

Children in out-of-home care in the East Kimberley: How the child protection system is failing Aboriginal communities

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Abstract

Since the introduction of child welfare legislation in Australia in the early colonial era, the separation of Aboriginal children from their parents has extended over several generations leading to significant displacement and intergenerational trauma. Today, there continues to be a significant over-representation of Aboriginal children in the welfare system, and Western Australia has the highest rate of Aboriginal children in out-of-home care nationally. This paper will discuss the Aboriginal and Torres Strait Islander Child Placement Principle and the difficulties associated with its implementation, particularly in the East Kimberley. The main conclusion drawn from this paper is that there is a need to rethink the interaction between child protection services and Aboriginal children, families, and communities. There is a need for culturally appropriate practices and consultation with communities to address systemic problems and disadvantages. Increased funding for Aboriginal-controlled organisations and a focus on strength-based rather than deficit-driven systems would go a long way towards addressing the over-representation of Aboriginal children in out-of-home care.

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Introduction

In the late 1980s a survey of 600 Aboriginal people¹ in the Kimberley found that one quarter of the elderly people and one in seven middle-aged people reported having been removed in their childhood.² The trauma resulting from these policies of separation and assimilation have produced lifelong effects, not only for the survivors of the Stolen Generations, but also for their children and their children's children. The enduring legacy of child separation and the psychological distress caused by child placement policies is intrinsically connected to the endemic rates of Aboriginal children in out-of-home care today. In Western Australia ('WA'), 49.5 per cent of children in out-of-home care are Aboriginal, despite making up only 5 per cent of the population.³

This paper argues that the Aboriginal and Torres Strait Islander Child Placement Principle ('Child Placement Principle') and the difficulties associated with its implementation, particularly in the remote East Kimberley, has led to the continued systematic disadvantage of Aboriginal children. The Child Placement Principle is a legal framework which ensures that Aboriginal children can maintain a connection to their culture, community, and customs. This is achieved through a placement hierarchy defined in child protection legislation across the Australian jurisdictions. In WA, when a child is placed in out-of-home care, priority is first given to the child's relatives, then within the child's community, then an Aboriginal family, and only then, if no other option is available, a non-Aboriginal family. To

¹ The term 'Aboriginal' is inclusive of Aboriginal and Torres Strait Islander people.

² Human Rights and Equal Opportunity Commission, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Report, 1997) ch 1 ('*Bringing Them Home Inquiry*').

³ Secretariat of National Aboriginal and Islander Child Care, *Family Matters: Western Australia Issues Paper* (Report, 2013) 6.

provide context, this paper will outline a brief history of the removal of Aboriginal children. This is followed by a discussion of the ‘best interests of the child’ principle and will explain how this fits in with the Child Placement Principle. The paper will analyse compliance with the Child Placement Principle and the complexities with its implementation in remote areas. It is clear that policymakers need to critically evaluate the way in which the current system operates and make changes that conform more closely with best practice guidelines. This should involve focusing on Aboriginal strengths and solutions rather than emphasising the narrative of deficit and disadvantage.

History of removal of Aboriginal children

The removal of Aboriginal children has a long history, underpinned by policy debates about the parenting capacities of Aboriginal people and belief in the need for institutional interventions to safeguard the wellbeing of Aboriginal children. Past child removal policies sought to ‘eliminate or assimilate Indigenous peoples in the making of a white Australian nation’.⁴ Successive governments since European settlement have forcibly separated Aboriginal children from their families. Under welfare legislation implemented in each state and territory in the 1940s, Aboriginal children had to be found to be ‘neglected, destitute or uncontrollable’ in order to be removed.⁵ The term ‘neglect’ was reflective of the systematic disadvantage and poverty that many Aboriginal people faced.⁶ As a result, its broad application resulted in the removal of large numbers of Aboriginal children.

