014 this figure had risen to over 50%.⁵ From 2014 to 2015 the rate of growth was far greater for Aboriginal children (9%) compared to non-Aboriginal children (3%).⁶

Accordingly, ALSWA submitted that the key priority for any reform to the child protection system is the need to invest in culturally competent, appropriate and effective early intervention strategies to prevent Aboriginal children from coming into care in the first place and recommended that the Western Australian government should provide increased resources for culturally competent, appropriate and effective prevention and early intervention programs for Aboriginal children and families at risk of child protection intervention.⁷ ALSWA notes that in 2014–2015, the total expenditure

2 Ibid 3.

3 Ibid 4.

4 Productivity Commission, *Report on Government Services* (2016) Chapter 15 Child Protection Services.

5 Department for Child Protection and Family Support, *Annual Report 2014–2015* (2015) 28.

6 Ibid.

7 See ALSWA, *Submission in Response to the Department for Child Protection and Family Support Consultation Paper on Out-of-Home Care Reform Legislative Amendments* (15 February 2016) 3–4.

on child protection and out-of-home care services was in excess of \$400 million compared to \$48 million on family support services.⁸ As observed by ALSWA in its submission to the Federal Senate Inquiry into out-of-home care in 2014, increasing resources for early intervention and prevention strategies will initially require a greater overall budget.⁹ However, in the long term, considerable cost savings will result by preventing vulnerable families and children becoming involved in the formal child protection system.

Strategic Focus One: Aboriginal families

The Discussion Paper states that the 'needs of Aboriginal families facing multiple and complex problems cannot be addressed by one service alone'. Instead, what is required is an 'across-government response designed and delivered in partnership with the Aboriginal community and the community services sector'.¹⁰ It is recognised that the rate of growth for non-Aboriginal children entering care has slowed in comparison to Aboriginal children and that targeted and culturally secure services for Aboriginal families and children is required.

ALSWA agrees that the core focus for earlier intervention and family support strategies must be Aboriginal children. This is essential not only as a consequence of the high disproportionate rate of involvement in the child protection system but also because of the unacceptable disproportionate rate of detention of Aboriginal children in Western Australia. It is well known that a substantial proportion of children under the care of the state are also involved in the juvenile justice system. ALSWA submits that while the focus of the Strategy must be Aboriginal children, there must also be a firm resolve to resource and develop effective strategies designed for Aboriginal children. Programs and services designed for non-Aboriginal children cannot simply be adapted for use with Aboriginal families.

ALSWA also highlights that early intervention and family support is vital because of the reality that the vast majority of Aboriginal children under the care of DCPFS will return to live with their family of origin as teenagers by choice. In ALSWA's experience, the circumstance of 'self-selection' by Aboriginal teenagers is now occurring at a much younger age. The considerable financial resources expended by the state in removing children from their families and instituting formal child protection proceedings coupled with the human cost for these children as a result of being shifted from one unacceptable placement to another (eg, general foster care and group homes), can be avoided by the injection of resources at the front end. The best outcomes for the children, their families and the community will be achieved by providing the families with *appropriate* early intervention and support.

8 See Productivity Commission, *Report on Government Services* (2016) Table 15A.

9 ALSWA, Submission to the Commonwealth Senate Community Affairs Reference Committee Inquiry into Out-of-Home Care (30 October 2014).

10 Department for Child Protection and Family Support, *Earlier Intervention and Family Support Strategy*, Discussion Paper (February 2016) 5.

Strategic Focus Two: Strengthen the service sector

The Discussion Paper notes that some local information sharing about at risk families currently takes place; however, there is a need to strengthen the processes across government for identifying those families most in need of earlier intervention and targeted support services. It is also stated that the existing Human Services Regional Managers Forum in each district could coordinate interagency communication to identify at risk families and/or those who have not engaged with existing services. The specified key agencies include Corrective Services, Mental Health, Police, Housing, Health and Education and relevant information could include identification of domestic violence, substance misuse, truancy, offending, mental health vulnerability, poor uptake on child health checks and a parent's prior experience of care.¹¹

Question: How can Regional Managers Forums play a role in across-government identification of vulnerable families?

ALSWA does not have any specific concerns in regard to the use of Regional Managers Forums as a mechanism for identifying vulnerable families via appropriate information sharing. However, ALSWA is concerned about what processes will be implemented to engage with Aboriginal families once they have been identified as requiring early intervention or family support services. Vulnerable and disadvantaged Aboriginal families are already subject to interventions by numerous government agencies and, in the absence of a culturally secure process, it is likely that any attempts to engage or reengage these families will fail. A review of Aboriginal community-controlled intensive family support services for Aboriginal and Torres Strait Islander children observed that:

While community control was seen as essential for credibility in community, the fact that the service was not 'the welfare' (i.e. the statutory agency) was important in itself to 'getting a foot in the door'. Caseworkers frequently referred to the separation between the statutory agency and their own service, and the voluntary nature of their services.¹²

In regard to the services reviewed, it was also observed that their 'standing as Aboriginal and Torres Strait Islander community services was important to engagement and take-up'.¹³ Moreover, it was argued that for effective intensive family support services for Aboriginal families there must be a

11 Department for Child Protection and Family Support, *Earlier Intervention and Family Support Strategy*, Discussion Paper (February 2016) 6.

