Submission to the Yoorrook Justice Commission investigation into systemic injustice in the child protection system

Victoria Legal Aid

Acknowledgement of Country

Victoria Legal Aid operates on the unceded lands of First Nations peoples throughout Victoria. We acknowledge the Traditional Custodians of the land and respect their continuing connections to land, sea and community. We pay our respects to First Nations people and communities throughout Victoria, including Elders past and present.

Note of thanks

We would like to acknowledge and thank our former client ‘Mikala’ for sharing her story and truth telling and for her time and expertise in reviewing this submission.

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Executive Summary

"Something has to change. At the end of it all something has to give. Parents and children can't keep going on like this."

*Lived experience statement of Mikala (**Annexure 1**).*

Victoria Legal Aid (VLA) welcomes the Yoorrook Justice Commission's investigation into the child protection system in Victoria.

We acknowledge and are led by the advocacy and expertise of Aboriginal Community-Controlled Organisations (**ACCOs**), which consistently demonstrate the value of community-led solutions.

Our submission focusses on the key actions we see as essential to ending systemic injustice in the child protection system. In our view it is critical to prevent entry into the child protection system by creating a fully self-determined approach to the welfare of First Nations children, addressing drivers into the system. While resourcing community-led prevention and early intervention is paramount, the approach for First Nations children in child protection must also be transformed based on self-determination, community support and healing and addressing systemic racism that frequently manifests in paternalistic assumptions about First Nations families.

In the immediate term, we see the need for urgent changes to the existing child protection system in Victoria, to enhance fairness and to support families to stay together. These include:

- Reinstating the Children's Court ability to make orders in the best interests of children without time-limits on reunification
- Establishing specialist Children's Courts state-wide, including Marram Ngala Ganbu
- Expanding access state-wide to independent non-legal advocacy for families in the child protection system
- Meaningfully implement and build accountability measures into the framework to reduce the criminalisation of children in residential care.

VLA's Child Protection Practice

VLA is the largest provider of legal services to adults and children in the child protection system across Victoria. In 2021-22, grants of VLA assistance to child protection clients totalled 9,011, of which 17 per cent were for First Nations clients (1,561).

We also deliver the Independent Family Advocacy and Support service (IFAS), which provides non-legal advocacy to parents in the early stages of child protection involvement, prioritising First Nations parents and primary carers, parents with intellectual disabilities, and parents from culturally and linguistically diverse backgrounds.

Since 2016, we have also played an active role in advocating to reduce the criminalisation of children and young people in Victorian out-of-home care (**OOHC**)[1] and are committed to reducing the overrepresentation of First Nations children in both the child protection and youth justice systems.

Through our practice experience, we see the disproportionate harms experienced by First Nations children and families at the hands of the child protection system; harms that are a consequence of centuries of laws, policies, systems and structures that have entrenched systemic and structural racism, and normalised the disempowerment of First Nations people and denied their right to self-determination

Earlier reports laying the ground for change

> *This overrepresentation of First Nations children in child protection is not a symptom of a broken system, but rather representative of the failure to dismantle systems designed to intervene in First Nations families and impose non-Indigenous futures on First Nations children. Regardless of the apologies and rhetoric of reform, this over-representation will continue until these systems are transformed.*
>
> *Dr Paul Gray, Co-Chair of the Secretariat of National Aboriginal and Islander Child Care's (*SNAICC*) Family Matters campaign*[2]

25 years ago, the landmark *Bringing them Home* report detailed how the forced removal of First Nations children formed an integral part of racist assimilation policies adopted by successive Australian state governments throughout the twentieth century. It described the profound and lasting intergenerational impacts that this disconnection from family and country and denial of culture had and continues to have on First Nations communities. It also showed how contemporary systems and practices reproduce these harms[3] through a paternalistic lens[4] that maintains government's decision making over the lives of First Nations families.

It is deeply disturbing that over two decades on from *Bringing them Home*, more First Nations children are being removed from their families and placed in care than ever before. In the past four years, the rate of First Nations children with child protection involvement has increased significantly[5] and First Nations children are 22 times more likely to be in OOHC than non-Aboriginal children.[6]

We see in our practice the strong link between OOHC, contact with police and entrenchment in the criminal justice system, further separating First Nations young people from their families and communities and placing them at greater risk for mental health and socioeconomic challenges.[7]

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[1] Our 2016 *Care Not Custody* report examined VLA's data and found almost one in three young people we assist with child protection matters who are placed in out-of-home care later returns to us for assistance with criminal charges: Victoria Legal Aid *Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system*, 1.
[2] Dr Paul Gray, (14 May 2021) 'Governments must let go of their power over the lives of Australia's First Nations children' The Guardian online.
[3] Human Rights and Equal Opportunity Commission (1997) *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Part 6 – Contemporary Separations.
[4] As above, "… Indigenous families were historically characterised by their Aboriginality as morally deficient. There is evidence that this attitude persists. A focus on child-saving facilitates blaming the family and viewing `the problem' as a product of `pathology' or `dysfunction' among members rather than a product of structural circumstances which are part of a wider historical and social context', Part 6, Chapter 21 – Child Welfare and Child Protection.
[5] Australian Institute of Health and Welfare (2022), *Child Protection Australia 2020–21*, Table T4.
[6] As above.
[7] See our submission to the Yoorrook Justice Commission on systemic injustice in the criminal justice system.

