21 April 2017

2017 Legislative Review
General Law Unit
Department for Child Protection and Family Support
PO Box 6334
EAST PERTH WA 6892

By email to: ccactreview@cpfs.wa.gov.au

Dear Sir/Madam,

REVIEW OF THE CHILDREN AND COMMUNITY SERVICES ACT 2004 - SUBMISSION

Thank you for the opportunity to provide feedback to inform the development of proposals for consideration by Government in relation to the *Children and Community Services Act 2004.*

ABOUT THE WOMEN'S LAW CENTRE (WLCWA)

The WLCWA is a not-for-profit community legal centre funded by the Commonwealth Attorney General's Department to provide quality legal services to disadvantaged women in Western Australia. We provide free legal advice and casework in the areas of family law, family and domestic violence issues, care and protection proceedings and criminal injuries compensation for victims of family and domestic violence and/or sexual assault. We also provide community legal education and professional development training in our casework areas.

The WLCWA is a state-wide service. We undertake several outreach programs to specific target groups, including the assistance of Aboriginal women who live in remote communities in the Ngaanyatjarra Lands through a partnership with the NPY Women's Council. WLCWA also auspices Djinda Services, a partnership with Relationships Australia that provides a specific service to Aboriginal victims of family and domestic violence in the metro area.

In addition, the WLCWA hosts a coordinator for the Domestic Violence Legal Workers Network, the network being a collaboration of legal practitioners who work in the area of family and domestic violence.

We applaud that action has been taken in accordance with Recommendation 33 of the Law Reform Commission Report[1] as part of the WA Government's "Freedom from Fear" reform plan,[2] and look forward to further positive changes that will assist survivors of family and domestic violence in Western Australia.

Both WLCWA and Djinda Services made submissions previously in relation to proposed changes to the law relating to Out of Home Care in response to the CPFS consultation paper in 2016.[3] WLCWA welcomes now the opportunity to provide our views in relation to respond to the Review of the Children and Community Services Act Consultation Paper, December 2016 (**Consultation Paper**). We are also appreciative of our inclusion in the working group that will explore issues in Part 5 of the Consultation Paper.

Please find, accordingly, our submission below. In principle, we endorse as part of this submissions and recommendations made in relation to the Consultation Paper from:

- Aboriginal Legal Service of Western Australia (**ALSWA**);
- Djinda Services (**Djinda**)
- Aboriginal Family Law Services (**AFLS**) and
- Legal Aid of Western Australia (**LAWA**).

Unless otherwise stated, we mean the submissions to the Consultation Paper when referring to submissions of the above organisations throughout this document.

Please do not hesitate to contact the writer if there are any queries.

Yours sincerely,

Carrie Hannington
Managing Solicitor
WOMEN'S LAW CENTRE OF WA INC

[1] Law Reform Commission Final Report: *Enhancing Family and Domestic Violence Laws (June 2014).*
[2] Department of Child Protection and Community Services: *Freedom from Fear: Working towards the elimination of Family and Domestic Violence in Western Australia 2015*
[3] CPFS *Out of Home Care Legislative Amendments Consultation Paper*, November 2016 and Women's Law Centre of WA: Submission on out of home care reform 16 February 2016 (**WLCWA Out of Home Care Submission**).

- SUBMISSION -

1. Introduction

The WLCWA supports any amendments to the *Children and Community Services Act (WA)* (**Act**) that will uphold the rights of women and children, promote their safety and help families to stay together. We are, however, deeply concerned about the dysfunction that we believe is currently evident in the child protection system in Western Australia, and believe this is reflected by an unacceptable number of children in care in Western Australia. We note particularly the high proportion of these children who are of Aboriginal and Torres Strait Islander[4] origin and who are in care as a result of family and domestic violence.

We agree with other organisations that have identified substantial dysfunction in such areas as poor resources, inefficient use of resources, inconsistencies and delays in court processes. Ultimately we believe that fundamental changes are necessary, both philosophically and practically, and that the entire system (and its current priorities) could well do with review and overhaul. Nowhere is this more apparent than with respect to Aboriginal children, where an apparent failure to fully understand issues of culture and identity have pushed matters into crisis.

We believe that workers employed by the Department for Child Protection and Family Support (**CPFS**) are on the whole committed and well-intended, but hampered by inappropriate ideologies, lack of training and resources. We suggest that a multi-organisational and intergovernmental approach that emphasises early intervention, community participation and support for families and promotes cultural relativity and access to justice would go some way to alleviating current pressures on the system. Together with the prioritisation of concepts and measures that focus on this approach and re-drafting of basic principles, we believe that positive change is possible. We also believe that the matters addressed in the consultation paper (**Consultation Paper**) have potential to foster this approach.

It is inevitable that additional resources may be required. Whilst these may incur costs, we suggest that there is potential for substantial social return on investment. There is more than enough evidence with regard to adverse long term effects for inadequacies in child protection and out of home care in terms of secondary trauma, mental health issues, substance misuse, suicide, physical health problems, delinquency, family and domestic violence, criminal offending and incarceration. All of these come at great cost to the community in both emotional and monetary terms.

We don't believe that any proper analysis has been conducted in relation to savings made as a result of appropriately targeted expenditure on the child protection system. We therefore recommend at the outset that such an approach be adopted as matter of urgency.

Recommendation 1

That an analysis based upon social return for investment in the child protection system in WA should be considered urgently as a prospective matter of practice.

[4] Aboriginal and Torres Strait Islanders are referred to as "Aboriginal" throughout this submission.

WLCWA has provided responses to the issues raised in the consultation paper. Organisations were also invited to comment on matters not specifically addressed within the same. In addition to the above recommendation, therefore, we would like to make some other general recommendations that we believe will be essential to the success of any amendments to the Act. These are as follows:

1.1 An interagency approach

There are a number of issues that are intricately connected with a need for child protection. These include (but are not limited to):

- Housing and homelessness. In our experience, protection orders are frequently made not because a woman lacks capacity to care for a child but because they are in a situation where they have nowhere to live.
- Family and domestic violence – which in turn often leads to homelessness.
- Alcohol and substance misuse and abuse by parents and others in houses where children are present.
- Mental health problems.
- The intergenerational trauma as frequently experienced by Aboriginal people.

We remain strongly of the view that law alone cannot decide upon the management of children identified as needing care and protection, let alone one piece of legislation. A multi-agency approach, recognised as effective in extensive studies and documentation, should not only be adopted but enshrined in the principles of the Act (s.9). We refer to this further at 1.4 of this submission in recommending that a more therapeutic based approach be adopted as part of court procedure.

Although the Signs of Safety process purports to adopt an interagency approach (that is reflected in proposals under s.143 of the Act and care plans) we are of the view that as policy only these measures do not go far enough. We believe that at a minimum the principles in the Act should contain provisions to the effect that the best interests of a child are served by a holistic, multi-agency approach and collaboration.

Recommendation 2

(a) That the legislation recognise the need for child protection as part of a complex range of existing issues requiring combined fields of expertise and support.
(b) That principles of the Act include a holistic approach.

1.2 A preventative approach that uses early intervention

In 2009 all Australian governments agreed on a National Framework for Protecting Australia's Children 2009-2020 that called for investment to be increasingly directed to prevention. This was echoed in Western Australia in the CPFS paper "Building a Better Future"[5] (**Building a Better Future Paper**) by placing "prevention" as an important first step in a hierarchy of measures.
We note with alarm, however, the statistics that are quoted by ALSWA in their submission – namely that CPFS spends approximately 70% of its budget on child protection and only 30% on preventative measures and early intervention.

[5] WA Government Department of Child Protection and Family Support: *Building a Better Future*: Out of Home Care Reform in Western Australia. April 2016; page 14

We maintain that prevention should form part of an effective interagency approach where a Protection Order (**Order**) is likely. Early intervention services should be designed to ameliorate the inequities associated with the structural disadvantage experienced by these families who predominantly come from lower-socio-economic groups. We further believe that this should be reflected legislatively in principles, and in greater power bestowed on the court to supervise requirements at the early and interim stages of an application for an Order by CPFS. We address this further in relation to proposals under s.143 of the Act (**s.143 Proposals**).

It is worth noting also that literature on grief and loss document the phenomenon of the replacement child and repeat pregnancy where a child is lost to a biological parent. Given the high proportion of infants and children under 4 years of age who are coming into care, it appears highly likely that their mothers remain in this cycle; hence a cascading effect with subsequent pregnancies, continuing dysfunction and removal of these children as well – with additional stress on the system.