Child removal policies were defined using Western understandings of child-rearing practices and did not consider Aboriginal approaches to parenting, resulting in courts failing to understand cultural differences and favouring the removal of Aboriginal children. This lack of cultural understanding persists today and Aboriginal family life is positioned as dysfunctional compared to Anglo-Australian ideals, which reinforces a paternalistic policy setting.⁷ Kimberley Stolen Generation Aboriginal Corporation Chair Mark Makar told the WA Parliament ‘the psyche has not changed in how you think of Aboriginal people since colonisation’.⁸ Mr Makar explained how current child protection policies and controls imposed on Aboriginal people continue to deprive children of their language, identity, and culture.⁹ The Bringing them Home Inquiry documents the effects of forcible removal and recognises how past laws and practices continue to compound the trauma and ongoing disadvantage Aboriginal people face.¹⁰ It acknowledges the failure of existing systems to reduce the number of Aboriginal children placed in out-of-home care.¹¹ Over two decades on from the Bringing them Home Inquiry, the removal of Aboriginal children from their families continues and Australia’s child protection framework fails to respect international human rights obligations to protect children and in particular Indigenous children, as will be discussed in the following section of this paper.

The best interests of the child

Article 3(1) of the *Convention on the Rights of the Child* (‘CROC’) states that in all actions concerning children ‘the best interests of the child shall be a primary consideration’.¹² Australia ratified the CROC

⁴ Sana Nakata, ‘The Re-Making of Nation and Indigenous Australian Children’ (2017) 76(4) *Australian Journal of Public Administration* 397, 397.

⁵ Bringing Them Home Inquiry (n 2) ch 1.

⁶ Ibid.

⁷ Laura Dunstan, Belinda Hewitt and Sana Nakata, ‘Indigenous Family Life in Australia: A History of Difference and Deficit’ (2019) 55(3) *Australian Journal of Social Issues* 1, 1.

⁸ Mark Bakar, ‘Selected Reading About Western Australia’s Stolen Generations’, *Kimberley Stolen Generation* (Web Page) <<https://www.kimberleystolengeneration.com.au/resources/readings/>>.

⁹ Ibid.

¹⁰ Bringing Them Home Inquiry (n 2) ch 1.

¹¹ Ibid ch 26.

¹² *Convention of the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3(1).

on 17 December 1991 and has incorporated treaty provisions into domestic legislation.¹³ In WA, the best interest principle can be found in s 7 of the *Children and Community Services Act 2004* (WA) which mirrors art 3(1) of the CROC. In order to determine the child's best interests, the legislation provides a number of factors be considered, such as the need to protect the child from harm and the capacity of the parents to provide for the child's needs and to protect the child from harm.¹⁴ An additional principle implemented into legislative frameworks in Australian jurisdictions, which applies specifically to Aboriginal children, is the Child Placement Principle. The principle grew from a grassroots community movement in the 1970s initiated by Aboriginal and Torres Islander Child Care Agencies.¹⁵ The movement sought to establish distinct child welfare legislation aimed at reducing rates of child removal and preserving children's cultural identity and was inspired by the success of similar legislation in the United States.¹⁶ In WA, the principle is found in s 12(2) of the Act.¹⁷ The Act states that in making a decision about the placement arrangement of an Aboriginal child, the principle to be observed is that any placement of the child must, so far as is consistent with the child's best interests and is otherwise practicable, be in accordance with the following order of priority:

- (a) placement with a member of the child's family;
- (b) placement with a person who is an Aboriginal person in the child's community in accordance with local customary practice;
- (c) placement with a person who is an Aboriginal person;
- (d) placement with a person who is not an Aboriginal person but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, the child's family.¹⁸

Child Placement Principle: Issues and compliance

The objective of s 12(2) of the Act is to enable children who are the subject of placement arrangements to maintain a connection with their family and culture.¹⁹ This is consistent with the CROC and the best interests of the child principle. In terms of compliance with the Child Placement Principle, according to the Productivity Commission, 68.7 per cent of Aboriginal children are placed in accordance with s 12(2) of the Act.²⁰ However, this figure is likely to be misleadingly high 'given the poor understanding of the principle and inadequate commitment to the efforts necessary for its realisation'.²¹ The Aboriginal Child, Family and Community Care State Secretariat notes there are no requirements about what steps must be taken in order to comply with the principle.²² Consequently, the principle can be viewed as being satisfied even if a child ends up in a placement with a non-Aboriginal foster carer because the welfare agency has seen to have worked through the hierarchy.²³ There are no practical guidelines regarding the implementation of the principle and as a consequence, decisions are made by individual caseworkers with no standardised test or consistency.²⁴ As a result, compliance with international norms and best practice is limited.

¹³ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process* (Report No 84, 28 July 2010) [3.14].

¹⁴ *Children and Community Services Act 2004* (WA) s 8 ('the Act').

¹⁵ Fiona Arney et al, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Policy and Practice Considerations* (Report No 34, August 2015) 4.

