

**Submission to the Family Law Council  
reference on Families with Complex Needs  
& the Intersection of the Family Law and  
Child Protection Systems**

October, 2015



**NATSILS**

**NATIONAL ABORIGINAL & TORRES  
STRAIT ISLANDER LEGAL SERVICES**

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## 1. About NATSILS

1.1. National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

## 2. Introduction

2.1. NATSILS wishes to thank the Family Law Council for the opportunity to submit on the Family Law Council's reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems.

2.2. This submission has arisen from seriously held concerns about the number of children in out of home care and the poor relationship that Aboriginal and Torres Strait Islander peoples have with the family courts and child protection services.<sup>1</sup> It is well documented that Aboriginal and Torres Strait Islander peoples are more likely to have family law needs than non-Indigenous Australians, including for care and protection. For example, the Indigenous Legal Needs Project found that:

- 17.2 per cent of NSW participants identified an issue relating to custody or access to children.<sup>2</sup>
- 12.2 per cent of NT participants identified a child support, contact or residence issue.<sup>3</sup>

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<sup>1</sup> Nationally, Aboriginal and Torres Strait Islander children are ten times more likely to be on care and protection orders and almost eleven times more likely to be in out-of-home care than non-Aboriginal children. Nationally, the number of Aboriginal children removed from their families and placed in out of home care increased by 98% between 2006-07 and 2013-14. Australian Institute of Health and Welfare (AIHW) (2013), *Child Protection Australia 2011-12*, in AIHW (Ed.), *Child Welfare Series no. 55.* (Canberra: AIHW) at 17.

<sup>2</sup> C. Cunneen and M. Schwartz, *The Family and Civil Law Needs of Aboriginal People in NSW* (2008) at 11.

<sup>3</sup> Fiona Allison et al, *Indigenous Legal Needs Project: NT Report* (2012) at 89- 90.

2.3. Related to the high levels of interaction that Aboriginal and Torres Strait Islander peoples have with the family law system and child protection is a greater tendency to have complex needs relative to non-Indigenous Australians. The types of complex needs that are common for Aboriginal and Torres Strait Islander peoples include disability (particularly mental impairments), drug and alcohol abuse, poor health and literacy. Furthermore, the different world views of Aboriginal and Torres Strait Islander peoples can create additional added complexity. It is important to stress that the complex needs of Aboriginal and Torres Strait Islander people can only be understood in the context of colonisation, dispossession and disadvantage.<sup>4</sup>

2.3. It should be noted that because this is a submission from the national body of the ATSILS, many of the comments here are of a general nature, although some examples related to particular states and territories have been provided to illustrate an argument or to highlight issues in particular areas. This submission will not address the references provided regarding information sharing as NATSILS does not have a collective position on the issue. It should be noted however, that a number of the ATSILS expressed concerns about the possible forms increased information sharing may take and potential effects on Aboriginal and Torres Strait Islander people. Instead this submission focuses on how the family law system could be improved overall and how services could be better integrated to meet the needs of Aboriginal and Torres Strait Islander people.

### 3. Enhancing interaction between the family courts and relevant services:

*How can there be enhanced interaction between the family courts and relevant services, including child protection departments, family violence, mental health services, drug and alcohol services and support services for Aboriginal and Torres Strait Islander families?*

3.1. Currently, the system and its agencies are not well oriented towards prevention or de-escalation of family law conflicts. A study undertaken by the Victorian Office of the Child Safety Commissioner<sup>5</sup> in relation to a cohort of at risk youth showed that often very effective and intensive co-ordination and joint work was evident through Child Protection working with care agencies and other services when matters reached a crisis point, but not before.<sup>6</sup> Poor

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<sup>4</sup> Gordon et al. have argued that colonisation has resulted in “unresolved grief that is associated with multiple layers of trauma spanning many generations”. Gordon et al cited in Al-Yaman F et al, *Family Violence Among Aboriginal and Torres Strait Islander Peoples* (Canberra: Australian Institute of Health and Welfare, 2006) at 3. See also: P Memmott et al, *Violence in Indigenous communities* (Canberra, Commonwealth Attorney-General’s Department, 2001).