This situation cannot be assisted by a dearth of early intervention and supportive treatment programmes. We believe that there is not only an ethical imperative to be addressed for the mental health of these mothers and their children, but also a social investment imperative.

Recommendation 3

(a) That in directing a holistic approach, principles of the act emphasise a need for early intervention and prevention.
(b) That any changes to legislation attract commensurate review of support services available, with consideration given to the establishment of an interagency body dedicated to the assistance of families where there is a need to take children into care.

1.3 An approach that adopts cultural relativity as a central theme

We note the strong submissions of AFLS, ALSWA and Djinda Services that make references to the 'western centric' nature of the current child protection system. WLCWA is highly supportive of the proposition that the WA child protection legislation adopt provisions from the Queensland legislation requiring that services provided meet cultural needs of the child. We agree that this should go further to include a revision of the system with respect to Aboriginal children 'from the ground up' using appropriate cultural paradigms/values and with decisions made by Aboriginal people.

Further, we believe that the same principle needs to be applied widely to any children that come from an Aboriginal *or* culturally and linguistically diverse (**CaLD**) background. We note at this point the lack of any reference to CaLD children in the Consultation Paper and raise this as an issue of concern – especially given recent statements by our Prime Minister to the effect that Australia is "the most multi-cultural country in the world." Any actions or proceedings involving children from ethnic backgrounds should involve those who have not only expertise in child protection but also knowledge of cultural understanding, community/country of origin and other relevant matters that may affect children specifically such as post-migration trauma, refugee status or separation from country and family.

Ultimately, such an approach forms an important part of community ownership. Legislation should reflect this.

Recommendation 4

That there be included in the Act principles with regard to children requiring out of home care that reflect:

(a) community ownership and participation; and
(b) appropriate culturally relevant approaches and paradigms.

1.4 A conference based and less adversarial approach

We refer to the submission of LAWA in 2012[6] in relation to conference based decision making processes, and observe the success of this methodology in other jurisdictions. We agree with the reasoning of LAWA in that respect. Whilst recognising that significant strides have been made via the Signs of Safety process, we believe this needs to be taken further and integrated more within the processes of the Children's Court.

We refer to the submission of ALSWA and references to the alternative of therapeutic judicial review models in which a helpful description is provided of models in Victoria (the Koori Care and Protection List and Family Drug Treatment Court), and in other jurisdictions such as Arizona. We would strongly support the introduction of similar approaches/initiatives in WA, as they would encompass the early intervention and holistic, multi-disciplinary approaches already referred to. There is also potential to streamline such an approach with processes in the Family Court.

We further maintain that an inquiry (as opposed to adversarial) model is better equipped to explore creative solutions to the complex problems that present in child protection matters - particularly at an early stage - as is a therapeutic rather than strictly 'legal' approach. We believe this serves children's best interests and has the potential to achieve better outcomes. We support both Recommendations 1 and 2 in LAWA's 2012 submission.

Recommendation 5

That serious consideration be given to a fundamental overhaul of the court system in relation to child protection matters that incorporates:

- Inquiry and conference based processes;
- A multidisciplinary, therapeutic approach and
- A minimisation of adversarial processes.

1.5 Adequate legal representation

We agree with observations from other organisations that refer to the frequent imbalance of power between CPFS and its officers and parent/relative respondents. This is also our experience, in both Signs of Safety procedures and court processes.

Access to justice and the provision of accurate, skilled and culturally appropriate legal advice and representation is also essential not only to ensure the upholding of legal and human rights, but is important for the conservation of resources and appropriate use of court time. We have known women to agree to Orders when they have had no apparent understanding of what they are signing, and then approach us for a revocation of those orders.

[6] Submission in relation to Review of the Children and Community Services Act by Julie Jackson, Acting Director, Family Division, pages 6-8 and Recommendation 1.

Whether this ultimately meets with success or not, there is potential for a large number of resources to be required of both CPFS and the Children's Court. We believe that a requirement for no Order to be made by consent unless legal advice has been provided to relevant parties should be properly included within the Act; it is not enough to state within the principles that decisions be simply explained once they have been made. The allocation of resources by CPFS to assist respondents in legal representation is another potentially socially beneficial and cost saving measure.

We also believe that a number of Orders could be avoided if legal advice were combined with attention to applications at an early stage (see our comments on early intervention and s.143 Proposals). Grants of Legal Aid are not always made to potential trial litigants. The prospect of court and cross examination is daunting for an unrepresented litigant with poor grasp of the issues. In our experience, litigants sometimes, 'give up,' resulting in Orders being made that could have been avoided. This adds to the already high level of children in care, and places additional stress on CPFS.

Once an Order is made then often there is scant opportunity for input into care plans (which are not enforceable anyway) which may do little to address reunification or even contact. We believe this state of affairs to be tantamount to a basic denial of human rights, and address the same later in this submission.

Recommendation 6

(a) That CPFS lend support to greater funding for representation of respondents to CPFS applications for Orders in the Children's Court.
(b) That the Act contain a requirement that no Order be made in the absence of evidence that independent legal advice has been provided.

1.6 . Permanency Planning

In the Building a Better Future Paper a number of both policy and legislative changes were canvassed, mostly aimed at expediting the removal of children on a more permanent basis on grounds that this purportedly creates greater stability for children. We note that there is no mention of the latter in the Consultation Paper, or of permanency planning, or of how it is now intended to implement any proposed legislative changes. This is of concern.

Past practices concerning ATSI children well document the devastating effects of forced and permanent removal and separation from families. The fifties, sixties and seventies also saw adoptions generally promoted as a means of social engineering in western nations to alleviate the welfare system and fulfil the needs of childless couples.[7] The adverse effects on children, biological and adoptive parents of adoptions from that era are also documented; both of these examples must serve as a potent reminder that separating children from family in any manner is a matter that should never be viewed a 'convenient' solution.

WLCWA remains of the view that any framing of the legislation which promotes a belief that permanency planning (and consequent long-term orders, special guardianship or adoption) somehow provides the best solution to complex situations where children are at risk is flawed and misguided, and inherently harmful to the `best interests' principle. Long term or permanent

[7] See Caroline Thomas *"Adoption for looked after children: messages from research: an overview of the adoption research initiative*," UK 2013, p.34

removal from family is in itself a form of serious potential psychological damage that needs to be balanced carefully with perceived and actual risks to which a child is subject; it matters not how competent and well-meaning are the potential carers.

We note the summary by Gerry Moore that is quoted in the ALSWA submission to the Consultation Paper[8] and agree with his assertion that permanent identity of a child cannot be changed by permanent care orders, and that severing bonds with culture and culture is tantamount to an abuse of human rights. Whilst we agree that this has particular and cogent application to Aboriginal children,[9] we believe the same reasoning can be applied to *all* children to a greater or lesser degree. A recognition of the dangers of permanent removal have been acknowledged by Governments not only by the Apology to the Stolen generation[10] but also by Governments for the practises of forced adoptions in previous decades[11] which acknowledged the harm done through any process which disaggregates a child from meaningful relationships with family and community.

As such, we reaffirm the recommendations made in our previous submission made on 16 February 2017[12] in relation to out of home care reform, as well as those of Djinda and AFLS. Long-term care orders should be a measure of last resort and this should be included within the principles of the Act.

We remain particularly mindful of the effects of permanent removal of children from Aboriginal families, and support those parts of the submission by AFLS that pertain to this issue. We believe that there is much to be said for consideration of the abolition of Until 18 Orders with respect to Aboriginal children. At the very least, such Orders should only be made for *any* child as a matter of absolute last resort, and the legislation needs to make this clear.

We believe that a reduction of long term orders for out of home care can be achieved through early intervention, and also by addressing other Orders currently available under the Act. To this end we suggest that consideration be given to:

(a) Greater utilisation of Subdivision 3 Protection Orders (Supervision). We agree with ALSWA that these are underutilised, and should be capable of extension more than once. The current limitation period of three years is not sufficient to enable parents to address the complex issues that surround the making of the Orders. The proposed multi-agency and early intervention approach would make this more of a reality, particularly if there is greater scope for including provisions within Orders and for monitoring and review by the Court.

(b) The same observations apply to extension of time regarding Subdivision 4 Protection Orders (time-limited), which should be increased to a maximum of three years, with multiple extensions possible

In relation to any orders that remove a child from family, even on a contemplated short term basis, the 'no order' principle in s.46 should be strengthened and the principles expanded to make reunification an immediate goal, with obligation on the part of carers to facilitate contact.