¹⁶ *Ibid.*

¹⁷ The Act s 12(2).

¹⁸ *Ibid.*

¹⁹ *Ibid* s 12(1).

²⁰ Senate Community Affairs References Committee, Parliament of Australia, *Inquiry into Out of Home Care* (Report, 19 August 2015) 20 ('*Senate Inquiry into Out-of-Home Care*').

²¹ Secretariat of National Aboriginal and Islander Child Care, Submission No 93b to Senate Community Affairs References Committee, *Inquiry into Out of Home Care* (June 2013) 8.

²² Senate Inquiry into Out-of-Home Care (n 20) 237.

²³ *Ibid.*

²⁴ *Ibid.*

The Senate Inquiry into Out-of-Home Care notes Australia's child protection system is too narrowly focused on legislative requirements to stop child abuse rather than focusing on overall outcomes for children and the child's best interests.²⁵ This risk-averse approach to child protection that favours removal over supportive strategies creates an overcrowded out-of-home care system which struggles to provide safe and stable placements for children with multiple and complex needs.²⁶ Child welfare advocate Frank Hytten says that 'Aboriginal children are being removed from their families unnecessarily and over-zealous child protection workers are misinterpreting Aboriginal culture'.²⁷ Systematic discrimination relating to misinterpretation across the cultural interface acts as an initial barrier to children being cared for on country by their communities. Removal of children from their families causes significant distress and trauma and there is a need for a more holistic approach that looks at the best long-term outcomes for children. This includes therapeutic models of care that address trauma and abuse in order to improve the wellbeing of children in out-of-home care.²⁸

The Aboriginal carer shortage: The youth dependency ratio and cultural child-rearing practices

The shortage of suitable Aboriginal carers and the challenge of recruiting Aboriginal people to become foster carers acts as a significant impediment to the successful implementation of the Child Placement Principle.²⁹ In June 2015, non-Aboriginal carers cared for 49 per cent of Aboriginal children in out-of-home care.³⁰ This shortage of kinship carers stems from the insufficient number of adults in communities who are able to provide care, systematic barriers, and the eligibility criteria that excludes some carers. Compared with non-Aboriginal children and adults, there is a high youth dependency ratio among Aboriginal people.³¹ This is calculated by dividing the number of children by the number of working adults. While the youth dependency ratio for non-Aboriginal people is 0.27, the ratio of Aboriginal children to the proportion of Aboriginal adults is 0.6.³² This has implications for the capacity of Aboriginal communities to meet the needs of children who require out-of-home care and to maximise adherence to the Child Placement Principle. There is a greater proportion of Aboriginal children to the proportion of adults who may be potentially available to care for them.

State and federal policy frameworks reveal an enduring and negative conceptualisation of Aboriginal family life.³³ For example, many Aboriginal carers provide multiple forms of care to children including foster care, kinship care, and care for their own children as well as informal care for biologically related or unrelated children.³⁴ Shared care-giving within families for children who are not biologically related 'does not fit with Anglo-centric assessment models based on concepts of biological nuclear family being the "safest" configuration'.³⁵ However, kinship care, which is care provided by relatives such as grandparents or close community members, is at the top of the Child Placement Principle hierarchy and is the most preferred option. There is a need for child protection services to develop culturally sensitive

²⁵ Ibid 74.

²⁶ Ibid 75.

²⁷ Gillian Bennett, 'Top NT Magistrate Says Placement Policy Neglects Human Rights of Indigenous Children' *Australian Broadcasting Corporation* (Sydney, 21 July 2013).

²⁸ Senate Inquiry into Out-of-Home Care (n 20) 125.

²⁹ Secretariat of National Aboriginal and Islander Child Care, *Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Western Australia 2019* (Compliance Review) ('WA Child Placement Principle Compliance Review') 6.

³⁰ Family Matters, 'What is the Aboriginal and Torres Strait Islander Child Placement Principle?', *Family Matters* (Web Page, 2 November 2016) <<https://www.familymatters.org.au/aboriginal-torres-strait-islander-child-placement-principle/>>.

³¹ Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Catalogue No 3238.0.55.001, June 2011).

³² Ibid.

³³ Dunstan, Hewitt and Nakata (n 7) 1.

³⁴ Arney et al (n 15) 11.

³⁵ Ibid.

practices and consult with Aboriginal communities to develop models informed by the needs and practices of Aboriginal communities.