<sup>5</sup> A study being undertaken by Victorian Aboriginal Children’s Commissioner, Andrew Jackamos will also be of relevance once released. The 1000 Taskforce research, will explore the cases of 1000 Koori children in out of home care in order to analyse the gaps in care for Koori in the care of the state.

<sup>6</sup> Victorian Commission for Children and Young People, *Submission: Five year Plans for out of home care for Children and Young People* (29 November 2013).

collaboration in the interests of Aboriginal and Torres Strait Islander people was also evident in the recent child protection inquiry in Queensland, which found that the over-representation of Aboriginal and Torres Strait Islander children in child protection was compounded by:

Systemic factors such as an over-reliance on tertiary responses, a lack of meaningful collaboration between the department and Aboriginal and Torres Strait Islander agencies, and restrictions on referrals to family support services are adding to the problem.<sup>7</sup>

3.2. It is clear that there needs to be collaboration at the earliest stages possible. In particular, attention needs to be paid on how to build appropriate pathways between organisations to ensure that people are able to navigate difficult processes and access appropriate supports. In this regard, NATSILS would support further consideration and development of the Family Group Meetings model used in Queensland in the family law process. This model operates in the child protection jurisdiction and is a multi-stakeholder meeting where family members and service providers participate in case planning. This provides an important forum in which the best interests of the child can be discussed and planned for by all the relevant stakeholders. However, the implementation of this model would also require case management possibly by the ICL or a family consultant and would require resourcing.

3.3. It should also be noted that greater collaboration and information sharing is not only required between child protection and the family law system, but also between child protection and the juvenile justice system. Throughout the country there are an alarming number of Aboriginal and Torres Strait Islander children in the child protection systems who come into contact with the police, and who are subsequently placed under youth justice supervision or incarcerated. NATSILS is gravely concerned that there is poor interaction and integration between these departments to act in the best interests of children.<sup>8</sup>

3.4. In particular NATSILS is concerned that:

- There is a lack of clear and consistent policies and trauma-informed training to ensure residential care staff involve police to manage behaviour only as an absolute last resort.<sup>9</sup>
- The policing of children in residential care in particular - for things like property damage or running away - means the State (their 'parent') is facilitating the creation of a police profile in some instances where arguably a 'good parent' would not.<sup>10</sup>
- In the experience of NATSILS it is rare for child protection workers to attend court when their clients are facing criminal charges. However child protection workers are the guardians of these children and should be there to support them as such.<sup>11</sup>

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<sup>7</sup> Honourable Tim Carmody, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) 386

<sup>8</sup> Victorian Commission for Children and Young People, *Submission: Five year Plans for out of home care for Children and Young People* (29 November 2013).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

### 3.5. Addressing these issues will require:

- Joint case planning to balance the child protection and justice needs of Aboriginal and Torres Strait Islander peoples. In this regard we note the potential of thorough child protection care plans in addressing concerns that may otherwise prompt more intensive involvement from youth justice or corrections and thus lessen a young person's interaction with the criminal justice system.
- Better integration and collaboration, informed by a human rights centred approach, which places the rights of the child at the forefront including cultural rights. Child protection services and those helping to care for vulnerable Aboriginal and Torres Strait Islander children need to better understand how to help protect and promote these rights.<sup>12</sup>
- NATSILS would support the idea of a dedicated list within the Children's Court that would cater for dual clients (that is, children who are subject to both Child Protection and Youth Justice orders. This is because for a young person, the factors leading to criminal charges and protective concerns are often the same. Determining one matter in isolation from the other can lead to compromised outcomes that are not sufficiently holistic to meet a young person's needs.