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[8] SNAICC National Voice for Children: *Achieving Stability for Aboriginal and Torres Strait Islander children in out of home care*; policy position statement 2016

[9] This not only because of the particularly cogent dangers associated with disconnect from culture and country, but also because of the history of colonisation and forced removal – see report "Bringing them Home."

[10] February 2008, transcribed http://www.theaustralian.com.au/news/nation/full-transcript-of-pms-speech/news-story/3143dac870aec0145901e575ae79cc3b

[11] The Hon Julia Gillard MP: Prime Minister National Apology for forced adoptions 2013

[12] WLCWA: response to proposed Out of Home Care reforms; 16 February 2016. (WLCWA OOHC 2015 Submission)

Recommendation 7

We propose the following legislative amendments:

a) Within principles, that a child:
   i. should only be removed from their biological parents as a last resort, and only if there is no other feasible way to protect them from harm;
   ii. a child should not be placed with non-biological family if there is no other feasible way to protect the child's best interests;
   iii. Where a child is placed in foster care, reunification must be the primary objective.

b) Principle 16 should be made mandatory to read: *"a child who has been taken into care **must** be given adequate support and encouragement to maintain contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life."*

Long term orders (Subdivision 5: Protection Order [until 18]) should be used only as an absolute last resort and safeguarded by the Court needing to be satisfied that certain requirements have been met. We highly are in favour of regular review of the progress of long-term orders, or participation and monitoring by external bodies and the courts, and of review by the courts.

WLCWA further shares concerns with ALSWA about the apparent view within CPFS that once a long-term order is made, there is no need to pay close attention to reunification or even consider it. It has been our experience that, in fact, reunification is then seen as possibly harmful (or at least confusing) to the new 'bond' with the long term carers. We believe this concept is also fundamentally flawed. If children must be placed in care, reunification must be the paramount consideration, and reunification planning needs to start immediately. Detailed provisions for how reunification is to occur need to be included within s.143 Proposals and care plans that are made with full parental participation and carefully explained. These should be subject to external review and scrutiny by the courts (see at 1.7 of this submission).

Recommendation 8

Amendment of s. 58 to the effect that Protection Orders (Until 18) should be used only as an absolute last resort, and that an application for such an Order may not be made unless:

a. (with respect to a child under 5 years of age) leave has first been obtained from the court;
b. the application is supported by evidence demonstrating the existence of exceptional circumstances, such as would justify the making of such an order;
c. reunification has been attempted genuinely at least once, and has not been successful;
d. the carers have shown a commitment to maintain the child's connection with their biological family; and
e. in the case of an ATSI child, CPFS have complied with principles set out in sections 12, 13 and 14.

1.7. Review of s.143 proposals, care plans and post order arrangements

1.7.1 Proposals under s.143

WLCWA is concerned at the lack of scope for substantive matters – such as reunification arrangements – to be fully enquired into and evaluated at an early stage in the proceedings. A series of adjournments frequently use up court time, resulting in a "clogging up" within the Children's Court of pre-order proceedings whereas we believe that the opportunity could be used for early intervention and addressing of matters that could substantially assist to resolve matters earlier.

One way in which the situation could be improved is through greater attention and scrutiny to s.143 Proposals, which purport to prescribe actions and priorities once the child is taken into care. In our experience there are a number of serious issues with these reports in that:

- Neither the Act nor Regulations prescribe any matters that must be included in a s.143 Proposal, with the result that as a result such reports are often haphazard and inconsistent.
- Reports frequently emphasise irrelevant considerations, and don't emphasise highly relevant ones.
- Resources are often lacking with respect to preparation of proposals, meaning that they are done hurriedly or that court processes are put off purely on grounds of a s.143 Proposal not having been finalised.
- S.143 Proposals are seen as something that 'has to be done' and not as a document with content of considerable potential significance.
- Caseworkers are not required to consult with other agencies or stakeholders in preparing s.143 Proposals, so the contents are formulated entirely from the perspective of CPFS.
- CPFS caseworkers sometimes appear untrained and inexpert in preparing s.143 Proposals;
- Clients all too frequently present with s.143 Proposals that do not appear to have been explained and that they do not understand. Given the importance of the issues at stake, this is highly unsatisfactory.
- There is no avenue for monitoring or review of a s.143 proposal – yet once it goes in to the court, it supposedly provides a legal guide to which judicial officers can refer in the event of reports being submitted of further proceedings taking place.

The same observations can be made with respect to care plans that relate to provisional Orders. In short, both are often 'tokenistic' and of no real assistance to the court or parties. This is a waste of resources.

We note that ALSWA have described particular concerns in relation to s.143 Proposals that are written for Aboriginal children. We share these concerns, and our staff have reported similar experiences and we support the recommendations of ALSWA made in this respect.

We believe that proposals which thoroughly canvass all relevant issues have potential to provide a sound written tool that can outline responsibilities of all parties and stakeholders as well as fully inform the court. In turn, this should provide a sound basis for judgement as to whether making an order is the only viable alternative (s.46) and as to whether making a long term order is the only avenue open (see previous proposals for reform).

We further believe that a wider scope for input into s.143 Proposals would allow for the holistic, multidisciplinary approach we have favoured, and would allow for greater community, family and

parental ownership. An initial review could be undertaken by a community body such as has been proposed in relation to appointment/revocation of foster carers. This would also give parents more confidence in CPFS and in policy and process, which in turn would lead to a better relationship between clients and CPFS.

Importantly, attention and monitoring at the s.143 Proposal stage would provide clearer guidelines to judicial staff and others, with a potential to achieve outcomes that prevent later trials and extensive associated CPFS and court time.

Recommendation 9

The section referring to s.143 Proposals should be overhauled and made far more comprehensive, with the inclusion of:

a) Prescribed terms based on sound principles, which emphasis how the child's best interests will be met.
b) An emphasis on contact and reunification, with detailed provisions as to how this will be achieved.
c) Input to the report by concerned stakeholders such as child health, counsellors, drug and alcohol authorities and the WA Housing Authority.
d) Compulsory independent advice having been obtained prior to acceptance by the court of a s.143 Proposal.
e) An avenue for expeditious review by an external body such as has been proposed in relation to appointment of foster carers.
f) Opportunity for review and amendment by the court.

1.7.2 Care plans (Part 4 Subdivision 3)

In the experience of staff at WLCWA, CPFS does not adhere to the provisions of s.89 of the Act or the Care Planning Policy[13] and it is not infrequent for Care Plans that have not been made until well after an Order has been made, or have never been reviewed. Sometimes it is difficult to obtain plans form CPFS caseworkers, and there are instances where once obtained, the mother of a child appears never to have seen a document. Procedural requirements, in our view, need attention.

Neither legislation or policy contains specific requirements, and inclusion of these would well bear further discussion. Care plans attached to final Orders should include the same elements as for s.143 Proposals. In addition:

Recommendation 10

(a) Standard terms and provisions should be included care plans, with an emphasis on reunification as an overarching objective.
(b) Plans should detail how reunification is to be achieved.
(c) Plans should be required to be structured to monitor progress with contact and reunification, and to address obstacles.
(d) Cultural Plans should be included as an integral part of care plans for Aboriginal children, and with respect to children from CaLD backgrounds.

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(e) Governance of post-order arrangements should include an ongoing review of therapeutic and rehabilitative support and services for both carers and biological parents.

With respect to cultural plans, we note the observations of ALSWA. We have had similar experiences, and support those concerns.

1.7 Enforceability of final orders and care plans

It is of concern to us that however comprehensive the provisions in a care plan and inclusive of principles, the Court has no power to enforce them. In fact, the Court is effectively limited to a consideration of whether a child is in need of protection, and if so then what type of order should be made. This means that whilst there is no proper auspicing by the court at preliminary/early intervention stages, but no scope either for the court to monitor and supervise an Order once it has been made.

We believe that as a result of the court's lack of capacity in this manner, the trial listing rate (and pre-trial conference/trial rate) is unduly high. We see a lack of faith that CPFS will adhere to the principles – because there is no requirement to put these in any care plan attached to a final Order. Once an order is made, recourse is not straightforward. The only avenue apparently open to many parents is to try and stop an Order being made in the first place (hence time that could be spent in early planning is often spent instead arguing about sequential adjournments) and a hope that CPFS will change their mind. Given the limited opportunities for input into care plans post Order and the even more limited opportunities for review (see below), no wonder the trial listing rate is so high.

This is an unproductive state of affairs, and another reason behind the waste of a time period in the early stages that could be valuable in achieving better outcomes. WLCWA agrees with ALSWA in the proposition that final orders should be reformed by making amendments that impose conditions relating to such matters as placement, contact and reunification. This would achieve greater parity also with current scope regarding enforceability of Family Court orders in WA.

