



Victorian Aboriginal Children & Young People's Alliance

"If we get it right for Koori kids then we get it right for everyone."

Submission to the Commission for Children and Young People Inquiry into the implementation of the Children, Youth and Families amendment (permanent care and other matters) Act 2014

The Victorian Aboriginal Children and Young People's Alliance (The Alliance) consists of 13 Victorian Aboriginal Community Controlled Organisations (ACCOs) involved in providing out of home care services for Koori kids. They aim to advocate for, and positively influence the future of, Aboriginal children and young people in Victoria. VACCHO is the auspice agency to the Alliance.

Aboriginal people must not be denied the right, with members of their community, to enjoy their identity and culture, and to maintain their kinship ties, their language and their distinctive relationship with land, waters and other resources ((Humanrightscommission.vic.gov.au, 2016).

The Alliance commends the Andrew's Government in committing to and undertaking an independent inquiry of the Permanent care amendments. We are pleased to know that the Minister for Children, Youth and Families, the Hon Jenny Mikakos has agreed to release the inquiry findings.

Terms of Reference for the Commission for Children and Young People Inquiry (CCYP) Permanency Amendments Inquiry

The Inquiry's terms of reference ask it to examine the evidence to determine how well the permanency amendments are meeting their objectives, including early indications about the impact of the changes on outcomes achieved for children and their families and any unintended consequences.

The Inquiry will consider:

- *the impact of the permanency amendments on vulnerable children and their families*
 - *whether the permanency amendments are leading to more timely permanent outcomes, including family preservation and family reunification for vulnerable children, and more timely outcomes for children for whom it is unsafe to return to the care of a parent*
 - *whether the permanency amendments have strengthened cultural supports and planning for Aboriginal children in out-of-home care*
 - *the impact of the permanency amendments on child protection and other services*
 - *whether any unintended consequences can be directly attributed to the permanency Amendments*
- VACYPA submission: CCYP inquiry into Permanency Amendments



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- *barriers that prevent permanent care orders being made.*

Outcomes of the permanency amendments

The Alliance advises that the impact of the permanency amendments has caused significant distress to many Aboriginal families and carers. The Alliance is fully aware of the lack of resources which then limit the opportunities for Aboriginal families to access much needed culturally appropriate support. The Alliance has been informed by ACCOs that long term implications and risks associated with the permanency amendments does not follow the Aboriginal Child Placement Principle (ACPP).

The Alliance believes that long term implications and risks associated with the permanency amendments are;

- An increase in the loss of identity as a result of the child or young person's Aboriginal identity not being verified at the time of substantiation or failure to continue strengthening of Aboriginal identity post permanency
- Child protection workers do not have a clear understanding of the ACPP, which may increase the chances of an Aboriginal child or young person entering into permanent care.
- Limited monitoring of adoption and permanent care programs to ensure that they are meeting the ACPP. There is limited monitoring of these programs and provision for ACCO input, into the care of Aboriginal children and young people is required.
- 'Tick a box' assessments undertaken by Child Protection Unit (CPU) during the case planning stages, do not contain satisfactory collection of relevant information to capture Aboriginal children and young persons' connection to Aboriginal family, Culture, Community and Country.
- Miniscule time frames making it impossible to gather and provide evidence for the court regarding any chance of reunification. There has also been concern from ACCOs that Child Protection have been bypassing the ACPP in order to move children in to permanent care.
- A lack of transparency with parents, family and involved services regarding pre-birth notifications.
- Restoration programs not adequately resourced.
- Intergenerational and ongoing trauma resulting in young people prematurely becoming parents.
- Post-natal depression being a key factor in underdeveloped parenting skills, including bonding and attachment.
- Time lapses with unallocated cases.



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Recommendations

1. The Alliance recommends that DHHS child protection embed the ACPP in all elements of practice to prevent Aboriginal children and young people entering the out of home care system and/or placed inappropriately.
2. The Alliance recommends that an Aboriginal Family Led Decision Making (AFLDM) meeting occur in the first instance, without exception, (no more than) 48 hours after substantiation, as set out in “the child’s best interests”, inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria (www.ccyp.vic.gov.au, 2016), to inform the CSP and develop the case plan.
3. The Alliance recommends the development of a mechanism to provide regular, culturally appropriate review and monitoring of Cultural Planning post permanent care court order.
4. The Alliance recommends culturally safe post care legal support to ensure that Aboriginal families fully understand the conditions as set out in court documents.
5. Provide monitoring and support to facilitate families in meeting conditions set out in their court orders: Currently there is no post legal support for permanent care, and no monitoring of the implementation of court orders. The Alliance recommend greater involvement of ACCOs in existing permanent care programs and the funding and development of additional new permanent care programs to be operated by ACCOs in areas where these services are lacking. This could be direct service delivery by an appropriately resourced ACCO or in partnership with a mainstream service/s to ensure culturally safe contact for Aboriginal children and their carers.