12 Tilbury C, *Moving to Prevention Research Report: Intensive family support services for Aboriginal and Torres Strait Islander children* (Secretariat of National Aboriginal and Islander Child Care & Griffith University, 2015) 27.

13 *Ibid* 29.

'genuine partnership at the service delivery level, so the service is not used to monitor families or to gather evidence for more coercive interventions'.¹⁴

It is well known that many Aboriginal families distrust child protection workers because of the historical actions of past welfare agencies. The current situation, whereby increasing numbers of Aboriginal children are being removed from their families, reinforces this distrust and acts as a barrier to effective engagement with support services. Coupled with this, is the need to ensure that cultural and language barriers are also appropriately accommodated. ALSWA submits that Aboriginal community-controlled organisations must be the conduit for engaging with and offering services to at risk Aboriginal families. If this is not feasible in a specific location, it is vital that Aboriginal caseworkers are the first point of contact for any Aboriginal family. In this regard, it is noted that the initial indications from DCPFS's current pilot of an intensive in-home support service for Aboriginal families suggest that this program is most successful when led by a senior Aboriginal worker and provided by or partnered with an Aboriginal community controlled organisation.

The Discussion Paper also comments that 'intensive in-home family support and parenting services is required in order to build and support the practical life skills of families and address neglect, which is the primary reason children come into care'.¹⁵ It is suggested that the existing Family Support Network model could potentially be utilised to coordinate, connect and case manage families in this type of in-home support service. The Department states that a co-design process with Aboriginal organisations (including community sector services) and end users will be undertaken but some of the essential elements of the program that have already been identified include:

- focus on Aboriginal families and the provision of culturally secure services;
- priority for families with children aged 0–6 years;
- an 'assertive and persistent approach will be required';
- a significant amount of time will need to be spent in the family home;
- a whole of family model considering the needs and responsibilities of each family member will be required; and
- a tailored family plan, focused on each families' unique priorities, strengths, needs and culture will be developed

It is also stated that through a 'process of co-design with Aboriginal service partners, clear outcomes will be developed around the Empowered Community norms' of school attendance, seeking employment, paying rent, no criminal behaviour, and that old people and children are safe.

14 Ibid 31.

15 Department for Child Protection and Family Support, *Earlier Intervention and Family Support Strategy*, Discussion Paper (February 2016) 6.

Question: How should the provision of intensive in-home services be designed and delivered for Aboriginal families and in partnership with Aboriginal agencies?

It is ALSWA's view that the provision of intensive in-home services for Aboriginal families should be designed, led and delivered by Aboriginal community-controlled organisations. While ALSWA supports a partnership approach between DCPFS and Aboriginal community-controlled organisations in the development of specific services and programs, it is emphasised that Aboriginal community members and organisations must be consulted at the outset and be accorded genuine decision-making authority in regard to the development and delivery of the service or program. In this regard, it has been stated that:

Services for Indigenous Australians are most effective when the community is involved in both their planning and implementation stages. When Indigenous Elders, community members, and other local service providers are engaged in a consultative process, the most important needs of the community can be distinguished and the most appropriate methods of implementation can be identified.¹⁶

The comments in the Discussion Paper (referred to above) indicate that particular components of the proposed services have already been determined. ALSWA queries what level of consultation with Aboriginal community members and agencies has taken place to date? For example, ALSWA is concerned about the statement that an 'assertive and persistent approach will be taken'? Aboriginal people are best placed to understand what is required for any particular family and/or community. An assertive approach may not be effective for all families. Different approaches will be required in different locations and flexibility is essential. The idea of 'community norms' will only be effective if they are devised by Aboriginal members of the relevant family and/or community. Each family will have different needs, strengths and aspirations. For example, to require a family member to 'seek employment' may be unrealistic and unfair in particular circumstances. A more appropriate first step may be to undertake literacy training or obtain a drivers licence. Further, for victims of family violence, safety considerations will outweigh efforts to obtain employment. As has been noted previously, it 'is important to communicate with community members in order to identify their most pressing needs'.¹⁷

In addition, ALSWA wishes to highlight that the provision of intensive in-home family support services should not be viewed as the sole solution for at-risk families. ALSWA is aware the DCPFS has begun operating a number of Enhanced Contact Centres for parents involved in the child protection system. It is understood that parents are able to attend these centres to meet with their children in a family-friendly environment but also undertake courses/programs to enhance their parenting skills and

16 Price-Robertson R et al, *Working with Indigenous children, families and communities: Lessons from practice* (Communities and Families Clearinghouse Australia, Practice Sheet, March 2011) 2-3.