Entrenched social and economic barriers to kinship care

Systematic barriers to the recruitment of Aboriginal carers include high levels of disadvantage experienced by Aboriginal people.³⁶ This includes structural risk factors affecting Aboriginal families, such as poverty and poor housing, which substantially account for the over-representation of Aboriginal children in the welfare system.³⁷ Relative and kinship carers are more likely to be disadvantaged than other types of carers yet they receive lower rates of financial reimbursement than foster carers.³⁸ The financial burden placed on kinship carers is unreasonable and unsustainable, particularly where the relative carer faces prior financial disadvantage. Chronic housing shortages and overcrowding can often lead to Aboriginal or kinship carers being deemed unsuitable, limiting adherence to the Child Placement Principle.³⁹

To address the systemic disadvantages Aboriginal communities face, funding and support is required to assist potential carers and families. In the East Kimberley, the Binari-Binya Yarrowoo organisation and the MG Corporation, representing the Miriuwung and Gajerrong people, have developed programs to generate employment opportunities as well as address ‘alcohol and substance abuse, support for victims of domestic violence, support for men to support women, educational programs, on-country programs for children and on-country healing’.⁴⁰ Family violence and drug and alcohol abuse tend to compromise the ability of parents to properly care for their children and feature prominently in Child Protection and Family Services (‘CPFS’) reports of children removed from their families. However, parents often have little opportunity to object to CPFS orders and are given limited opportunities and resources to address the root causes of their issues, such as alcohol and drug dependencies. Engaging Aboriginal communities to develop support networks and organisations to assist parents to better care for their children can help families avoid prolonged engagement with the child protection system and lower the rates of Aboriginal children in out-of-home care.

The intersection between criminal justice and the child protection system

High rates of imprisonment among the Aboriginal population, criminal records, and allegations of child maltreatment means many potential kinship carers are viewed unfavourably by welfare agencies.⁴¹ A barrier that can prevent family reunification in child protection matters is that all adult members of a household in which a child is placed are required to have working with children checks. Criminal offending would preclude an individual from obtaining a working with children check. This disproportionately affects Aboriginal people, who in WA are 17 per cent more likely to be imprisoned than their non-Aboriginal counterparts.⁴² Funding and policies which aim to reduce Indigenous incarceration would, in turn, enable more children to stay out of the child protection system. In one case at Kimberley Community Legal Services, a child was unable to be reunified with his mother because

³⁶ Ibid 10.

³⁷ John Fluke et al, ‘Placement Decisions and Disparities among Aboriginal Groups: An Application of the Decision Making Ecology through Multi-Level Analysis’ (2010) 34(1) *Child Abuse and Neglect* 57, 58.

³⁸ Senate Inquiry into Out-of-Home Care (n 20) 165.

³⁹ Ibid.

⁴⁰ Western Australian Coroner, *Inquest into the Deaths of Thirteen Children and Young Persons in the Kimberley Region* (Report, 7 February 2019) 37 [144] (‘*Kimberley Inquest*’).

⁴¹ Bennett (n 27).

⁴² Senate Standing Committees on Finance and Public Administration, Parliament of Australia, *Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (Report, 13 October 2016) [4.7].

he resided with two family members who had committed alcohol and family violence–related offences. In other cases, Aboriginal people with criminal records for issues such as not paying parking fines or not turning up to court appearances for unregistered cars preclude them from becoming carers.⁴³ Minor criminal offences in Aboriginal communities that occur due to financial barriers, such as being unable to understand or pay fines or vehicle registration fees, means there are fewer Aboriginal carers available. This acts as a barrier to compliance with the Child Placement Principle.

Children with complex needs in out-of-home care

Another difficulty associated with children in out-of-home care is the psychological demands and financial burdens of providing for children with high needs. Many children have complex needs, particularly mental health and behavioural problems stemming from their traumatic abuse experiences.⁴⁴ According to the Senate Inquiry into Out-of-Home Care, young children are generally placed in home-based care; however, older children with complex needs are more likely to be placed in residential care.⁴⁵ Anglicare, in its submission to the Out-of-Home Care Inquiry, acknowledged that for children with challenging behaviour, residential care becomes the ‘default’ option.⁴⁶ One example of this is as follows. Sophie was placed in a group home in the East Kimberley after being assaulted by her mother.⁴⁷ CPFS’s efforts to find an appropriate carer in accordance with the Child Placement Principle failed as Sophie’s proposed family carers did not have capacity to care for her. For example, one family member was assessed as unsuitable as her own children were in the care of CPFS. Sophie has Foetal Alcohol Spectrum Disorder, which

contributes to her exhibiting violent and eruptive symptomology that causes her to engage in violent criminality, self-destructive and aggressive oppositional defiant behaviour. This poses a threat to the physical, psychological and emotional wellbeing of [herself] and of others.⁴⁸

Sophie’s placement at the group home was characterised by absconding and engagement in criminal behaviour. As a result, Sophie was moved off country to a location over 3,000 kilometres from her family.