## 4. Early assessment of children at risk:

*What opportunities exist for ensuring the early assessment of risk to children in family law matters?*

- 4.1. In family law matters there can be a number of delays with information sharing, which may hinder the early assessment of children at risk. This is of course a major concern for NATSILS and there are a number of measures that NATSILS would support to try and address delays.
- 4.2. Firstly, NATSILS would support the Western Australia model which allocates a family consultant to each child related case, to case manage matters such as referrals to other agencies, gathering information for the court and preparation of a family report. Early assessment is possible with this model given the first court event is a case assessment conference, while referrals are able to be managed and reported to the court at the next court event.
- 4.3. Secondly, NATSILS would support further implementation and trialling of the Western Australia model which involves the positioning of a senior officer from child protection being onsite at the

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<sup>11</sup> *Ibid.*

<sup>12</sup> The Victorian Aboriginal and Torres Strait Islander Children's Commissioner is collaborating with the Victorian Equal Opportunity and Human Rights Commission on a project that aims to educate and raise awareness of the importance of Aboriginal cultural rights. An outcome of this project will be a set of tools to help public authorities understand, protect and promote cultural rights which could be used to inform this approach.

family court in order to ensure immediate sharing of relevant information in regard to children at risk.

- 4.4. Thirdly, a checklist could be supplied with the registrar so that when an application is filed initially risk could be flagged and steps taken such as allocating early dates and arranging for attendance of Child Safety representative so they are able to provide any information available on their records to the court at the first court event. In jurisdictions with Magellan courts this may mean that the court can expeditiously consider whether the matter should be transferred to the Magellan list or managed with the appointment of an ILC.
- 4.5. Fourthly, NATSILS would support further encouragement of legal practitioners conducting a risk assessment when initially instructed. This could be the DOORS (Detections of Overall Risk Screen) or similar less complex tool designed for use by specifically for practitioners which would lead to an early assessment of risk based on standardised indicators. Practitioners could then refer to appropriate agencies at this stage.<sup>13</sup> In this regard it should be noted that, ATSILS' provide services relating to family law, child protection and family violence and regularly refer clients to Aboriginal or Torres Strait Islander service providers where considered appropriate.
- 4.6. Finally, as highlighted below, in order to enhance early assessment for children at risk in family law matters, services need to be appropriately resourced to deal with family violence. The significant barriers faced by Aboriginal and Torres Strait Islander women accessing help for family violence, must be addressed in order to ensure that children at risk are appropriately assisted.

## 5. Services needed to support families where child safety concerns are identified:

*What services are needed to support families and children who use the family law system where child safety concerns are identified:*

- 5.1. A number of services are required to support Aboriginal and Torres Strait Islander families where child safety concerns are identified. NATSILS submits that government departments and relevant agencies should provide practical solutions to ensure the wellbeing of families, including children. Currently, there are a number of issues with services in this area.
- 5.2. Firstly, the paucity of services due to a lack of funding is a major issue. Failure to provide appropriate services in the family law system increases the likelihood that underlying issues will go unaddressed which has clear ramifications for children, particularly where safety concerns have been identified. The report of the Community Affairs References Committee on out-of-home care has stated that, "the lack of family support services means there is limited scope for

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<sup>13</sup> However, it should be noted, that there are possible disadvantages of an assessment tool, including over-reliance on processes, rather than experience.

at-risk parents to get the support they need to build safe and resilient families for their children.”<sup>14</sup>

5.3. For example, the failure to provide appropriate accommodation means that victims of family and domestic violence are less likely to file for protection orders, and/ or leave their situations of abuse, or may become homeless as a result of leaving.<sup>15</sup> In any situation, any children of the victim are at further risk of exposure/ abuse or being taken into protective custody. The provision of appropriate services is therefore critical to the welfare of the child. In addition, services also need to be funded to address any particular issues that a child may have developed as a result of their exposure to family and domestic violence, for example counselling or anger management. Such services will need to be tailored to the specific needs of children generally, and Aboriginal and Torres Strait Islander children in particular.