We draw attention to the very limited avenues currently available, namely:

i. Internal review by CPFS (Act s.90);
ii. Application to the Case Review Panel (ss 92 and 93); and
iii. A right of appeal to the State Administrative Appeals Tribunal (SAAT)

We are also sceptical regarding the number of care plans brought to review the scope for actual change and the degree of impartiality, as we have rarely seen a care plan changed at either stage 1 or 2 above. Review by SAAT is a daunting prospect for a client who has little grasp of the contents or implications of a care plan and – as we have noted – litigants sometimes fail to obtain legal representation. It further concerns us that SAAT does not possess expertise in relation to child protection matters, particularly with regard to ATSI children, CaLD children or children with special needs.

Recommendation 11

(a) The Children's Court should have the power to make final orders in respect of placement, contact and procedures for reunification
(b) That a right be created for all parties to apply to the court:
    i. To enforce a provision
    ii. To review a provision
(c) That an appeal lie directly to SAAT in relation to a decision of a magistrate in (b).
(d) The Case Review Panel be abolished and additional Children's Court magistrates be appointed to assist in additional work associated with the new responsibilities regarding care plans.

We believe that introduction of the above would have a positive and cost effective value in leading to greater confidence in and better relationships with CPFS, with parents more readily agreeing to orders to which they know there will be some recourse if conditions are not fulfilled.

1.8 Representation of Children

In our experience, children are infrequently represented in the Children's Court in relation to protection proceedings. It concerns us that this is not addressed in the Consultation Paper, including in the context of interaction between the Family Court and the Children's Court of WA.

We are concerned that s.148(4) whereby a child representative can act on a child's instructions where a child has "sufficient sufficient maturity and understanding to give instructions" or "wishes to" may not always be consistent with acting in the best interests of children according to s.7. We refer to the LAWA submission made in 2012 Recommendation 8, and support arguments outlined in the relevant discussion. We particularly emphasise the essential requirement of representation 'in the child's best interests' where appropriate.

We believe that there is much to be said for compulsory representation of children as outlined in the submission by AFLS at pages 18 to 17 and strongly agree that lawyers representing Aboriginal children should be lawyers who have experience and cultural competence working with Aboriginal people. At the very least, the powers of a child representative should be commensurate with those of the Independent Children's Lawyer in the family court legislation, in the interests of streamlining procedures between those two courts.

In addition to legal representation of children, we support suggestions by agencies as to the statutory creation of the role of "children's advocate." Such a person could make representations to the Court as to the instructions of children, and would complement the role of lawyers making representations 'in the best interests" of children.

Recommendation 12

a) That s.148 be reworded and strengthened to make the representation of children compulsory where this would be in the child's best interests, and to require children's legal representatives to inform the court as to the best interests of the child.

b) That consideration be given to creation of the role of child advocates and an outlining of their responsibilities within the Act.

1.9 Children from Culturally and Linguistically Diverse (CaLD) backgrounds

We have already voiced concerns that the Consultation Paper does not make any mention of CALD parents or children. It would further appear that the CPFS Annual Reports do not report specifically on the data regarding CaLD children. We understand that the most recent document on the CaLD Services Framework[14] has not been updated since 2013 and the figures on CaLD children entering care are:

- 192 CaLD children at 30 June 2011;
- 233 CaLD children at 30 June 2012; and
- 234 CaLD children at 30 June 2013.

Whilst these figures are considerably lower than the rate of Aboriginal children getting taken into care, we are not convinced that they truly reflect the situation. We note the recent National Research Audit undertaken as part of the National Framework for Protecting Australia's Children 2009-2020 which identified that 'there is limited research regarding cultural issues within statutory child protection services in Australia' and proposed that a future research priority should focus on families from CALD backgrounds. [15]

In our experience, CaLD women who are victims of family and domestic violence are often extremely hesitant about coming forward, given their frequent isolation from community and language barriers. This applies to both women whose partners are also CaLD and women who have Australian partners; in fact, we are concerned that what we are seeing in the course of our assistance to victims of family and domestic violence (**FDV**) is only the 'tip of the iceberg.' If we are right, then this provides further justification for urgent research to be conducted into the needs of CaLD children, especially those affected by FDV.

We note a number of views expressed by AFLS, ALSWA and Djinda in relation to forcing non-Aboriginal frameworks upon Aboriginal people, such as:

- Separation from country and culture of origin;
- Potential loss of connections and identity;
- the importance of extended family within a child's life; and
- Different concepts of parenthood that may extend to other family members and different child-rearing norms.

We are also concerned that observations made by ALSWA regarding the appointment of carers by caseworkers who seem to have no understanding of the differences between Aboriginal people in different places in Australia could very well apply with equal adverse consequences to CaLD children.

We suggest that a range of considerations need to be taken into account regarding CaLD children, including cultural needs, effects of migration/refugee status and possible isolation from family and culture. For this reason we believe that the establishment of expert panels set up as a result of this review should comprise experienced representatives from CaLD communities wherever this is appropriate. These are included in our recommendations below:

[14] CPFS: Culturally and Linguistically Diverse (CaLD) Services Framework, December 2013

[15] Kaur, J (2012). Cultural Diversity and Child protection: A review of the Australian research on the needs of culturally and linguistically diverse (CaLD) and refugee families and children.. Diversity Consultations

Recommendation 13

(a) At the very least, there should be a collection of data regarding child abuse and neglect amongst both CaLD and refugee communities in WA.

(b) the cultural background of children coming into contact with the child protection system should be recorded in the electronic case management system and that this data be aggregated to inform a system-wide response.

(c) there should be comprehensive recording of cultural and linguistic information about children coming into contact with the child protection system, with analysis of emerging trends from that data to inform planning and resourcing.

(d) CPFS cultural competency should be developed by setting cultural competency targets and the developing training programs and practice guides.

(e) every child in care with a diverse cultural heritage should have a cultural connection plan.

(f) Consideration should be given to development of principles that relate to CaLD children similar to those that guide the placement of Aboriginal children.

1.10 Women in prison

As indicated in our WLCWA OOHC submission 2016,[16] WLCWA has worked with women in prison. Research confirms that incarcerated women are some of the most vulnerable and disadvantaged women in our community. The majority of Aboriginal incarcerated women are mothers and often significant carers for others in their extended family networks. Their incarceration has far-reaching consequences for their children, families and communities.[17]

Aboriginal women are over-represented in the prison population. Generally, Aboriginal and Torres Strait Islander people make up 41.2% of the entire Western Australian prison population with Aboriginal and Torres Strait Islander women making up approximately 50% of the female prison population.[18]

Whilst funding cuts unfortunately led to the discontinuation of a specific WLCWA prison service in 2015, we continue to sometimes assist incarcerated mothers in the care and protection jurisdiction by ensuring safe arrangements are in place whilst they are unable to care for their children, negotiating visits with children and having their children returned to their care on release.

WLCWA is concerned that women in prison – often only for short periods – frequently experience bias on the part of caseworkers and an inconsistent approach, as we illustrated this through Hilary's case study in our WLCWA OOHC submission. [19]Worse is the apparent inclination of CPFS to place

[16] Supra at no.3

[17] Wilson, M and Jones J, "The Social and cultural Resilience and emotional wellbeing of Aboriginal mothers in prison", Centrelines, May 2012; note 1

[18] Wilson, M and Jones J, note 2

[19] See WLCWA Out of Home Care Submission at page 10. *The DCPFS caseworker made several comments to Hillary and her WLCWA Solicitor that 'jail is no place for children' and 'the child shouldn't be punished for her Mother's crimes'. It was clear the worker held a strong view against children having contact with their parents in prison. It took almost 3 months for the Department to organise the first visit which were to be held on a monthly basis.*

children with paternal relations or others who have no intention of maintaining contact between mother and child, with the result that the child remains with the carer upon their release, often for long periods. This leads to disintegration of families and further separation trauma.

We have also known women to receive little or no advice either independently or from CPFS agree to various measures they do not understand, most notably 'until 18' orders when they clearly had no idea of the ramifications. In this respect we are deeply concerned by the gap left by removal of our service in this respect, which appears unlikely to be filled, and we re-iterate the need for independent legal advice, specific requirements in plans, monitoring and enforcement.

We also believe that ongoing support by a range of agencies is crucial in maintaining connections in families where a woman has been incarcerated.

Women who serve their time in prison should not be further punished by removal of their children. Further, this is an example of where lack of investment in a particular measure leads to a higher long term cost in that such women are more likely to reoffend or at least to require intensive support services. We believe that the special needs of women in prison and their children should not be forgotten when considering any changes that we have suggested or that are ultimately considered.

