



OUR BOORIS
our way

Minister Rachel Stephen-Smith
Minister for Children, Youth and Families
ACT Legislative Assembly, Civic Square, London Circuit
Canberra ACT 2601

Friday, 10 May 2019

Dear Minister Stephen-Smith,

The Steering Committee are pleased to present you with the next set of recommendations arising from the work of the Review Team and Steering Committee on the Our Booris, Our Way review.

We thank the Directorate for providing the quarterly update that was presented and discussed by the Steering Committee in our April meeting. However, we note that only the first four recommendations were represented and did not include the further recommendations that were presented in December 2018. We acknowledge the disruption of the holidays over the new year period; however, it is imperative that we receive consolidated information regarding the recommendations to reassure us that the Directorate has received, and is working towards resolutions for, these recommendations.

In this letter, we have started to make recommendations that largely go to the core of child protection practice and treatment of Aboriginal and Torres Strait Islander children and families. While these practice issues may not be legislative or formal policy settings, they heavily influence the experience of our community and will, if implemented well, positively influence the experience of our children.

We note that while the Community Services Directorate are the principle party accountable for child protection, we recognise the outsourced provider of case work through long term placements is ACT Together. The recommendations that address case work practices and processes apply equally to ACT Together, and any future contracted party, as to case work performed by the Community Services Directorate.

Through the detailed work performed by the Our Booris, Our Way Review Team, we are uncovering some concerning practice and processes within Child Protection and ACT Together. The emerging data demonstrates a deficiency in the quality, regularity and consistency of child protection case work and poorly informed cultural practices. It is in the best interests of the child to maintain a genuine relationship and engagement with their family and we are concerned about the evidenced tendency to preference the foster carer's desires.

The apparent bias of ACT Together towards non-Aboriginal and Torres Strait Islander foster carers is cause for grave concern given the level of responsibility afforded to ACT Together. We understand that the A Step Up for Our Kids Strategy has been undergoing a mid-contract and strategy review; however, we have not seen evidence that there is quality control of case work including the required engagement with children and families and associated documentation. This issue must be addressed before moving to any new contract arrangement. We feel that it is imperative to raise this with you early given the gravity of the issue and we anticipate that future recommendations will draw from this information.

New recommendations

8(b): Access to legal representation and advocacy

The recommendation 8(a) talked about the importance of clarifying the nature and role of support people in meetings and for them to be purposefully and deliberately engaged in interactions with child protection. This recommendation, 8(b) Access to legal representation and advocacy complements that recommendation.

Current arrangements for families to be able to access formal legal services and representation in the ACT is extremely limited. The Aboriginal Legal Service (ALS) does not provide assistance with child protection matters in the ACT, unlike in NSW. This omission is an anomaly in the ALS service provision and is linked to its funding model where the ACT government does not fund the ALS to perform child protection work. That leaves organisations such as Legal Aid and the Women's Legal Service, both of which are under-resourced for their demand.

We note that the Red Cross Birth Advocacy Service as part of the A Step Up for Our Kids Strategy is oversubscribed, with a waiting list of 20 families as at February 2019. The Birth Advocacy service, in the interests of empowerment, provides support for parents in order to represent themselves, however this may not be the most appropriate model for Aboriginal families. It is important to understand that this service does not take the place of formal legal services.

The Women's Legal Service in their public submission to the Review describes the child protection system as:

*impenetrable for many of our clients who are highly vulnerable, have low levels of literacy and a deep mistrust of child protection agencies due to past and current practices. The system is not conducive to participation and the voices of children and parents being heard, especially in the context of vulnerable parents. **Every family should receive legal advice as soon as they begin to engage with CYPS.** Organisations should be resourced to provide ongoing advocacy and legal representation to assist families navigate the jurisdiction and prevent matters escalating. Investment in early intervention circumvents costly, time-consuming and traumatic escalation of child protection matters through the legal system and separation of families.*

8(b) Recommendation

The Steering Committee recommends that funding be made available, as a matter of urgency, to professional legal and advocacy services that are culturally appropriate to ensure that Aboriginal and Torres Strait Islanders families are able to access formal legal services.