5.4. Further funding needs to be provided to services, including:

- appropriate accommodation;
- community education which promotes the legal rights of women and children supportive relationships;
- counselling, including the provision of men's counselling and treatment;
- drug and alcohol rehabilitation;
- mental health and cognitive impairment treatment and support;
- culturally competent legal services (as discussed further below at 6.12)

5.5. Secondly, a key issue is that supporting services are not designed for Aboriginal and Torres Strait Islander peoples, particularly those with complex multiple needs.<sup>16</sup> In the Queensland inquiry into out of home care the Townsville Aboriginal and Islander Health Services was quoted, stating that:

Many of the current programs/resources that are available e.g. violence prevention, parenting, budgeting, hygiene etc. etc. are not delivered in ways that are appropriate to Aboriginal and Torres Strait Islander culture but more importantly, many of these programs don't even recognise the lived experience of Aboriginal and Torres Strait Islander people.<sup>17</sup>

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<sup>14</sup> Senate Community Affairs References Committee, *Out of home care* (Commonwealth of Australia, August 2015) at 10.4.

<sup>15</sup> In this regard, it should be noted that there is a clear link between family and domestic violence and homelessness with research showing that women and children escaping family and domestic violence are the prevailing face of homelessness in Australia. A study conducted in 2003–04, showed that children of women escaping family and domestic violence comprised two-thirds of child clients of Supported Accommodation Assistance Program services. Macdonald, 'Women and children experiencing family violence are the face of homelessness' (2007) 20(5) *Parity* 21. See also: H Aldemir, 'Rethinking the place of children in the nexus between domestic violence and homelessness' (2009) 22(10) *Parity* 48.

<sup>16</sup> Rhys Price-Robertson and Myfanwy McDonald, *Working with Indigenous children, families, and communities: Lessons from practice* (March 2011, CAFCA Practice Sheet).

<sup>17</sup> Honourable Tim Carmody, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) at 356.



5.6. At the same time however, Aboriginal and Torres Strait Islander people have complex needs and relationships with the family law system and child protection systems, which places added importance on appropriate services. The Victorian Inquiry into child protection found that:

The impact of disadvantage on a child's development and the history of forcible removal of Aboriginal children has resulted in Aboriginal families being suspicious of health and welfare services. This means that services designed to assist Aboriginal people must pay close attention to how Aboriginal people use the services and provide those services in a culturally competent manner.<sup>18</sup>

5.7. It should also be noted that research has identified that Aboriginal and Torres Strait Islander women experience additional difficulties in accessing appropriate supports, compared to their non-Indigenous counterparts.<sup>19</sup> These difficulties arise for a number of reasons, including remoteness and inability to physically access services, distrust of government and non-government agencies delivering social services and communication barriers. These obstacles need to be addressed in order to increase the opportunity for Aboriginal and Torres Strait Islander peoples to access help and this means tailoring services appropriately.

5.8. In the recent Federal 'Out of Home Care' Inquiry the Committee expressed the view that Aboriginal and Torres Strait Islander community controlled agencies "should be introduced across all jurisdictions and should be involved in the full range of family support services for Aboriginal and Torres Strait Islander people."<sup>20</sup> NATSILS concurs with this recommendation.

5.9. Thirdly, there is a need for early referral to services at the outset including parenting programs. Support for services must be referred through culturally appropriate pathways and supported through Aboriginal liaison and support workers. NATSILS is gravely concerned that due to high demand and reduction of funding long waiting lists are usual not only for parenting programs, but also supervised contact.

5.10. Fourthly, NATSILS is concerned about the accessibility to counselling and parenting programs in remote and regional areas. There is a need for support services to be local or for service providers to travel regularly to regional or remote areas. NATSILS clients in remote areas sometimes have to attend services which are 2-3 hour drive away or more, which may result in financial hardship and significant difficulties for parents with school going children and limited family support.