During her placements, Sophie has had limited contact with her immediate and extended family. Due to her complex needs, Sophie has been placed a significant distance from her country and community. It is clear that Sophie’s development of a sense of belonging has been compromised by being raised in out-of-home care, an issue outlined by Aboriginal Family Law Services WA.⁴⁹ Sophie’s primary language is Gurindji, which is spoken in the Victoria River region. By being placed off country, Sophie is geographically separated from her language and culture. This has inhibited her connection to family and community and her sense of cultural identity, a primary facet of the Child Placement Principle.

On 28 November 2019, the Children and Community Services Amendment Bill 2019 (WA) was introduced to the legislative assembly, which would amend s 12 of the Act to better implement the Child Placement Principle to enhance and preserve Aboriginal children’s connection to family, community, and culture.⁵⁰ The Bill amends s 12(2) as follows:

- (c) placement with a person who is an Aboriginal person who lives in close proximity to the child’s Aboriginal community;
- (d) placement with a person who is not an Aboriginal person but who—

⁴³ Bennett (n 27).

⁴⁴ Arney et al (n 15) 10.

⁴⁵ Senate Inquiry into Out-of-Home Care (n 20) 206.

⁴⁶ Anglicare Australia, Submission No 87 to Senate Community Affairs References Committee, *Inquiry into Out of Home Care* (November 2014) 15.

⁴⁷ Name changed to protect the child’s identity.

⁴⁸ Paediatrics Report from the client’s file.

⁴⁹ Aboriginal Family Law Services WA, Submission No 46 to Senate Community Affairs References Committee, *Inquiry into Out of Home Care* (October 2014) 5.

⁵⁰ Western Australia, *Parliamentary Debates*, Legislative Assembly, 28 November 2019, 2 (Simone McGurk).

- (i) lives in close proximity to the child's Aboriginal community; and
 - (ii) is responsive to the cultural support needs of the child and is willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community;
- (e) placement with a person who is an Aboriginal person;
- (f) placement with a person who is not an Aboriginal person but who is responsive to the cultural support needs of the child and is willing and able to encourage and support the child to develop and maintain a connection with the culture and traditions of the child's family or community.⁵¹

If applied in Sophie's circumstances, the amendments may mean Sophie would not have been moved off country where she struggles to maintain a connection to her culture and community. If passed, the amendments will mark a positive step towards the full implementation of the Child Placement Principle.

The continued impacts of intergenerational trauma and displacement on Aboriginal families

Aboriginal families and communities are working towards healing the trauma of removal as well as displacement from country, institutionalisation, and abuse.⁵² However, 'trauma, premature death and grief are experienced at disturbingly high rates in Aboriginal communities'.⁵³ The Aboriginal Legal Service WA surveyed 483 clients who had been forcibly removed and found that one third of those clients reported that their children had been taken away in turn.⁵⁴ Children born into communities that suffer from intergenerational trauma are more likely to experience prolonged exposure to trauma arising from illness, exposure to violence, family disintegration, and financial stress.⁵⁵ These effects of child removal policies are intergenerational and the experiences of dispossession impact the ability of families to seek or accept help from a system perceived to have caused or contributed to their problems in the first place.⁵⁶ The Senate Inquiry into Out-of-Home Care identified the reluctance of some Aboriginal communities to engage with those authorities responsible for past and present practices of child removal.⁵⁷ This affects people's choice to become carers for Aboriginal children in their communities and limits the effectiveness of the Child Placement Principle.