Recommendation 9: Early support programs available (in recommendations dated December 2018)

10(a): Access to supports for Kinship carers

The Steering Committee is supportive of efforts to place children with Aboriginal and/or Torres Strait Islander kin given the demonstrated, positive life-long outcomes for the child across all areas of life including strong links with family, community and culture. However, kinship carers sometimes require additional support. Feedback directly to the Steering Committee and also the case reviews has emphasised that kinship carers need simpler access to financial and other support to enable them to safely and sustainably care for a child or children who may have experienced significant trauma.

We are aware that some kinship carers state that they are family and therefore do not require support and so the case workers employ a “hands off” approach. This in part reflects a genuine and valid community fear of removal of the child from the kinship placement based on destructive previous government policies and practices and does not take into consideration the individual needs of the child or kinship carer.

Foster carers have access to a range of supports and a powerful peak body to lobby for support, however, kinship carers find requesting support more difficult. Kinship carers perceive a reluctance on the behalf of ACT Together and the Directorate to share what supports are available and inequity in the distribution of supports between foster carers and kinship carers. The case reviews have evidenced on several occasions, children not being placed with Aboriginal or Torres Strait Islander kin who have been found suitable to care due to a perceived lack of resources. There are occasions where multiple supports are extended to the foster carer, rather than a more sustainable plan in place for the kin to receive these, or different supports. These children are experiencing additional placements and extended periods away from family and culture and they should be placed with kin in accordance with the connection element of the Child Placement Principle.

The recent Carer Handbook references the different supports available depending on whether the case work is completed by ACT Together or the Community Services Directorate. This is an unnecessary complication for kinship carers to negotiate and the availability of supports should be consistent, in access and value, between the Directorate and any contracted party.

Recommendation 10(a):

The Steering Committee recommends that the Directorate be more direct and transparent with supports that are available for Aboriginal and Torres Strait Islander kinship carers.

We recommend that the Directorate design and communicate a simple, accessible and equitable process by which kinship carers can access or apply for supports with a mechanism to dispute the findings and have circumstances re-evaluated. This process must be designed with the community to ensure that the processes do not unnecessarily compound the difficulties and trauma experienced by kinship carers.

10(b): Kinship Care Assessment Process

The Steering Committee has received feedback from existing kinship carers on the extensive and lengthy process by which they are assessed and deemed eligible to be approved as kinship carers.

The Steering Committee understands the importance of assuring a safe environment for the child, however, the process is often delayed after initial placement, especially if the initial placement was as a result of emergency action. The delay leads to the perception that arguments of attachment and stability outweigh the value of reunification with the family.

A father of a child in the review cohort when interviewed by the case review team on the potential of kinship carers expressed: “Heaps of my family would have cared for (the child)”. The extended family had not been approached, nor assessed for the ability to care for the child. For example, a child who often spends time with their grandmother or aunty should not be prevented from being placed with them simply for the purposes of carrying out checks.

In future, we expect that these assessments could be completed by the Aboriginal Child Care Association (ACCA).

Recommendation 10(b)(i):

The Steering Committee recommends that Aboriginal and Torres Strait Islander children be placed in Aboriginal and Torres Strait Islander kinship care immediately upon removal rather than being moved to foster care while carer checks are conducted when stable family options for care are present.

Recommendation 10(b)(ii):

The Steering Committee also recommends that the process of applying and performing suitability assessments of Aboriginal and Torres Strait Islander kinship carers (Kinship Carer Assessments) is a transparent and timely process and that additional resources be applied to ensure that these are not delayed.