Recommendation 14

Consideration should be given to inclusion in legislative changes of:

(a) A requirement for legal representation of children whose mothers are in prison.
(b) Providing a requirement for independent legal advice to be given to parents in prison prior to agreement to Orders being made.
(c) Mandatory inclusion in proposals and care plans of provisions whereby wherever possible contact between women who are in prison and their children should be maintained; and
(d) Mandatory requirements for enforcement of provisions in care plans.

1.11 Transparency and information sharing

We refer to the submission to the Consultation Paper made by AFLS and to item 4 of that submission on page 11. We strongly endorse all the suggestions made and supporting reasons on pages 11-13 and endorse Recommendation 1.

1.12 Review process and form of new legislation

It is of concern that whilst a history to the Consultation Paper is provided, there are no indications in the Consultation Paper of the above, and no indications as to how submissions will be received, evaluated and the way forward progressed. We do not know, for instance, whether there will be an opportunity to make further submissions to proposed legislative changes once drafted. We strongly request that information be provided as soon as possible with regard to future process and timelines.

We are also concerned that whilst a working party has been set up to look at integration between the Family Court of WA and the WA Children's Court, this does not appear to be the case with respect to other areas addressed in the Consultation Paper. We suggest that there should be steering groups in all instances comprised of both CPFS officers and relevant stakeholders. This is particularly so in relation to the changes that relate to the Aboriginal placement principle.

Recommendation 15

That CPFS provide an open and comprehensive agenda regarding any changes to the Act or supporting regulations that will be made.

2. Responses to issues raised in the Consultation Paper

2.1 Improving consistency in foster care standards through the assessment, approval and revocation process

Consultation Question 1
Which of the above legislative models is preferred for improving sector-wide consistency in the approval of foster carer applicants and the revocation of existing foster carers' approval where necessary?

2.1.1 A decision making panel

WLCWA is supportive of any measure that will ensure safety and quality care for children entering care. We believe that there are currently inconsistencies regarding the appointment of foster carers, with poor scrutiny of decisions as to placement. As previously indicated, we are also keen to support any measure that fosters ownership of the issue of children in care by the wider community, and that encourages particular participation from local people with specific knowledge of area and culture.

We therefore are supportive of measures that would see decisions placed within the community and made by persons other than departmental officers. We also agree with the observations of Djinda Services that departmental staff are of necessity constrained by a variety of factors that operate in relation to their employment. This may place them in conflict situations were important decisions have to be made. We have also found staff to vary greatly in experience, skill and availability of backup resources, which also has the potential to seriously inhibit effective decision making.

This is perhaps illustrated by the comments of ALSWA regarding mistakes that have been made in the placement of Aboriginal children. We note with great concern that these include:

- placing children with "Aboriginal" carers who are not in fact Aboriginal;
- failure to mention Aboriginality in care plans;
- inappropriate placement of children from regional areas inappropriately in urban areas; and
- limiting contact with extended family.

Experiences reported by our staff have been similar and is, considering the situation of Aboriginal children, untenable. We are also deeply concerned that similar mistakes may be in evidence regarding the placement of CaLD children, and suggest that research we have proposed needs to be undertaken with respect to CaLD children makes particular consideration of carer selection.

We are broadly supportive of Model C (page 11 of the Consultation Paper), which would see a cross sector panel make decisions about the appointment and revocation of foster carers; this provided that appropriate persons are included on the panel, and that such panel members are available so as to draw on a range of individuals and organisational representatives to suit each individual assessment. We agree that whilst CPFS caseworkers should maintain an oversight role, final placement decisions should rest with the panel.

Whilst the need for specialist panels particularly equipped to assess the needs of Aboriginal children cannot be understated, we believe that community panels should have a decision making role with regards to all children, especially those with special needs – such as CaLD children or children with mental or physical disabilities – who require expert assistance of a specific kind. We are therefore in favour of a very broad, state-wide 'pool' of community members and organisations available to panels, with resources directed to raising community awareness about the same.

Apart from the benefits in appointing quality carers, we believe this is an excellent means to foster community ownership, with the potential to remove the apparent current perception that 'they' (meaning government) should make decisions about 'problem' children and the resulting distancing that has occurred. Aboriginal specific panels can have a particularly important role in removing paternalistic perceptions of CPFS and fostering more positive relationships.

We are also in favour of function of panel going beyond appointment of carers and to a more 'big picture' approach that would see panel members working with CPFS, parents, carers and children on planning generally, including S. 143 Proposals, care plans, reunification and contact arrangements. In this manner, panels can potentially serve to greatly reduce the workload and heavy burden of decision-making currently experienced by workers in an under-resourced department.

In the event that Option B is preferred then WLCWA would favour establishment of a community sector review Board to suit individual circumstances. This should include individuals and organisations that have sufficient cultural relevance and expertise. The establishment of pilot projects in selected metro and regional areas may be advisable prior to final decisions regarding any of the options in the Consultation Paper.

2.1.2 Criteria for assessment

Of concern regarding the Consultation Paper is the lack of indication as to the *means* by which the panel will make a decision as to the suitability or otherwise of a relative or foster carer.

There will need to be clear guidelines as to panels are to approach their task. Panels would need careful terms of reference (**TORs**), and clarity regarding such fundamental matters as whether the decision would need to be unanimous and supported by a majority. Attention needs to be given as to whether standard TORs are included in the Regulations or modified according to individual regions.

Recommendation 16

a) That consideration be given to the establishment of a central panel with appropriate expertise and cross cultural representation to make decisions about the suitability and appointment of both foster and relative carers.

b) That further workshopping as to TOR's for panels and relevant considerations be undertaken in conjunction with appropriate stakeholders, with the possible establishment of pilot projects.

c) That mechanisms be established for panels to have an ongoing review function, and for panels to have input into care plans.

d) That both panel members and prospective carers undergo appropriate professional development and training.

We are further supportive of the recommendations made by ALSWA with regard to assessment of carers of Aboriginal children, and agree that there needs to be specialised training for carers, a willingness to spend time in a child's culture or community and participation in the preparation of culture plans, all of which should be assessed by appropriate Aboriginal agencies and organisations.

2.1.3 Legislative amendments

We agree that legislative amendments proposed by ALSWA in relation to external assessment bodies have the potential to give meaning and purpose to the Aboriginal Placement Principle.

We refer to the *Children and Community Services Regulations 2006* (**Regulations**). Regulation 4*:* approval of carers (Act s. 79(2)(a)(i)) needs to be redrafted with greater clarity about how relevant considerations that may be referred to in support of assessing safety and responsibility.

Foster carers should demonstrate a commitment to:

a. a full understanding of the cultural background of the child and a willingness to continue cultural and family connections; and
b. reunification of the child with parents and family. The carer should be prepared to outline the means by which they will do this.
c. Provisions should be mandatory in language.

We suggest that police records alone, frequently relied on by CPFS in denying carer status, particularly in the case of Aboriginal people, should carry only such weight as is appropriate.

Recommendation 17

(a) That Regulation 4 be amended to include a mandatory requirement for:

i. a full understanding of the cultural background of the child and a willingness to continue cultural and family connections; and
ii. reunification of the child with parents and family.

(b) That Regulation 4 be reviewed in consultation with appropriate persons in relation to its application to Aboriginal children.

2.1.4 Relative carers

We note the absence of specific reference to relative carers in the Consultation Paper. In our experience, such placements are often inconsistent with relatives denied carer status in the wake of an inadequate or even complete lack of explanation. This happens particularly in relation to prospective Aboriginal carers. WLCWA believes that a panel with appropriate expertise and knowledge should similarly advise in the case of relative placements where issues exist as to the suitability of relative carers and that this should particularly apply to Aboriginal and CALD children.

Recommendation 18

We support Djinda's Recommendation 15: namely that "a new regulation be introduced stating that a potential relative carer cannot be rejected for reasons that could be rectified by the provision of financial or other supports, and that a potential relative carer must be given the opportunity to have a support person present whilst being interviewed at any time during an assessment."

Consultation Question 2

Should a community sector organisation, in addition to the individual foster carer, have a right of review in the event that one of their foster carers has his or her carer approval revoked by a decision-maker?

We are highly in favour of community sector organisations also having a right of review with respect to revocation. We have all too often known decisions regarding revocation appear to be carried out with no consultation and no explanation. There have been instances when children have been removed and taken to unknown and unrelated foster carers, when it has taken a long time to find out what has happened and restore the status quo, and even then no explanation is forthcoming.