5.11. Finally, it is clear that access to legal assistance services is a critical part of providing the necessary support to enabling individuals and their children to escape family violence. Given the disproportionate rates of family and domestic violence in Aboriginal and Torres Strait Islander communities it is essential that Aboriginal and Torres Strait Islander peoples can access culturally competent legal assistance services such as NATSILS and Family Violence Prevention Legal Services

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<sup>18</sup> *Ibid.*

<sup>19</sup> M Willis, *Non-disclosure of violence in Indigenous communities Trends & Issues in Crime and Criminal Justice no. 405*. (Canberra, Australian Institute of Criminology, 2011).

<sup>20</sup> Senate Community Affairs References Committee, *Out of Home Care Report* (Commonwealth of Australia, August 2015) at 10.79.

(FVPLS). The ATSILS and FVPLS provide culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples, including those impacted by family and domestic violence. NATSILS recommends that further funding be provided to the ATSILS and FVPLS to enable Aboriginal and Torres Strait Islander peoples experiencing family and domestic violence to access the legal services they need.

## 6. Improving and Integrating the family law system for families with complex needs:

6.1. The following section will address the following two terms of reference concurrently:

*What opportunities exist for developing integrated responses to families with complex needs who use the family law system?*

*How could the approach taken to families with complex needs by the family courts be improved?*

6.2. As noted in the 'Introduction' it is well documented that Aboriginal and Torres Strait Islander people are more likely to have family law needs than non-Indigenous Australians, including for care and protection. However, the fact that the family courts are not meeting the complex needs of Aboriginal and Torres Strait Islander peoples has been borne out in research and in NATSILS experience. For example, the Indigenous Legal Needs Project that while 17.2 per cent of NSW participants identified an issue relating to custody or access to children and 16.2 per cent identified an issue relating to care matters, of these, very few (14.9%) sought legal advice in relation to the issues around family law and child protection matters.<sup>21</sup> Furthermore, statistics from both the Family Court and the Federal Circuit Court indicate the numbers of Aboriginal and Torres Strait Islander people accessing the courts are low.<sup>22</sup>

6.3. A recurring theme identified in the Indigenous Legal Needs Project was that processes are culturally intimidating and unresponsive to an Aboriginal world view. The formality of the courts is often intimidating for Aboriginal and Torres Strait Islander people and the historic association between the family courts and 'welfare' raises fears that children will be removed as a result of engaging with court processes. Furthermore, there are a range of common cross-cultural issues that arise for ATSILS clients including those arising from kinship relationships, the practice of customary law and the prevalence of gratuitous concurrence (the tendency to agree with the questioner).<sup>23</sup>

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<sup>21</sup> Fiona Allison et al, *Indigenous Legal Needs Project: NT Report* (2012) 89- 90; C. Cunneen and M. Schwartz, *The Family and Civil Law Needs of Aboriginal People in NSW* (2008) at 64.

<sup>22</sup> Aboriginal Family Violence Prevention Legal Services Victoria, *Improving accessibility of the legal system for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault* (June 2010, Policy Paper Series, Paper 3).

<sup>23</sup> North Australian Aboriginal Justice Agency (NAAJA), *Submission to the Australian Productivity Commission Inquiry into Access to Justice Arrangements* (2014) at p10.

6.4. Recent State inquiries into child protection systems in Queensland and Victoria have also raised concerns about the appropriateness and effectiveness of broader child protection agencies and child protection systems to meet the needs of Aboriginal and Torres Strait Islander children and families.<sup>24</sup> The Victorian Inquiry found that:

Outcomes for vulnerable Aboriginal children and their families are generally poor and significant improvement is required in the performance of systems intended to support vulnerable Aboriginal children and families. There is a need to develop specific Aboriginal responses to identify different ways to improve the situation of vulnerable Aboriginal children in Victoria.<sup>25</sup>

6.5. In NATSILS view developing an improved response by the family law court to meet the needs of Aboriginal and Torres Strait Islander will necessitate addressing a number of crucial areas. This section of the submissions deals with a number of barriers that Aboriginal and Torres Strait Islander people face in the family court system and makes recommendations by which these barriers could be ameliorated.