We refer the Commission to the many wide-ranging inquiries and reports which have made strong recommendations for systems changes, grounded in First Nations peoples' right to self-determination, to stop the removal of children and young people from their families and to resource communities to support healthy, thriving First Nations communities[8] (see list at **Annexure 2)**.

A note on this submission

Drawing on our practice experience and data, this submission shares VLA's perspective on systemic injustices in the child protection system and our suggestions on how reforms could lead to fewer children becoming involved with and staying in the system. We are conscious that as a mainstream organisation, our submission should be viewed as supplementary to the contributions and expertise of ACCOs leading work in the child and family sector.

In preparing this submission we have consulted with the Victorian Aboriginal Legal Service (**VALS**), the Victorian Aboriginal Child Care Agency (**VACCA**) and Djirra.

We also consulted with Mikala (not her real name), a First Nations member of Shared Experience and Support (**SEaS**), our advisory group for parents with lived experience of the child protection system. Mikala has provided a lived experience statement at **Annexure 1** and reviewed this submission.

A self-determined approach to the welfare of First Nations children

> *Poverty, assimilation policies, intergenerational trauma and discrimination and forced child removals have all contributed to the over-representation of Aboriginal and Torres Strait Islander children in care, as has a lack of understanding of the cultural differences in child-rearing practices and family structure*
>
> *Australian Institute of Family Studies (**AIFS**)*[9]

First Nations children's over-representation in child protection stems from the policies and the legacies of colonisation, which in many ways are still ongoing today. This has led to entrenched systemic racism and poor health and wellbeing outcomes for First Nations people. Although contemporary child protection systems have sought to distance themselves from past policies, these systems continue to operate on negative assumptions that increase inequality and injustice against First Nations families. Understandings of risk, child abuse and neglect are typically biased in favour of white parenting practices, which can lead to culturally inappropriate assessments and an over-surveillance of First Nations families.[10]

[8] Megan Davis (2019) *Family Is Culture : Independent Review of Aboriginal Children and Young People in OOHC*, states that Child Protection is "a well-trodden reform landscape that is littered with comprehensive and unimplemented recommendations for reform",9.

[9] Australian Institute for Family Studies (2020*) Child protection and Aboriginal and Torres Strait Islander children,*1.

[10] Krakouer, J., Bhathal, A. et al (2021) 'First Nations children are still being removed at disproportionate rates. Cultural assumptions about parenting need to change', *The Conversation.*

A fully self-determined approach to the welfare of First Nations children that removes the imposition of non-First Nations frameworks was recommended in the *Bringing them Home* report[11] and has been reiterated in many reviews and by First Nations advocates. It is crucial to address the drivers of over-representation from the earliest stages, including by reducing economic exclusion in First Nations communities and strengthening universal and targeted child and family services and support for new parents.[12] This "must be driven by the cultural authority of Aboriginal and Torres Strait Islander families and communities, who know best what is needed for their children to thrive".[13]

Nationally, 84 per cent of government child protection funding is spent on statutory intervention and OOHC, and only 16 per cent is invested in supporting children and families with early intervention and prevention services. While Victoria has proportionally the highest investment in early family support at 25.8 per cent, SNAICC points out that only 11.6 per cent of children who received an intensive family support service in 2019–20 were First Nations children.[14] As the effects of the COVID-19 pandemic are projected to continue exacerbating social and economic adversities, the need to expand access to culturally safe, community-led early family support services is paramount.[15]

The Commission for Children and Young People (**CCYP**) found that exposure to family violence and substance abuse were the major drivers for First Nations children entering care.[16] Our Independent Family Advocacy and Support (I**FAS**) data supports this, with family violence making up 38 per cent of IFAS clients' major presenting concerns.[17] In our legal practice we also see that family violence contributes significantly to First Nations children's over-representation in the child protection system, and that the current limited availability of supports for victim-survivors (predominantly mothers) can lead to the forced separation of children from victim-survivor parents and/or carers. As Mikala's story shows (at **Annexure 1**), the dynamics of family violence relationships are not always well understood by Child Protection practitioners, and parents who are victim-survivors are not always given the support they need to provide a safe environment for their children. We also see how family violence and child protection matters can intersect with and exacerbate other legal and non-legal needs, such as housing, fines, Centrelink access, mental illness and disability, and discrimination. For example, homelessness and insecure housing have been found to play a significant role in preventing First Nations children from being reunified with mothers who are victim-survivors of family violence.[18]

As found by the Royal Commission into Family Violence (**The Royal Commission**), the effects of trauma linked to dispossession and child removal inform First Nations victim-survivors' distrust of