Community Sector organisations would need to act regarding revocation in a manner consistent with principles and TOR's utilised in the appointment of carers, but should have decision making with respect to:

- Revocation of current carer status
- Appointment of temporary foster carers
- Restoration of carer status; and
- Safeguarding against repetition of revocation incidents.

We further propose that 'immediate' revocations where children are removed from foster carers without warning be reserved for only the most serious incidents where no other option is available.

2.1 Improving outcomes for Aboriginal children, families and communities

WLCWA notes the unacceptably high levels of Aboriginal children in care in Western Australia. Statistical information is well presented in the other submissions that we have endorsed. We agree that this overrepresentation, combined with the special circumstances of post colonisation intergeneration trauma and previous practices relating to disregard for fundamental human rights justifies special and urgent attention on the part of CPFS in addressing the crisis regarding Aboriginal children in care in Western Australia.

We agree also with ALSWA's comments in their introduction about the "inexorable links" for with other areas of social dysfunction. We have already referred to this as a general observation, and suggest that the distressing over-representation of Aboriginal children in criminal prosecutions, incarceration, substance misuse programmes, suicide and accidental overdose deaths are directly linked to the unacceptably high levels of Aboriginal children in care. We stress again the need for recognition of the need for and commitment to social investment in CPFS and from CPFS as a means of long term benefit to the wider community in both emotional health and monetary terms, and for greater analysis to occur in this regard.

The failure of any measures taken by CPFS in recent years to address the high numbers of Aboriginal children in care indeed suggests that whatever CPFS is doing to improve matters, it isn't working. This is a pity, because in our experience CPFS workers devote much time and focus to Aboriginal children and are often well intentioned. No amount of resources, however, can be effective if the underlying philosophies are wrong, if efforts are misdirected or if measures that could be helpful are not deployed for lack of requirement to do so or resources. That this has happened has not only been counterproductive in terms of failing to achieve outcomes. It has frustrated CPFS workers, angered Aboriginal people and ultimately placed a higher burden on CPFS and the community.

WLCWA notes that the submissions of ALSWA, AFLS and Djinda make reference to a number of matters that we have included in our general observations as to how the Act can be improved. In advocating for this general 'overhaul' we have borne in mind particularly the needs of Aboriginal women and children, and have made comment where there may be particular application. We recognise the expertise of the aforementioned organisations, and where some of our general observations have been taken further and provided a detailed explanation of how this may specifically benefit Aboriginal children, we agree and endorse their views and recommendations entirely.

We particularly support the submissions put forward by AFLS in this regard on pages 13 - 24 of their submission.

We particularly support the submissions put forward by ALSWA with regard to:

- fundamental mistakes in adopting permanency planning (and CPFS' rationale behind it) as the best solution to the reduce numbers of children in care, or provide greater stability.
- observations regarding the failure of the self-determination principle (s.13) to fully reflect self-determination and incorporation of provisions that fully reflect the principle and recommendations for amendment to ss. 3 and 14.
- flaws in the Aboriginal Practice Leader (**APL**) model in failing to provide assistance from a child's specific family and community.[20]
- the need for amendment to the definition of 'parent' and other provisions that will make room for the Aboriginal concept of parenthood (as differing from western concepts).
- improvements to the Court process that will assist the Court in evaluating the best interests of Aboriginal children at an early stage, and address imbalances of power.
- Institutions of a therapeutic court model pilot as a means of facilitating meaningful self-determination.

Recommendation 19

(a) That the application of permanency planning as applicable to ATSI children be urgently reviewed
(b) That the self-determination principle be reviewed and amended to correctly reflect the principle.
(c) That the APL model be reviewed to allow greater input and decision making by persons from local country and community.
(d) That the concept 'parent' as understood by ATSI people be included in amendments made that reflect and respect the concept.
(e) That Court processes be directed to addressing the needs of ATSI children at an early stage by appropriate persons.
(f) That a therapeutic court model be piloted as a means of facilitating meaningful self-determination regarding ATSI people and their children.

We further agree with ALSWA' proposals to:

- overhauls regarding s.143 Proposals and cultural plans; we support the proposed amendments to s.143.
- greater use of Protection Orders (Supervision), repeal of s.49(4) and increase in in time limit to 3 years.
- increase of maximum duration of a Protection Order (time-limited) to 3 years.
- model and legislative changes proposed in relation to Protection Orders (Special Guardianship).

[20] We believe in this respect that this failure reveals a flaw in general thinking that continues to be evident in the non-ATSI community, namely that Aboriginal people share the same background, culture, views and beliefs throughout Australia and that provided a person in 'Aboriginal' they are qualified to make decisions about any ATSI issue. ATSI nations and language group are as diverse as within any other world region. We would not suggest that a "European" person should make decisions about anyone living anywhere in Europe. Through proposed changes, we believe that the CPFS legislation can play an important role in shifting such fundamental community misconceptions.

- Restrictions on making of Protection Orders 'Until 18', changes that would allow a parent to care for a child under one of these Orders and regular review of Orders.
- Inclusion of conditions in final Orders, improved opportunities for review and amendments with respect to review.

Consultation Question 3

Are there any changes to the Act that could help to clarify or strengthen the intended operation of the child placement principle as a way of enhancing and preserving Aboriginal children's' connection with family and culture.

We agree with the comments of ALSWA within the background on their submission regarding proposed means to improve compliance with the Aboriginal and Torres Strait Islander Child Placement Principle (**ACPP**). We agree with their comments regarding the ACPP, its history and the need for broad application.

We particularly draw attention to the observation by ALSWA:

- that any current measure of compliance by CPFS with the CPP is deficient because it "only indicates what proportion of Aboriginal children are placed with either a family member, an Aboriginal person in the child's community or another Aboriginal person." The failure to include general foster carers in the assessment is, in our view, a major deficiency.
- The vagueness of departmental guidelines.
- The practice of consultation with CPFS officers and not relevant community, and the resulting failure to correctly observe the ACPP.

The recommended reforms that ALSWA have outlined to ss. 12, 61 and 81 are supported by WLCWA and we have nothing to add.

We also endorse the submissions of AFLS in relation to this consultation question and agree that:

- Consideration should be given to repealing until 18 Orders with respect to ATSI children;
- There should be a requirement for siblings not to be separated;
- 'Active efforts' should be made to support families;
- ATSI children should be represented by compulsory independent children lawyers; and
- home care placements should be monitored.

We endorse AFLS' recommendations 2-6 in this respect.

We endorse Djinda's recommendations 12-14.

Consultation Question 4

What legislative changes might improve the effectiveness of the consultation required of the Department when making a placement for an Aboriginal child?

WLCWA endorses the recommendations of AFLS and Djinda Services in relation to this consultation question.

WLCWA agrees with AFLS in their submission with respect to the need for:

- the thorough and appropriate education of caseworkers, which we have already made reference to.
- the ongoing monitoring of cases by external bodies.
- compulsory representation in negotiated placements.

We support recommendations 7 - 9 of the AFLS Submission.

We support recommendations 12 - 19 of the Djinda Submission.

We support those recommendations in the submission of ALSWA that pertain to this consultation questions.

Consultation Question 5

Are any changes required to increase the effectiveness of the principles set out in sections 13 and 14?

WLCWA agrees with AFLS in their submission with respect to the need for:

- amendments to the wording of the self-determination principle. 'Allowing' Aboriginal people to participate indecisions regarding their children is archaic, patriarchal and utterly inappropriate.
- Including a principle of community participation
- Taking account of cultural paradigms in applying attachment theories to Aboriginal people, and including in the act provisions that accommodate Aboriginal concepts.
- The need for timely decisions.

The following recommendations be endorsed and supported by WLCWA:

(a) recommendations 10-13 of the AFLS Submission
(b) recommendations 20-25 of the Djinda Submission
(c) those recommendations in the submission of ALSWA that pertain to this consultation questions.

Additional note

We would add to the above that whilst we stress again the urgent, specialist and culturally relevant attention that needs to be provided regarding ATSI children, we believe some of the recommendations made our colleague organisations can usefully be considered in relation to *all* children who come to the attention of CPFS in needing care and protection.

We believe that we have already echoed this in some of our own submissions in other areas of the Consultation Paper, where in appropriate instances we have made particular reference to ATSI women and children. We would include the following as worthy of wider application and for inclusion in principles and compulsory provisions of S.143 Proposals and care plans:

- The non-separation of siblings wherever possible;
- Placement with family over and above non-family;
- Intensive support for parents;

- Monitoring of out of home care placements;
- Review by external bodies of out of home care placement arrangements;
- Requirement for independent legal advice in the event of negotiated placements; and
- Strict adherence to timelines.