The Senate Committee is concerned that current child protection practices risk creating another 'Stolen Generation'.⁵⁸ It is acknowledged that the practices for child removal are different to that of previous generations; however, if adequate supports and services for Aboriginal communities and families are not provided the results will not be dissimilar. In order to achieve better outcomes for Aboriginal children living in remote areas such as the East Kimberley, the welfare system needs to be resourced to engage in culturally appropriate means, which will increase trust that child protection agencies are helping rather than harming Aboriginal children. For example, the Northern Territory government has funded the expanded use of interpreters to ensure families can engage in planning and reunification in their first language.⁵⁹ These types of initiatives increase trust and confidence that Aboriginal children and families are being supported in culturally safe ways. The out-of-home care system must be trauma-

⁵¹ Children and Community Services Amendment Bill 2019 (WA) s 12(2).

⁵² Kimberley Inquest (n 40) 48 [182].

⁵³ Ibid 11 [18].

⁵⁴ Aboriginal Legal Service WA, Submission No 127 to Human Rights and Equal Opportunity Commission, *Bringing Them Home Inquiry* 44.

⁵⁵ Kimberley Inquest (n 40) 48 [182].

⁵⁶ Arney et al (n 15) 3.

⁵⁷ Senate Inquiry into Out-of-Home Care (n 20) 239.

⁵⁸ Ibid 243.

⁵⁹ Government of Northern Territory, Department of Chief Minister, *Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023* (Plan Report, April 2018) 38 <https://rmo.nt.gov.au/__data/assets/pdf_file/0005/498173/Safe,-Thriving-and-Connected-Implementation-Plan-Web.pdf>.

informed and CPFS must empower communities to enter into genuine partnerships with Aboriginal communities to support children and their families.

Self-determination and community participation in decision-making processes

The principle of self-determination is an important aspect of the Child Placement Principle. The Act states that Aboriginal people ‘should be allowed to participate in the protection and care of their children with as much self-determination as possible’.⁶⁰ Self-determination involves ‘Aboriginal peoples’ right to determine and develop policies and services, and to participate in decisions that impact their children, families and communities’.⁶¹ However, the continuing tendency to identify issues and solution in terms of Western social norms and frameworks remains a major impediment to progress towards self-determination.⁶² Approaches to out-of-home care that fail to ensure community engagement, empowerment, and responsibility corrode the foundations for improving outcomes for Aboriginal children.⁶³

The Secretariat of National Aboriginal and Islander Child Care advocates for the introduction of ‘holistic, integrated Aboriginal controlled services’ across all jurisdictions.⁶⁴ Aboriginal community-controlled organisations are the most effective and best-placed to support Aboriginal children and families.⁶⁵ Policymakers see a deficit-driven rather than a strength-based system that recognises the capacity in Aboriginal-led organisations to achieve positive outcomes in their communities.⁶⁶ Maureen O’Meara, CEO of Aarnja, the Kimberley Regional Authority, says that millions of dollars have been ‘thrown’ at programs in the Kimberley that are set out to help Aboriginal people.⁶⁷ However, ‘families haven’t been consulted about the effectiveness of these programs on-the-ground or consulted as to whether the programs are needed at all’.⁶⁸ Between 2010 and 2019 the number of Aboriginal children in care in WA increased from 1,492 to 2,942.⁶⁹ Reversing this trend requires investment into programs which empower Aboriginal communities and provide opportunities to strengthen the family and community’s capacity to offer the best possible care for their children.

The lack of consultation and Aboriginal voices within the child protection system, as well as funding shortages for early-intervention programs and family support services, prevents communities from tackling the disproportionate rate of Aboriginal children in out-of-home care in WA. In 2019, WA continued to have the lowest level of expenditure on intensive family support services and family support services in relation to total child protection spending in Australia.⁷⁰ In 2017 to 2018, spending on family support services decreased from 6.7 per cent to 4.8 per cent.⁷¹ Following the Kimberley Inquest, CPFS funded 26 Aboriginal Community-Controlled Organisations to deliver placement

⁶⁰ The Act s 12(2).

⁶¹ Government of Western Australia Department of Communities Child Protection and Family Support, *Aboriginal Services and Practice Framework 2016–2018* (Framework Report, 2016) <<https://www.dcp.wa.gov.au/resources/documents/aboriginal%20services%20and%20practice%20framework.pdf>>.

⁶² Healing Foundation, Submission No 7 to Senate Community Affairs References Committee, *Inquiry into Out of Home Care* (20 October 2014) 4.

⁶³ Ibid.

⁶⁴ Ibid 9.

⁶⁵ Secretariat of National Aboriginal and Islander Child Care, Submission No 93 to Senate Community Affairs References Committee, *Inquiry into Out of Home Care* (25 November 2014) 7.