Specific practice and legislative considerations for Aboriginal children and young people

The Alliance has been informed by ACCOs that there have been no demonstrable improvements observed or reported since the change to the permanency legislation in March 2016. The Alliance shares concerns that a lack of resources in restoration programs assisting with reunification may lead to failure to adequately support families.

Other concerns expressed by Alliance members include:

- The imposition of the 12-24 month time frame may have had an unintended consequence in the premature reunification of the children to the primary caregiver, without essential in home supports in place to strengthen the relationship. Consequently, children may enter the out of home care system more often and with longer term consequences of permanent placement breakdown, trauma and instability for the child
- DHHS not accepting the local knowledge or advice of ACCOs, family and/or community, particularly around the change of family circumstances.
- Child protection operating within a deficit model, and child protection workers basing their treatment of the family on old pattern and history within the family. New information and observations of the family are not



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included or taken into account and does not allow families the opportunity to prove that they have the ability to care for the child or young person.

Recommendations

1. The Alliance recommends that each individual case be professionally assessed, so that children have the opportunity to develop meaningful and strong relationships with their primary caregiver, and/or extended Aboriginal family and community.
2. The Alliance firmly recommends that co-assessments with Child Protection and the ACCO will work towards embedding the ACPP. An example was provided by an Alliance member where having a community member in the AFLDM role in DHHS and an AFLDM convenor in the ACCO ensured that the AFLDM meeting and Cultural Planning were of high quality and prepared in a timely manner.
3. The Alliance recommends that the Court notes conditions in the orders in the best interests of Aboriginal children following the ACPP at all times.
4. The Alliance recommends the inclusion of regular contact to strengthen the relationship with all Aboriginal family and sibling groups and work towards reunification, strengthening attachment, and continued connection to Community, Country and Culture. This would change the nature of 'contact' being only that of the parents.
5. The Alliance recommends a steadied and staggered reunification, tailored to support each individual based on individual care planning and circumstances.
6. The Alliance recommends that if a Permanent Care Order is made, contact arrangements be negotiated on individual circumstances, not limited to 4 contact arrangement per year as currently legislated.
7. Permanent Care should only be considered for an Aboriginal child or young person if all other avenues of reunification have been exhausted and evidence provided. This must follow the ACPP and be in consultation with the ACCO working with the family, who have detailed knowledge of the family and cultural considerations.
8. An Aboriginal child or young person, in keeping with the ACPP, should only go into permanency with an Aboriginal family member or community member or at the very least a non-Aboriginal carer, who has undertaken competency based cultural safety training and been approved by an ACCO.
9. Aboriginal children or young people going to a Permanent care order to be assessed on an individual case basis. It is essential that time frames not be generic and take into account the individual child's unique circumstances, rather than a one size fits all approach.



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Cumulative concerns

The Alliance has been informed by ACCOs that at the onset of the CCYP Taskforce 1000 investigation, there was a spike in referrals from the AFLDM convenor at DHHS. Reports from ACCOS have suggested that since the completion of Taskforce 1000 there has been a significant decrease in referrals. A familiar pattern with AFLDM is that the 48 hour time frame is rarely adhered to, and it's usually several months before everyone involved can come together to develop a plan that provides familial safety for the Aboriginal child or young person.

Other issues identified by the Alliance members were:

- Frustrations about instability and constant changes to AFLDM meetings.
- That meeting times in some cases may be changed several times due to AFLDM position at DHHS under resourcing, heavy caseloads and /or positions not filled.
- Communication and data collection between Child Protection and ACCO lacks transparency is sometimes problematic.
- Aboriginal Children and young people are left in care with no decision being made as to the future for those children.
- Carers fear losing resources that enable them to provide much needed support for children and young people post permanent care order being made. There is a reluctance for carers to accept children on permanent care orders. Resources that enable intensive support cease when a child or young person goes to permanent care. Therefore, Aboriginal children or young people with challenging behaviours or suffer significant trauma, will not be supported in a permanent care placement with a long time carer because of lack of ongoing support.
- The Alliance believes that there have been some positive experiences in relation to the permanency changes:, for example, where Aboriginal children and young people are languishing in care for extended periods, the new permanency laws have given a deadline for providing stability for them.

Recommendations

1. The Alliance recommends that adoption be removed as part of the objective in the permanency plan hierarchy.
2. The Alliance recommends that parents include Aboriginal kinship, which can best be described as the significant people who provide care in the Aboriginal child or young person's life.
3. The Alliance recommends adequate resource allocation be made to ACCOs to continue to support traumatised children and young people if the child goes to permanent care.