3 Supporting the Safety and Wellbeing of children and families exposed to family and domestic violence

Consultation Question 6

What further amendments might improve the effectiveness of the Act in protecting children from family and domestic violence (FDV) whilst keeping them safe with a protective parent?

WLCWA is very concerned at the number of children being taken into care as a result of FDV, particularly in light of research that shows FDV to be a key driver in the disproportionate numbers of Aboriginal children being taken into care. We note that whilst CPFS are unable to state conclusively how many children enter care as a result of FDV, they estimate this to be somewhere in the vicinity of 70-90%. We further note the disproportionately higher numbers of Aboriginal women that are subjected to FDV and resulting injury/fatality to both women and children.

We are concerned that whilst a working group has been convened to look at the interaction between the Children's Court and Family Court, one has not been established to look at the needs of FDV victims and perpetrators and their children who come to the attention of CPFS. Given the level of specialisation required to address FDV, the considerable work undertaken and the changes taking place in other legislation, we consider that such a group would be beneficial in order for changes to the Act to best complement and enhance other legislative measures and policies within Government. We believe this is the best means by which to achieve cost effective, multi-agency response in both FDV and child protection.

Recommendation 20

That a separate working group be convened to operate concurrently with the working group examining interaction between the courts to consider how changes to the Act that will best serve the needs of FDV victims and enhance other legislative reforms.

In the meantime, we make the following submissions:

3.1 Support

We stress the importance of visible support to all women who are victims of FDV. We referred previously to adoptions of a few decades ago and observe also that they also served a 'punitive' purpose for women who performed the unacceptable act of having a child out of wedlock.[21] We are concerned that women perceive an analogy with type of thinking in contemporary times, transferred to 'punishment' for being in a violent relationship or, in some cases, for becoming a sole parent by leaving one. A 'punitive' perception should be avoided at all cost and recognised as detrimental to both individuals and the community. It further risks encouragement to women to remain in violent relationships in circumstances not conducive to safety.

[21] Supra no.7

We draw our attention also to our arguments against injudicious use of long term care, and are concerned from our experiences about children remaining in long term care arrangements where the early circumstances of FDV have now changed, but no reunification has taken place on (at least perceived) grounds that the mother 'had her chance.' Even when this is not the case, we believe that children are sometimes taken into care without adequate avenues for support being explored. Such attitudes lower self-esteem, and further exacerbates the already existing trauma associated with FDV. It can catalyse other forms of social dysfunction at a cost to the community and additional resources required of CPFS and the court.

Women victim-survivors should have sufficient confidence in CPFS and governing legislation to see both as a means of support through episodes of FDV, until a more stable situation can be achieved. Planning should have as objective keeping families together and not pulling them apart.

Recommendation 21

(a) Changes to legislation should focus upon early intervention with a multi-agency approach that uses tools aimed at support and family unity.
(b) The principles of the Act should reflect an intention to support victims of FDV and reiterate the principle that Orders should not be made unless and until avenues for assistance have been fully explored and exhausted.

3.2 Specialised staff

The needs of victims of FDV may be complex and usually require attention from professionals who have particular experience in this respect. In turn, FDV can manifest in a particular way with regard to ATSI and CaLD families which requires specialist cultural knowledge in relation to their specific needs. Given the over-representation of ATSI women who are victims of FDV, this pertains particularly to ATSI women, and this was part the rationale behind the establishment of Aboriginal Family Violence Prevention Legal Services throughout Australia.

No such corresponding specialisation currently appears to exist within CPFS, notwithstanding that CPFS hosts a domestic violence unit. We suggest that caseworkers be specially trained in FDV and that where children of FDV victims (or who are victims themselves) who come to the attention of CPFS should be referred to FDV caseworkers as a matter of course.

Recommendation 22

Legislation should provide that a victim of FDV should be referred to a specialist caseworker and provisions in s.143 Proposals and Care Plans should require provisions that reflect:

a) the existence of FDV;
b) provisions that relate specifically to the management of the child within the background of FDV; and
c) consultation between that person and external bodies.

3.3 Multi-agency and community approach

It is imperative that support for FDV victims at risk of having children taken into care through a multi-agency and community approach. Proposals and plans that attach to orders in favour of the FDV survivor-parent should occur in consultation with a number of relevant stakeholders and the inclusion of members of an external panel such as envisaged in relation to appointment of foster carers should be at least considered.

We support the comments and comments made by Djinda on page 15 of their submission that in appropriate circumstances CPFS should be able to apply for a VRO, but also that VRO's may be an inappropriate avenue for Aboriginal families, and that other options may need to be explored. We would include in this greater option of VRO's or FVRO's that allow for contact but prohibit violence and substance intake.

We draw attention particularly to the Housing Authority in terms of multi-agency approach. It is not uncommon for FDV victims to have children taken into care as a result of having to leave accommodation. This risks women remaining in situations whereby they place both themselves and their children at risk. To solve this problem, sometimes (in our experience) CPFS caseworkers will tell the victim that if they do not leave and obtain a VRO then CPFS will apply for an Order. This can also mean that CPFS applies for an Order in any event because the victim now has nowhere to live.

Legislative changes proposed by the Department of the Attorney General (WA) in relation to the *Residential Tenancies Act (WA)* (**RTA**) may provide for leases to be transferred into a victim's name and facilitate the removal of perpetrator's from premises in cases of FDV. We suggest that CPFS consider how changes to the Act may best interact with any amendments to the RTA.

3.4 Orders allowing for placement of child with non-abusive parent.

We agree with the proposed protection order options as outlined on page 25 of the Consultation Paper, and that the interrelation between supervision orders made in favour of one parent and parental orders made by the Family Court bears careful analysis in the exploration of that relationship under part 5 of the Consultation Paper.

3.4 Perpetrator accountability

WLCWA is in favour of any measure that fosters perpetrator accountability; however, we are cautious in supporting any new offence in the terms as depicted in the Consultation paper at 3.4, as we are concerned that victims may end up being charged. We would prefer to see resources directed to input into behaviour management programmes that will now be compulsory under the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2017 (WA)* and carry sanctions for non-attendance.

We are concerned that there are insufficient avenues available for perpetrators to undertake programmes, and suggest that funding of programmes by CPFS that are specifically directed to perpetrator-parents could prove an effective contribution in this respect. We also agree with other organisations that the rate of incarceration of Aboriginal people is already unacceptably high.

Recommendation 23

That the Act be amended to direct that programmes for perpetrators against whom a VRO or FVRO has been made should be required to attend behavioural management programmes with a strong parenting component.

4 Therapeutic secure care for children at high risk.

This is not an area of expertise for WLCWA, and we therefore do not make any specific recommendation. We would like it noted, however, that we are not supportive of any measure that enhances the detention of children or potentially increases the time for which they might be detained.

5 The intersection between child protection proceedings and proceedings in the Family Court of WA.

WLCWA agrees that navigating multiple courts, laws and jurisdictions poses a significant problem for women experiencing family violence, and makes it difficult, sometimes impossible, for them to resolve their legal needs. Therefore, any amendments that provide state and territory courts with summary jurisdiction to hear family law matters is a welcome shift towards recognising the value in providing an integrated service for families with multiple needs.

We believe that there are a number of circumstances where it would be appropriate for a the Children's Court to hear family law matters that are related to proceedings before them and vice versa where a parenting matter can be resolved alongside an ongoing child protection matter. The Family Court is a particularly appropriate forum, given the emphasis on prioritising the safety of children, and the judge's previous knowledge of the relevant family's history. Ultimately, we favour a more inquiry-based and less adversarial approach in this respect.

We believe that any review of this area also needs ultimately to include some processes in the Magistrates Court, such as application for a FVRO. We appreciate the opportunity to participate in the working group that has been specially convened to explored this part of the Consultation Paper.

== Conclusion ==

We believe that a thorough revision of the Act is warranted. With the limited resources available at WLCWA, it has been difficult to formulate an adequate response to this submission within the required time that encapsulates the breadth of change that we believe is required to improve the operation of the Act and functioning of the child protection system in Western Australia. We are disappointed by the failure to adopt many recommendations made by LAWA in 2012, but believe nevertheless that in the current climate of innovation and change, some real progress is possible through agencies and organisations working together.

We summarise our key observations as follows, and suggest there is a need to:

- Shift the legal environment to one less adversarial and accompanied by a multi-disciplinary agency and community support approach.

