



ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) –

Response to Australian Law Reform Commission’s (ALRC’s) recommendation to establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children,

as per recommendation 15-1 of the Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (2017) report

Prepared April 2018

Purpose

The purpose of this brief is to present the Queensland Aboriginal and Torres Strait Islander Child Protection Peak’s (QATSICPP’s) response to the Australian Law Reform Commission’s *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* report, and in particular, recommendation 15–1:

Acknowledging the high rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration, the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children.

Introduction

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the peak representative body in Queensland representing Aboriginal and Torres Strait Islander community controlled child and family services.

QATSICPP has prepared this brief in the context of latest recommendations resulting from the Australian Law Reform Commission’s report *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (2017)*. In particular, QATSICPP advocates response to the need and requirement for recommendation 15-1, which calls for the establishment of a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children; and recognition of and response to the inter-relationship between out-of-home care, juvenile justice and adult incarceration.

This brief presents a summary of the need, use and place for a national inquiry into Aboriginal and Torres Strait Islander Child Protection, and raises inter-related recommendations of the Family Matters Campaign – Australia’s national campaign to reduce over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

Context

In February 2017, the Australian Law Reform Commission received Terms of Reference to undertake an inquiry into the incarceration of Aboriginal and Torres Strait Islander peoples. While the report states that the Terms of Reference for this inquiry did not include an investigation into child protection, child removal or juvenile justice, given the link between out-of-home care, juvenile justice and adult incarceration, the Australian Law Reform Commission considers that the issue warrants further attention.

The need for recognition and response to the inter-relationship between child protection, juvenile justice and adult incarceration is further conveyed through the report’s findings, which places the disproportionate incarceration rates of Aboriginal and Torres Strait Islander peoples today in social and historical contexts. The report states that key drivers of incarceration for Aboriginal and Torres Strait Islander people are identified as external to the criminal justice system; and subsequently there is a strong case and rationale for the recommendation pertaining to justice reinvestment, to address causal factors before contact with the criminal justice system arises.

The need for early intervention and prevention approaches are strongly highlighted, and also corroborate the need and requirement for similar prioritised investment in child protection. The report acknowledges that research shows the relationship between child protection, juvenile justice and adult incarceration, and that these should in fact be considered to be key drivers of adult incarceration. This places an imperative on bolstered efforts and focus on early intervention and prevention approaches that work with children and their families to arrest current negative trajectories.

This brief also advocates the report’s recommendations for national targets pertaining to Aboriginal and Torres Strait Islander incarceration and violence; and the inter-related need for a national target and underpinning strategy for Aboriginal and Torres Strait Islander child protection, in addition to the advised Commonwealth inquiry.

Issues

Aboriginal and Torres Strait Islander people are saliently over-represented across the spectrum of child protection, juvenile justice and adult incarceration.

The Australian Law Reform Commission's report highlights:

- Aboriginal and Torres Strait Islander adults constitute 27% of the national prison population
- In 2016, around 20 in every 1,000 Aboriginal and Torres Strait Islander people were incarcerated
- Aboriginal and Torres Strait Islander incarceration rates increased 41% between 2006 and 2016
- In 2016, Aboriginal and Torres Strait Islander people were 12.5 times more likely to be in prison than non-Indigenous people and Aboriginal and Torres Strait Islander women were 21.2 times more likely to be in prison than non-Indigenous women

The ALRC report places the principal causes of Aboriginal and Torres Strait Islander incarceration rates as being outside of the criminal justice system. The report recognises and acknowledges the impact of the social determinants of incarceration, including education and employment, health and disability, housing and homelessness and child protection and youth justice.

There is substantive evidence that shows the relationship between child protection, youth justice and adult incarceration. Aboriginal and Torres Strait Islander children are now more than 10 times more likely to be removed than their non-Indigenous counter-parts; as well as being 16 times more likely than non-Indigenous children to have contact with child protection AND youth justice supervision (AIHW 2017).