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4. The Alliance recommends establishment of a central data system that will enable the linking of ACCOs, AFLDM convenor and CPU, to reduce time frames and advance the planning stages.

Solutions and options for reform

The Alliance believes that in the best interests of Aboriginal children or young people, early intervention and prevention must be of highest importance with being placed in Permanent Care a very last resort. It has been identified that the number of AFLDM referrals and subsequent meetings have increased across Victoria in 2015-16 compared to 2014-15, which may have resulted in fewer children being on long term care or permanent care orders.

There is a need to ensure that, once the legislation is enacted there is resourcing which supports change of practice and achievement of stated outcomes. A recent example of where additional practice and resourcing has been impacted and improved because of legislative change is in the recent amendments to the *Children, Youth and Families Act*. All Aboriginal children in out of home care regardless of court order, require a cultural plan. Changes to cultural planning in legislation saw a new approach to cultural planning practice, this included a significant increase in resourcing to ACCO's to undertake cultural planning.

The Alliance recommends that:

- all Aboriginal children and young people be connected to Community, Culture and Country and this must be evidenced in the case plan.
- a monitoring and accountability mechanism be developed to ensure that AFLDM is held within 48 hours of substantiation as proposed by CCYP(2016)
- the AFLDM program is adequately resourced to ensure timely Aboriginal family gathering to ensure wrap around cultural care for the child or young person.
- all children's court orders and case plans should be developed with the advice of a culturally safe care team with ACCOS and the family in the first instance, capturing the voice of the child and their family when applicable. This is particularly important to permanent care orders. A culturally safe and informed legal team, situated in the children's courts, should be made available for families dealing with permanent care concerns. This will prevent an ineffective 'tick the box' assessment.
- adoption be removed from the permanency objectives.
- the Alliance adheres to the belief that all case plan implementation and development must involve a partnership between the family, the ACCO and Child protection
- all Aboriginal case plans include and reflect evidence of consultation about cultural safety and planning, connection to community, culture and belonging. The Alliance believes the outcomes of the AFLDM and



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timeframes, including cultural and community connections, attachment and safety must be recorded in a purpose built database.

- every case plan reflect the individual family circumstances. For example, cultural planning, protective factors, bonding, attachment, strengthening parenting capacity at the beginning of an order to maintain the relationship with the child and young person and their Aboriginal family.
- CSP to be written at onset of child protection involvement and with the AFLDM as a platform as per the new process for Cultural planning.
- all case plans be regularly reviewed and actions highlighted, in line with a worksheet, which works towards reunification with the Aboriginal family, primary caregiver and/or kinship, to strengthen attachment and bonding and ensure connection to Community, Country and Culture.
- a monitoring and accountability mechanism established to review Aboriginal children's health and wellbeing post Permanent Care order. (NB the Alliance acknowledges that the CCYP have agreed to review the cases of 10% of Aboriginal children in out of home care, but this is not inclusive of those children on Permanent Care Orders).
- the person responsible for the primary care of the Aboriginal child or young person to be named in the court order. This is especially important for permanent care orders in supporting Aboriginal children and young people in maintaining links with family, Culture, Community and Country.
- adequate resourcing of ChildFIRST and Integrated Family Services (IFS) in ACCOS be distributed with equity to allow for timely and meaningful reunification. This includes resourcing to assist ACCOs and Aboriginal families to access ChildFIRST and IFS through Support and Safety Hubs.
- resources for the development of an Aboriginal foster care drive which includes and/ or supports kinship carers especially when caring for children with challenging behaviours, to prevent placement breakdown and heal significant trauma. An Aboriginal foster care program would imbed Cultural, Community and Country inclusion for every Aboriginal child or young person entering into care with the approved foster carer.
- increased funding to early intervention and prevention programs prior to court to prevent children going into permanent care. In the cases were permanency is in the best interests of the child and their family that adequate supports are provided to ensure the child and carer have a continuum of Culturally safe supports. Implementation of this recommendation increases resourcing at the immediate point of contact, to support the legislative changes in delivering the desired outcomes.
- services and carers are funded to continue the care for the child post permanency, including the implementation and monitoring of the cultural plan.



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“Victorian Parliament recognises that, as human beings, we have basic rights, including the right to be treated equally, to be safe from violence and abuse, to be part of a family and to have our privacy respected.” (Victorian Equal Opportunity and Human Rights Commission, 2016).

References

Commission for Children and Young People, Victoria (2016), *In the Child's best interests: inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*. [online] Available at: <http://ccyp.vic.gov.au/downloads/in-the-childs-best-interests-inquiry-report.pdf>.

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Victorian Equal Opportunity and Human Rights Commission (2016), *Victoria's Charter of Human Rights and Responsibilities*, [online] Available at: <http://www.humanrightscommission.vic.gov.au/the-charter>.