⁶⁶ Senate Inquiry into Out-of-Home Care (n 20) 245.

⁶⁷ Aarnja, ‘Aarnja calls for an Urgent Kimberley Aboriginal Led Response to Coronial Inquest’, *Aarnja.org.au* (Web Page, 11 February 2019) <<https://aarnja.org.au/news/2019/2/11/aarnja-calls-for-an-urgent-kimberley-aboriginal-led-response-to-coronial-inquest>>.

⁶⁸ Ibid.

⁶⁹ Government of Western Australia Department of Communities ‘Out-of-Home Care Reform’ (Web Page) <<https://www.communities.wa.gov.au/projects/out-of-home-care-reform/>>.

⁷⁰ WA Child Placement Principle Compliance Review (n 29) 5.

⁷¹ WA Child Placement Principle Compliance Review (n 29) 5.

services and supervision of Aboriginal children in out-of-home care in WA.⁷² This is a significant step towards the provision of culturally appropriate services; however, the lack of cultural competency persists in CPFS, which reduces the accessibility and effectiveness of the service for Aboriginal people.

Currently only one quarter of child protection and family support services in the East Kimberley are run by Aboriginal corporations.⁷³ The presence of Aboriginal-controlled organisations is therefore still clearly lacking. In October 2019, WA's Aboriginal Affairs Minister Ben Wyatt announced new appointments to the Aboriginal Advisory Council of WA.⁷⁴ The members represent a diversity of regions, expertise, and genders and play a role working towards better social, economic, health, and cultural outcomes for Aboriginal people incorporating Aboriginal views, voices, priorities, and aspirations. Included on the Council are five members from the Kimberley region.⁷⁵ These appointments represent a positive step toward developing an inclusive and contemporary partnership between regional Aboriginal community leaders and the WA government. However, at the community level, consultation with Aboriginal people on child protection challenges and reform is lacking.

Conclusion

There is a strong over-representation of Aboriginal children in the out-of-home care system in WA and there are several barriers to the implementation of the Child Placement Principle that inhibit its best practice. These issues include the lack of guidelines on the application of the Child Placement Principle as well as systematic problems such as the shortage of Aboriginal carers and the high levels of disadvantage they face. Additional challenges include the complex needs of Aboriginal children in out-of-home care, stemming from their traumatic experiences and the effects of intergenerational trauma on Aboriginal families. Other issues include Aboriginal communities' lack of trust in child protection services, as well as a strong emphasis on Anglo-centric models for assessing CPFS involvement in care for Aboriginal children, which fails to consider cultural differences in child-rearing practices. The main conclusion drawn from this paper is that the state governments must re-evaluate the interaction between child protection services, Aboriginal children, and their families and communities. To address systematic problems and disadvantages that face Aboriginal children in remote areas, increased consultation with Aboriginal communities as well as culturally appropriate practices are required. Increased funding for Aboriginal-controlled organisations and a focus on strength-based rather than deficit-driven systems would go a long way towards addressing the over-representation of Aboriginal children in out-of-home care. There is evidence of some positive developments, such as the amendments contained in the Children and Community Services Amendment Bill 2019 (WA) and the new appointments to the WA Aboriginal Advisory Council. However, in order to reverse the trend of increasing numbers of Aboriginal children being placed in out-of-home care in WA, further support for remote Aboriginal communities is essential.

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⁷² Education and Health Standing Committee, Parliament of Western Australia, *Learnings from the Message Stick: Report of the Inquiry into Aboriginal Youth Suicide in Remote Areas* (Report No 11 November 2016) 65.

⁷³ Government of Western Australia Department of Communities Child Protection and Family Support, 'Services in the Community' (Web Page) <<https://www.dcp.wa.gov.au/servicescommunity/Pages/Location%20of%20services.aspx>>.

⁷⁴ Government of Western Australia, 'Appointments to the Refreshed Aboriginal Advisory Council Announced', *Media Statements* (Web Page, 22 October 2019) <<https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/10/Appointments-to-the-refreshed-Aboriginal-Advisory-Council-announced.aspx>>.

⁷⁵ Government of Western Australia Department of Premier and Cabinet, 'Aboriginal Advisory Council of Western Australia', *WA.gov.au* (Web Page, 31 January 2020) <<https://www.wa.gov.au/organisation/departments-of-the-premier-and-cabinet/aboriginal-advisory-council-of-western-australia>>.

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