Salient evidence exists too, linking juvenile justice with adult incarceration. Indigenous juveniles and young adults are more likely to be incarcerated today than at any other time since the release of the Royal Commission into Aboriginal Deaths in Custody final report in 1991 (Housing of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011). The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs has acknowledged the strong link between the disproportionate rates of juvenile detention and the disproportionate rates of adult imprisonment in its *Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system* (2011). Similarly to the Australian Law Reform Commission's report, the Inquiry also places prominent reasons for the high proportion of Indigenous people in the criminal justice system in the broader social and economic disadvantage experienced by many Aboriginal and Torres Strait Islander people. The Inquiry refers to

an analysis of the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS), which identified a number of economic and social factors that underpin Aboriginal and Torres Strait Islander contact with the criminal justice system. The analysis showed respondents to the national survey were far more likely to have been charged with, or imprisoned for, an offence if they left school early or performed poorly at school, were unemployed, or abused drugs or alcohol. The study found the level of risk of people being charged or imprisoned increased if the respondent was experiencing financial stress, lived in crowded households, or had been taken away from their natural family (Weatherburn, Snowball and Hunter 2002). The Inquiry also corroborates the Australian Law Reform Commission's calls for bolstered early intervention, as well as the need for a dedicated national justice target.

Compelling evidence subsequently exists to show the imperative for early intervention and prevention approaches, and the need use and value for a dedicated justice target, alongside a national inquiry into and target for Aboriginal and Torres Strait Islander child protection.

Recommendations

The recommendations below, draw on outcomes resulting from the Australian Law Reform Commission's report, as well as key asks and positions advocated recommendations of the national Family Matters campaign.

1. There is a high and evidenced need for the establishment of national targets to address Aboriginal and Torres Strait Islander incarceration and violence against Indigenous people
2. The Commonwealth should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children, with a focus on the feasibility of establishing commonwealth child protection legislation and regulations to enact obligations at international law as it pertains to the rights of Indigenous people, specifically children, enable consistency of policy and introduction of national standards for the admins
3. There is a strong need for development of a national comprehensive Aboriginal and Torres Strait Islander Children's Strategy which includes generational targets to eliminate over-representation and address the causes of Aboriginal and Torres Strait Islander child removal to improve child safety and wellbeing.
4. A target and strategy is needed to increase proportional investment in evidence-informed and culturally supportive prevention and early intervention services that are accessible to Aboriginal and Torres Strait Islander families.

5. A target and strategy is needed that recognises the unique role of, and provides sustainable funding for, a dedicated Aboriginal and Torres Strait Islander community-controlled early years sector.
6. We need national standards to ensure legislation and changing practices in the family support and child protection system so that it adheres to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), including:
 - a. Nationally consistent standards for implementation of all five elements of the ATSICPP and linked jurisdictional reporting requirements through the National Forum for Protecting Australia's Children
 - b. Increased representation of Aboriginal and Torres Strait Islander families, children and communities at each stage of the decision-making process, including through independent Aboriginal and Torres Strait Islander family-led decision making
 - c. Increased investment in reunification services to ensure children are not spending longer in out-of-home care than is necessary due to inadequate planning and support for parents; and increased investment in support services for families once children are returned
 - d. Increased efforts to connect Aboriginal and Torres Strait Islander children in out-of-home care to family and culture, through cultural support planning, family finding, return to country, and kinship care support programs.
7. Prioritise investment in service delivery by community controlled organisations in line with self-determination, including through investment targets aligned to need and "Aboriginal and Torres Strait Islander first" procurement policies for services to Aboriginal and Torres Strait Islander families.
8. Commitment to sustained increase in investment for family violence response and prevention, with a key focus on resourcing needs for Aboriginal and Torres Strait Islander community controlled organisations.
9. Development and publication of data to better measure the situation and causes of, and responses to, over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.
10. Establishment of state-based Commissioners, peak bodies and other representative bodies for Aboriginal and Torres Strait Islander children.