- Shift emphasis in the Act to balance applications and pre-protection order arrangements with management of situations after orders are made.
- Involve the community in the appointment of carers and monitoring of orders through community panels or inter-agency and community review boards.
- Where a protection order is required, amend the Act to require appointment of relative carers unless there is a very good reason why not to.
- Strengthen provisions and resources that will facilitate placement with biological parents wherever possible and adopting supervision orders wherever possible.
- Avoid long term orders where possible, but in any event improve monitoring of long term placements, including contact with biological parents and family.
- Adopt reunification and relationship with biological family as a key objective/principle.
- Support victims of FDV through an enshrined multi-agency approach and flexibility of orders available.
- Avoid wherever possible the unnecessary or prolonged detention of children.
- Streamline procedures between the Children's Court, Family Court and Magistrates Courts to avoid duplication of procedures and avoid trauma to victims of FDV as well as saving costs.

LIST OF RECOMMENDATIONS

Recommendation 1

That an analysis based upon social return for investment in the child protection system in WA should be considered urgently as a prospective matter of practice.

Recommendation 2

(a) That the legislation recognise the need for child protection as part of a complex range of existing issues requiring combined fields of expertise and support.
(b) That principles of the Act include a holistic approach.

Recommendation 3

(a) That in directing a holistic approach, principles of the act emphasise a need for early intervention and prevention.
(b) That any changes to legislation attract commensurate review of support services available, with consideration given to the establishment of an interagency body dedicated to the assistance of families where there is a need to take children into care.

Recommendation 4

That there be included in the Act principles with regard to children requiring out of home care that reflect:

(c) community ownership and participation; and
(d) appropriate culturally relevant approaches and paradigms.

Recommendation 5

That serious consideration be given to a fundamental overhaul of the court system in relation to child protection matters that incorporates:

- Inquiry and conference based processes;
- A multidisciplinary, therapeutic approach and
- A minimisation of adversarial processes.

Recommendation 6

(a) That CPFS lend support to greater funding for representation of respondents to CPFS applications for Orders in the Children's Court.
(b) That the act contain a requirement that no Order be made in the absence of evidence that legal advice has been provided

Recommendation 7

We propose the following legislative amendments:

(a) Within principles, that a child:

i. should only be removed from their biological parents as a last resort, and only if there is no other feasible way to protect them from harm;

ii. a child should only be placed with non-biological family if there is no other feasible way to protect the child's best interests;
iii. Where a child is placed in foster care, reunification must be the primary objective.

(b) Principle 16 should be made mandatory to read: *"a child who has been taken into care **must** be given adequate support and encouragement to maintain contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life."*

Recommendation 8

Amendment of s. 58 to the effect that Protection Orders (Until 18) should be used only as an absolute last resort, and that an application for such an Order may not be made unless:

i. (with respect to a child under 5 years of age) leave has first been obtained from the court;
ii. the application is supported by evidence demonstrating the existence of exceptional circumstances, such as would justify the making of such an order;
iii. reunification has been attempted genuinely at least once, and has not been successful;
iv. the carers have shown a commitment to maintain the child's connection with their biological family; and
v. in the case of an ATSI child, CPFS have complied with principles set out in sections 12, 13 and 14.

Recommendation 9

The section referring to s.143 Proposals should be overhauled and made far more comprehensive, with the inclusion of:

a) Prescribed terms based on sound principles, which emphasis how the child's best interests will be met.
b) An emphasis on contact and reunification, with detailed provisions as to how this will be achieved.
c) Input to the report by concerned stakeholders such as child health, counsellors, drug and alcohol authorities and the WA Housing Authority.
d) Compulsory independent advice having been obtained prior to acceptance by the court of a s.143 Proposal.
e) An avenue for expeditious review by an external body such as has been proposed in relation to appointment of foster carers.
f) Opportunity for review and amendment by the court.

Recommendation 10

(a) Standard terms and provisions should be included care plans, with an emphasis on reunification as an overarching objective.
(b) Cultural Plans should be included as an integral part of care plans for Aboriginal children, and with respect to children from CaLD backgrounds.
(c) Governance of post-order arrangements should include an ongoing review of therapeutic and rehabilitative support and services for both carers and biological parents.

Recommendation 11

(a) The Children's Court should have the power to make final orders in respect of placement, contact and procedures for reunification
(b) That a right be created for all parties to apply to the court:
    iii. To enforce a provision
    iv. To review a provision
(c) That an appeal lie directly to SAAT in relation to a decision of a magistrate in (b).
(d) The Case Review Panel be abolished and additional Children's Court magistrates be appointed to assist in additional work associated with the new responsibilities regarding care plans.

Recommendation 12

a) That s.148 be reworded and strengthened to make the representation of children compulsory where this would be in the child's best interests, and to require children's legal representatives to inform the court as to the best interests of the child.

b) That consideration be given to creation of the role of child advocates and an outlining of their responsibilities within the Act.

Recommendation 13

(a) At the very least, there should be a collection of data regarding child abuse and neglect amongst both CaLD and refugee communities in WA.
(b) the cultural background of children coming into contact with the child protection system should be recorded in the electronic case management system and that this data be aggregated to inform a system-wide response.
(c) there should be comprehensive recording of cultural and linguistic information about children coming into contact with the child protection system, with analysis of emerging trends from that data to inform planning and resourcing.
(d) CPFS cultural competency should be developed by setting cultural competency targets and the developing training programs and practice guides.
(e) every child in care with a diverse cultural heritage should have a cultural connection plan.
(f) Consideration should be given to development of principles that relate to CaLD children similar to those that guide the placement of Aboriginal children.

Recommendation 14

Consideration of legislative changes should include:

(a) A requirement for legal representation of children whose mothers are in prison.
(b) Providing a requirement for independent legal advice to be given to parents in prison prior to agreement to Orders being made.
(c) Mandatory inclusion in proposals and care plans of provisions whereby wherever possible contact between women who are in prison and their children should be maintained;
(d) Mandatory requirements for enforcement of provisions in care plans.

Recommendation 15

That CPFS provide an open and comprehensive agenda regarding any changes to the Act or supporting regulations that will be made.

Recommendation 16

(a) That consideration be given to the establishment of a central panel with appropriate expertise and cross cultural representation to make decisions about the suitability and appointment of both foster and relative carers.
(b) That further workshopping as to TOR's for panels and relevant considerations be undertaken in conjunction with appropriate stakeholders, with the possible establishment of pilot projects.
(c) That mechanisms be established for panels to have an ongoing review function, and for panels to have input into care plans.
(d) That both panel members and prospective carers undergo appropriate professional development and training.

Recommendation 17

(a) That Regulation 4 be amended to include a mandatory requirement for:

iii. a full understanding of the cultural background of the child and a willingness to continue cultural and family connections; and
iv. reunification of the child with parents and family.

(b) That Regulation 4 be reviewed in consultation with appropriate persons in relation to its application to Aboriginal children.

Recommendation 18

"That a new regulation be introduced stating that a potential relative carer cannot be rejected for reasons that could be rectified by the provision of financial or other supports, and that a potential relative carer must be given the opportunity to have a support person present whilst being interviewed at any time during an assessment."

Recommendation 19

(a) That the application of permanency planning as applicable to ATSI children be urgently reviewed.
(b) That the self-determination principle be reviewed and amended to correctly reflect the principle.
(c) That the APL model be reviewed to allow greater input and decision making by persons from local country and community.
(d) That the concept 'parent' as understood by ATSI people be included in amendments made that reflect and respect the concept.
(e) That Court processes be directed to addressing the needs of ATSI children at an early stage by appropriate persons.
(f) That a therapeutic court model be piloted as a means of facilitating meaningful self-determination regarding ATSI people and their children.

Recommendation 20

That a separate working group be convened to operate concurrently with the working group examining interaction between the courts to consider how changes to the Act that will best serve the needs of FDV victims and enhance other legislative reforms.

Recommendation 21

(a) Changes to legislation should focus upon early intervention with a multi-agency approach that uses tools aimed at support and family unity.
(b) The principles of the Act should reflect an intention to support victims of FDV and reiterate the principle that Orders should not be made unless and until avenues for assistance have been fully explored and exhausted.

Recommendation 22

Legislation should provide that a victim of FDV should be referred to a specialist caseworker and provisions in s.143 Proposals and Care Plans should require provisions that reflect:

a. the existence of FDV;
b. provisions that relate specifically to the management of the child within the background of FDV; and
c. consultation between that person and external bodies.

Recommendation 23

That the Act be amended to direct that programmes for perpetrators against whom a VRO or FVRO has been made should be required to attend behavioural management programmes with a strong parenting component.

Carrie Hannington
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21 April 2017