11: Improve quality and monitoring of Cultural Plans

The Public Advocate and Children and Young People Commissioner, in the early days of our review, presented a project plan to the Steering Committee for an audit of cultural plans. However, we know from the detailed case reviews the deficiencies in the plans. While compliance on having a cultural plan is high, the quality is not. Of the one hundred and thirty-one cases reviewed to date, requiring a cultural plan, one hundred and eight cases have a cultural plan.

Emerging data suggests that:

- nine cases where the cultural plans were completed involved consultation with the child's community
- one involved consultation with Aboriginal and Torres Strait Islander agencies in the child's community
- two involved consultation with Aboriginal and Torres Strait Islanders in the ACT Community; and
- thirty-five of these cultural plans were provided to the carer.

We need to immediately support learning and engagement of case workers and families in the development of cultural plans that facilitate access and practice of connection and identity. The Steering Committee expects that a cultural plan will be:

- developed with active engagement from the Aboriginal and Torres Strait Islander members of the family;
- supported during development through the ability to access independent Aboriginal and/or Torres Strait Islander cultural advice where required;
- monitored for implementation and amendments to the plan as the child's cultural needs change; and

- of high quality through meeting the needs of cultural identity, and connection to culture, of the child and family over time.

In the event that the family is unable to contribute to the plan, then we expect that the cultural plan would be developed with active engagement from the Aboriginal and/or Torres Strait Islander Community from which the child comes and in which they currently reside. This engagement with the Aboriginal and Torres Strait Islander community would support the growing understanding of case workers as to the connection between culture and wellness of the Aboriginal and Torres Strait Islander population and to build a core understanding of culture and its criticality to the cultural safety and development of identity and belonging for Aboriginal and Torres Strait Islander children.

From the case reviews, the team have observed a family who were seeking guidance on cultural practices and were advised to perform an acknowledgement of country regularly throughout the day. In another child's cultural plan, it prescribed totems of an opossum and iguana, neither of which are native to Australia. The situation would be comical if not so extraordinary and deeply consequential to a child's understanding of their own culture, identity and connection.

Recommendation 11(a):

The Steering Committee recommend that the Directorate adopt a highly consultative approach to the development of cultural plans in line with the participation, partnership and connection elements of the Aboriginal and Torres Strait Islander Child Placement Principle. This will drive an improvement in the quality and relevance of cultural plans to children's cultural needs.

Recommendation 11(b):

The Steering Committee recommend the Directorate seek support and guidance on leading practice in the development, monitoring and quality of cultural plans from local community-controlled organisations and from other jurisdictions who lead in this, for example the Victorian Aboriginal Child Care Agency (VACCA).

12: Pathways to restoration

Once a child is subject to long term orders, it seems that the pathways to restoration weaken and disappear.

However, there are circumstances that should prompt a re-evaluation of these orders. For example, where the parents have been successfully parenting subsequent children and/or other major risk factors around substance abuse, domestic violence and mental health are well managed. Then the opportunity for a pathway to restoration should be exercised with increased contact, and shared care. Restoration needs to be strengths based and may require additional wrap-around supports for the parents in the event that the child may have experienced trauma.

Case workers should be exercising best practice in maintaining family and cultural contact. The case reviews reveal a less strengths based approach and one that appears punitive with little benefit either to the safety of the child or the restoration of the child with their family. For example, urinalysis required three times a week over a period of years, extremely limited contact and prolonged supervision of this contact.

The Steering Committee anticipate that there may be further information on restoration to emerge from the completion of the final cohort of children subject to 18-year orders.

Recommendation 12:

The Steering Committee recommends that prompts and triggers to considering restoration are mapped and implemented, especially when there has been a positive change in parenting capacity.

Restoration needs to use a strengths-based, motivational approach and should consider restoration to family, not just to parents.

13: Father inclusive practice

It has become apparent through the case reviews that there is a lack of engagement of fathers throughout a family's experience with Child Protection.

This suggests potential disengagement of fathers from Child Protection processes. There needs to be greater discipline and follow through in case work to ensure fathers are included – especially if they are incarcerated. This also influences the contact arrangements for a child during more formal care actions.