6.6. Language Barriers:

Language barriers are a key issue for Aboriginal and Torres Strait Islander peoples in their interactions with the family law system and child protection system. The language of the law and government/bureaucracy and its concepts are difficult to effectively interpret into Aboriginal languages and are very poorly understood.<sup>26</sup> This means that ATSILS clients often have a poor understanding of court processes and proceedings as well as a very limited awareness of their rights and what legal remedies they may have available. Furthermore, there is a shortage of well-trained interpreters in some Aboriginal languages and in some communities and it is sometimes the case that interpreters, although booked, do not turn up. These issues exacerbate the communication difficulties and hence a client's understanding and ability to partake in processes.

Consequently, more needs to be done to overcome the language barriers experienced by Aboriginal and Torres Strait Islander peoples in their interactions with the family law system. Addressing this barrier will require greater funding and resourcing of interpreters who are skilled in English and well trained in interpreting.<sup>27</sup> It also should involve greater collaboration between legal services and interpreter service. For example, NAAJA civil and Community Legal Education solicitors have worked with the Aboriginal Interpreter Service to provide plain English explanations of the process and concepts in child protection matters – 'harm', parental responsibility v daily care and control, 'neglect' so that they can be more easily understood and

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<sup>24</sup> The Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (February, 2012) at 46.

<sup>25</sup> The Honourable Phillip Cummins et al, *Report of the Protecting Victoria's Vulnerable Children Inquiry* (2012) at 272.

<sup>26</sup> North Australian Aboriginal Justice Agency (NAAJA), *Submission to the Australian Productivity Commission Inquiry into Access to Justice Arrangements* (2014) at p10.

<sup>27</sup> The issue is particularly pronounced in Western Australia. See: Lucy Martin, 'WA Chief Justice slams end to funding of Aboriginal interpreting service' *ABC News* (17 November, 2014); Kate Allingham and Dennis Eggington, 'WA Calls for a Statewide Aboriginal Interpreter Service' [2006] *IndigLawB* 52; (2006) 6(22) *Indigenous Law Bulletin* 6

interpreted.<sup>28</sup> Work such as this is crucial to ensuring that Aboriginal and Torres Strait Islander people understand the processes that are relevant to them and are able to participate appropriately.

#### 6.7. Cultural safety and supports:

Removing language barriers however, is not sufficient and more cultural supports need to be put in place in order to improve the interactions that Aboriginal and Torres Strait Islander people have with the family law system and child protection. The issue of cultural safety for Aboriginal and Torres Strait Islander people was raised prominently in the Out of home inquiry in which the Commission found that that keeping children out of the system was made more difficult by departmental officers having a poor understanding of Aboriginal and Torres Strait Islander cultural and family practices. In particular, the Commission's survey of the Child Safety workforce found that while 84 per cent of respondents felt confident that they had the skills to work effectively with Aboriginal and Torres Strait Islander children and families only 22 per cent of their Aboriginal and Torres Strait Islander colleagues agreed.<sup>29</sup>

6.8. In order to improve cultural safety and awareness in these systems NATSILS recommends:

- Aboriginal Liaison Officers/ support workers. The employment of Aboriginal and Torres Strait Islander liaison officers within Children's Courts and Family Law Courts in order to provide culturally appropriate support, referral pathways and act as a conduit for communication in a cultural sensitive manner;
- Greater recruitment and retention of Aboriginal justice workers;
- Increased cultural awareness training within courts. Comprehensive, regular and in-depth cultural awareness training should be held for individuals that are part of the family law justice (as defined) including, child protection workers and Magistrates, Judges and legal practitioners across each jurisdiction, including Independent Children's Lawyers;
- The establishment of Aboriginal and Torres Strait Islander hearing days;
- Cultural reports becoming an integral part of family reports and report writers instructed to report on cultural issues with community and elders consulted as appropriate.