17 Ibid 3.

practical skills. For some families, the provision of in-home services may not be appropriate. DCPFS should closely monitor the effectiveness of the Enhanced Contact Centres with a view to expanding their ambit to enable families at risk to access services in a non-threatening and culturally appropriate environment away from their home (if this is necessary) and away from DCPFS offices.

Develop a shared outcomes framework for family support services

It is observed that different agencies currently adopt different outcome indicators and that outputs (eg, how many families were worked with and what was delivered to them) rather than outcomes tend to be used. It is proposed to develop a 'joint outcomes framework' with an accompanying evaluation regime. The suggested outcomes are reductions in child protection contacts; children needing to come into care; family and domestic violence; involvement in crime; poor parenting; mental health issues; family problems; involvement in anti-social behaviour; truancy/exclusion from school; poor housing/homelessness; alcohol and drug misuse; and increases in employment/training programs.

Question: Would an overarching shared outcomes framework for family support services be useful?

ALSWA supports the use of an overarching shared outcomes framework in contrast to the current focus on outputs. However, it is essential that there is flexibility for specific programs to adopt different outcomes depending on the particular design and focus of the program. It is unrealistic to expect that every program will be able to achieve all outcomes. It is also important to bear in mind that the achievement of short term outcomes is likely to result in the attainment of other outcomes in the long term. For example, increasing school attendance may not result in simultaneous reductions in contact with the criminal justice system; however, over time (and especially if school attendance levels are sustained) the likely outcome is less involvement in the criminal justice system.

Question: What are the most appropriate outcome indicators?

In regard to the suggested outcomes referred to above, ALSWA notes that some of the outcomes are more difficult to assess than others. For example, how is it intended to measure reductions in family problems or poor parenting? ALSWA does not suggest that these outcomes are not important; however, it will be necessary to ensure that positive outcomes in these types of areas are captured qualitatively.

Further, ALSWA submits that enhancing connection to culture and cultural identity should be added as an outcome for the provision of family support services. This is an often overlooked component of ensuring overall wellbeing for Aboriginal children and their families. A review of Indigenous community-managed programs found that making 'Indigenous culture central to an organisation or program was highlighted as critical to success'. For that review, SNAICC argued that "local community controlled organisations are central to maintaining local culture as they are 'rooted in their

community, cultures and country', and so provide 'culture' in a way that large national or statewide organisations cannot". It was further observed that an 'important aspect of embedding culture is prioritising the Indigenous worldview—that is, one that is relationally and holistically based on community and family obligations rather than the individual'.¹⁸

ALSWA submits that the enhancement of connection to culture and cultural identity and effective cultural practice should be at the heart of decision-making by DCPFS and should be a key outcome in any 'outcomes framework' for early intervention and family support. Unfortunately, in ALSWA's experience, recognition of culture is often treated as secondary to other matters and sometimes completely overlooked. In a recent child protection case, ALSWA's client (mother) requested support from Djooraminda. Instead, DCPFS engaged Uniting Care West. This arrangement did not work out and reunification did not occur. If Djooraminda had been engaged at the start it is highly likely that reunification would have been successful and the children would not have spent years in out-of-home care separated from one another and their family. Eventually, after lengthy legal proceedings, the children were returned to the care of their family and no protection order was made.

Further, ALSWA highlights that the Children's Court has expressed concerns about the lack of culture-oriented decision-making by DCPFS. For example, in *CEO DCP v BW & Ors*¹⁹ the magistrate commented that having an Aboriginal caseworker involved with the family would have been likely to have made a great difference and that an Aboriginal caseworker should have been involved 'at the very earliest stage of the Department's intervention'.²⁰ It was also observed that if there are no Aboriginal caseworkers available, organisations such as Djooraminda 'must be given greater capacity to become involved in case management much earlier in the proceedings'.²¹ Finally, ALSWA recommends that given that DCPFS has indicated its intention to utilise Aboriginal community controlled organisations more frequently in the provision of early intervention and family support services, it is imperative that DCPFS case workers and team leaders are provided with relevant training/education in order to ensure that Aboriginal families are not referred to the 'same old providers' due to a lack of 'on-the-ground' information and direction.

18 Morley S, *What Works in Effective Indigenous Community-Managed Programs and Organisations* (Child Family Community Australia, Information Exchange, Paper No 32 (2015) 5.

19 [2011] WACC 10

20 *Ibid* [68].

21 *Ibid* [241].

Strategic Focus Three: Review and redevelop strategies

ALSWA does not wish to comment on the effectiveness of existing programs operated by DCPFS. In regard to the provision of funding for youth services, ALSWA is of the opinion that DCPFS should prioritise funding for programs that are designed to reduce the risk that children enter the formal child protection system and to increase the future prospects for those children who have been removed from their families (ie, by supporting reunification or appropriate alternative placements).

The Discussion Paper states that in order to 'better respond and divert Aboriginal families away from the child protection system, a target of a minimum 50 per cent Aboriginal client based for funded services should be introduced'. ALSWA supports this approach because the reality is that 50% of DCPFS client base is Aboriginal families.



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