In one case, the father expressed: “Both parents should have the opportunity to care for their children and mothers should not be [prioritised] over fathers.”

The exclusion of fathers from case work practise in child protection also dislocates the child from the father and the extended family on the paternal side, who may be essential in the cultural connection and identity for the child, as well as providing more possibilities for kinship carer placements.

There is an opportunity to apply restorative justice practices through the Restorative Justice Unit that have qualified and practicing professionals in restorative justice.

Recommendation 13:

The Steering Committee recommends that CSD engage with Aboriginal community leadership to develop an improved policy position, practice guides and training that include fathers throughout the child protection process and makes concrete efforts to engage and maintain engagement with fathers who are incarcerated.

14: Aboriginal and Torres Strait Islander Health Assessments

While the specific health needs of children in out-of-home care may be met through other means, we would like to ensure that all Aboriginal and Torres Strait Islander children have the national health checks each year. As described by the Department of Health, the health assessment ensures that individuals receive primary health care services that meet their needs and includes physical, psychological and social wellbeing assessments. It also assesses what preventive health care, education and other assistance should be offered to the patient to improve their health and wellbeing.

We believe that this health check is complementary to other health checks, including the one performed by the Children at Risk Health Unit when entering care, and supports early detection and primary prevention of chronic conditions.

Recommendation 14:

The Steering Committee recommends that all Aboriginal and Torres Strait Islander children have the appropriate Health Assessment annually to ensure they receive the appropriate preventative and primary health services in the ACT. This should be included as an essential process within the Annual Review process.

Next Steps

The iterative nature of this review means that as community consultations are held and case reviews are completed, specific areas for improvement are being identified and shared with the Directorate.

We appreciate that this means that the Directorate is being asked to constantly review its own practices and report on immediate and intended changes. We do believe, however, that the conversations, training and focus on the circumstances of Aboriginal and Torres Strait Islander children in the ACT in the child protection system will bring momentum for positive and sustained change. We know that the content and history is confronting; however, it is imperative that case workers understand the context in which they are working and the story of our families and culture that they carry with them every day.

I look forward to discussing these recommendations with you, please do not hesitate to contact me if you have any questions.

Yours sincerely,

Barb Causon
Chair
Our Booris, Our Way

Attached: Recommendations list

Recommendations

We have provided this list of recommendations as a log of the recommendations that have been presented to aid discussion and evaluation.

No.	Recommendation title	Presented	TOR reference		
			Reducing children entering care	Improving experience of care	Improving pathways to restoration or exiting care
1	Allocation of Aboriginal and Torres Strait Islander children's cases to experienced and culturally intelligent case workers	June 2018			
2	Engagement of SNAICC for training on embedding Child Placement Principle	June 2018			
3	Policy and Practice Review to explicitly embed the Child Placement Principles	June 2018			
4	Universal access to Family Group Conferencing	June 2018			
5	Ensure full intent of Aboriginal and Torres Strait Islander child placement principle is reflected in the Child and Young People Act 2008	December 2018			
6	Feasibility study Aboriginal Child Care Association	December 2018			
7	Aboriginal and Torres Strait Islander Children's Commissioner	December 2018			
8(a)	Culturally appropriate advocate service	December 2018			
8(b)	Access to legal representation and advocacy	May 2019			
9	Early support programs available	December 2018			
10(a)	Access to supports for Kinship carers	May 2019			
10(b)(i)	Placed in kinship care immediately upon removal	May 2019			
10(b)(ii)	Kinship Care Assessment Process Placed in kinship care immediately upon removal	May 2019			
11 (a)	Improve quality and monitoring of Cultural Plans - consultation	May 2019			
11 (b)	Improve quality and monitoring of Cultural Plans – seek support from VACCA	May 2019			
12	Pathways to restoration	May 2019			
13	Father inclusive practice	May 2019			
14	Aboriginal and Torres Strait Islander Health Assessments	May 2019			