#### 6.9. Access to Courts:

Ensuring that Aboriginal and Torres Strait Islander peoples have access to courts is another obstacle. Access to courts for family law matters is a major issue experienced by Aboriginal and Torres Strait Islander peoples in rural and remote Australia. For example, in the Top End of the Northern Territory, child protection matters are only heard in Katherine and Darwin. While there are buildings in many remote communities which are used for criminal court circuits, these court

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<sup>28</sup> North Australian Aboriginal Justice Agency (NAAJA), *Submission to the Australian Productivity Commission Inquiry into Access to Justice Arrangements* (2014) at 10.

<sup>29</sup> Honourable Tim Carmody, *Taking Responsibility: A Roadmap for Queensland Child Protection* (2013) at 361.

facilities are closed when court is not sitting on circuit. Similarly, in Central Australia care and protection matters are only heard in Alice Springs and Tennant Creek and there is no family court registry in Alice Springs. This means that aside from a few visits by the Federal Circuit Court each year, the bulk of appearances for family law matters are conducted over the phone. This can be an arbitrary and confusing experience for clients, and exacerbates other barriers that might exist - such as language or cultural barriers.

Furthermore, there are often no video link facilities in remote communities. In a number of remote areas where our members work the family court only sits once or twice a month and it is very difficult for clients to attend as they generally live long distances away. For example, it is the experience of ATSILS Qld that many people, especially in the Gulf, withdraw their instructions or do not proceed past the advice stage as the thought of having to travel to Cairns or Townsville at their own expense for a final hearing and/or having to appear via telephone in their community, whilst their lawyer is in Mount Isa and the Court on the coast, is simply too much for them to undertake.

6.10. These factors all contribute to the number of Aboriginal and Torres Strait Islander people that are unrepresented for care and protection orders, which NATSILS is gravely concerned about. In Central Australia for example, the Central Australian Aboriginal Legal Aid Service (CAALAS) provides a duty lawyer service on care and protection list days. Their duty lawyer compiles data on the number and nature of applications, and has observed that approximately 60% of matters over recent months have proceeded without a parent present. This suggests that the parents may not know about the proceedings (particularly an issue for remote parties), or have not been adequately supported by child protection to access legal assistance upon service of the application, or prior to service.

6.11. In order to address this issue rural, and remote areas require more family law court assistance including standardising and making more widely available the ability for electronic attendance.<sup>30</sup> In particular ATILS Queensland, highlighted that if circuit courts were available in particular areas (specifically Mt Isa) then this would increase the likelihood of parental attendance.<sup>31</sup>

6.12. Access to Legal Services:

As has been discussed elsewhere in this submission (see 5.11) culturally competent legal services are needed to ensure that Aboriginal and Torres Strait Islander people are able to have their family law needs met. This will require greater funding of the ATSILS and FVPLS.

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<sup>30</sup> See discussion about this from Chris Cunneen and his recommendation that audio visual links should be used only when concerns with this technology have been addressed. Chirs Cunneen and Melanie Schwartz, *The family and civil law needs of Aboriginal people in New South Wales: Final Report* (University of NSW, 2008) at 144.

<sup>31</sup> ATSILS Qld suggested that if a circuit to Mount Isa was available using the Courthouse, it would not only cover Mount Isa and the Gulf, but also places such as Camooweal, Dajarra and Boulia to the south.

NATSILS also suggests that when an Aboriginal and Torres Strait Islander person has been referred to child protection services, they should be advised to seek legal advice.<sup>32</sup> If Aboriginal and Torres Strait Islander people were advised to seek legal advice at their first interaction with child protection authorities, this would likely mean more Aboriginal and Torres Strait Islander people would seek early and/or ongoing legal assistance which may prevent issues from escalating unnecessarily and assist to address the high levels of out-of-home care among Aboriginal and Torres Strait Islander children.

Our member ATSILS, Central Australian Aboriginal Legal Aid Service (CAALAS) has noted that in the past the NT Department of Children and Families (DCF), had a practice of making warm referrals to CAALAS, which involved DCF actively putting parents in touch with CAALAS for legal advice. Unfortunately this warm referral practice has ceased, and CAALAS has since observed an increase in the number of care and protection matters that are proceeding without a parent present. It can be inferred from this that the warm referral practice increased levels of engagement by parents in care and protection matters.

#### 6.13. Legal Education:

Greater resourcing and focus on legal education would significantly improve the interaction of Aboriginal and Torres Strait Islander peoples have with the family law system and child protection by enabling better understanding of legal rights and the role of the law.<sup>33</sup> ATSILS Queensland's, 'Aboriginal and Torres Strait Islander family law pathways group' established in Cairns a few months ago, is a good example of the legal education that is needed in Aboriginal and Torres Strait Islander communities. The focus of the group is to provide information to the community about the family law process including options available to families to keep children within the family or community as opposed to removal by child safety. NATSILS recommends funding of this type of service in order to facilitate Aboriginal and Torres Strait Islander peoples' participation in the legal processes that affect their lives.

#### 6.14. Civil assistance:

There is an increasing awareness within the ATSILS that the resolution of civil law issues can be crucial to resolving family law disputes, including in child protection matters.<sup>34</sup> As noted earlier, homelessness and housing issues are common reasons why children are considered to be 'in need of protection'. The assistance of clients in making applications for priority housing and transfers and to obtain support letters from other agencies to strengthen their applications for housing can make a crucial difference in prevention and escalation of these issues.

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<sup>32</sup> National Family Violence Prevention Legal Services Forum, *Submission to the Family Law Council: Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (May 2015) at 8.

<sup>33</sup> The Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients* (February, 2012) at 41.

<sup>34</sup> The lack of civil law knowledge for Aboriginal communities was also made evident in the NSW Legal Needs project. Chirs Cunneen and Melanie Schwartz, *The family and civil law needs of Aboriginal people in New South Wales: Final Report* (University of NSW, 2008).

The following case study from our member North Australian Aboriginal Justice Agency (NAAJA) illustrates how the issue of unsuitable living conditions can lead to care and protection and that through the resolution of these types of issues, family units can be maintained.

**Case Study:**

*Mrs R cares for her six grandchildren. The Department of Children and Families (DCF) removed the grandchildren from Ms R's care because the family was living in crowded and unsafe living conditions. NAAJA's civil team represented Mrs R in the child protection proceedings. NAAJA's welfare rights team assisted Mrs R with an application for priority housing which and Mrs R was offered a house through Territory Housing's supported accommodation program. The court recognised the efforts that Mrs R had made and the fact that she now had suitable accommodation was a significant factor in reducing the length of the protection order.<sup>35</sup>*

## 7. Conclusion:

7.1. The history between Aboriginal and Torres Strait Islander people and the family law system and child protection is overwhelmingly negative. Consequently interactions with the family law system and child protection is often the cause of great anxiety and concern for Aboriginal and Torres Strait Islander people. The current system, for many reasons, frequently discourages open and effective working relationships with Aboriginal and Torres Strait Islander people and as identified there are a number of obstacles to rebuilding a more positive and culturally flexible system. Awareness of the issues experienced by Aboriginal and Torres Strait Islander people must be central to any consideration of reform.

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<sup>35</sup> North Australian Aboriginal Justice Agency (NAAJA), *Submission to the Australian Productivity Commission Inquiry into Access to Justice Arrangements* (2014) at 21.