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[11] As above, 590 – Recommendation 43a.
[12] Secretariat of National Aboriginal and Islander Child Care (2021) , *Family Matters Report 2021*, Executive Summary, 6.
[13] As above.
[14] 'When compared to the 26.9 per cent of children in out-of-home care in Victoria who were Aboriginal or Torres Strait Islander, this suggests that the level of culturally safe and accessible services is not aligned to the level of support needs for Aboriginal and Torres Strait Islander families: Secretariat of National Aboriginal and Islander Child Care (2021), *Family Matters Report 2021*, 90.
[15] Social Ventures Australia (2020) *Keeping Families Together Through COVID: the strengthened case for early intervention in Victoria's child protection and out-of-home care system*, 2. This report was commissioned by Berry Street and major community service organisations, including VACCA. It found Victoria could prevent up to 14,600 children entering OOHC over the next ten years and save at least $1.8 billion by investing in early intervention programs including resourcing ACCOs.
[16] Taskforce 1000 reviewed the cases of 980 First Nations children in OOHC, finding 88 per cent had experienced family violence and 87 per cent had been exposed to parental alcohol or substance abuse: Commission for Children and Young People (2016), *Always Was Always Will Be: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, 11.
[17] This is followed by parental substance abuse at 16 per cent and mental health concerns at 12 per cent.
[18] Australian Housing and Urban Research Institute (2019) *Improving housing and service responses to domestic and family violence for Indigenous individuals and families*, 1.

police and Child Protection. The Royal Commission emphasised the need for greater investment in ACCOs operating in the family violence sector. It recommended Government prioritise adequately funding ACCOs, including to enable them to provide culturally appropriate family violence services for First Nations women and children, culturally-tailored family-centred services and crisis accommodation and support options for First Nations women and children.[19] First Nations justice organisations have focussed their advocacy on this same issue, calling for "expanded pathways for support and accountability that extend beyond police and criminal courts and are community-owned and community-driven" to remove barriers to escaping violence.[20]

Increased access to community-controlled legal assistance should be just one part of a more holistic approach to preventing escalation of problems, in addition to ensuring culturally competent and safe practices in services and statutory authorities. As stated in the *Pathways to Safety* report, "Families need to be able to access support before a crisis happens, and to ensure that children don't become stuck in the out of home care system and removed from their culture, communities and families".[21]

Transforming the system to prevent entry of First Nations children into out-of-home care

> *Cultural identity is not just an add-on to the best interests of the child…Denying cultural identity is detrimental to their attachment needs, their emotional development, their education and their health. Every area which defines a child's best interests has a cultural component. Your culture helps define how you attach, how you express emotion, how you learn and how you stay healthy.*
>
> *Professor Muriel Bamblett and Peter Lewis*[22]

While there have been numerous legislative and policy developments in Victoria over recent years aimed at supporting connection to culture and improving the outcomes for First Nations children in the child protection system, the reality is that this system continues to perpetuate harm to First Nations families and communities through continued removal of children from their families.

The rate of removal for First Nations children in Victoria is the highest in the nation, at almost double the nationwide rate and around 22 times the removal rate of non-First Nations Victorian children.[23] This has only increased in recent years, despite the national *Closing the Gap* commitment established in 2019 to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in care by 45 per cent.[24]

These statistics underline the need for a fundamental and self-determined reimagining of the child protection system that prioritises and resources community support and healing, moving away from

[19] Royal Commission into Family Violence (2016) *Summary and Recommendations*, 85 – Recommendation 146.
[20] Change the Record and the National Family Violence Prevention and Legal Services Forum (2021) *Pathways to Safety*, 5.
[21] As above,16.
[22] Bamblett, M., and Lewis, P. (2006) 'A vision for Koorie Children and Families: Embedding Rights, Embedding Culture', *Just policy: A journal of Australian social policy*, 45.
[23] The removal rate of First Nations children in Victoria is 103 per 1000 children; the nationwide rate is 57.6 per 1000 and the rate for non-First Nations Victorian children is 4.7 per 1000.
[24] Australian Productivity Commission (2022) *Closing the Gap Information Repository*, Target 12 – Figure CtG12.1.

its current bias towards white cultural conceptualisations of parenting, family structure, stability and risk mitigation, as has been called for by First Nations leaders over many years.

VLA acknowledges and supports the work of First Nations communities and the Victorian Government in leading Australian-first efforts to transfer authority for child protection functions to ACCOs,[25] and we support further progress of the *Wungurilwil Gapgapduir: Aboriginal Children and Families Agreement.*[26]

Urgent changes to enhance fairness and to support families to stay together

For most families, who are managed by the Department of Families, Fairness and Housing (**DFFH**), we believe that the following steps should urgently be taken to reduce the harms of contact with the child protection system:

- Ensure compliance with legislated requirements for First Nations children
- Reinstate the Children's Court's ability to make orders in the best interests of children without time-limits on reunification
- Provide intensive support for families to achieve reunification wherever possible
- Create a state-wide specialist Children's Court
- Expand and appropriately resource Marram Ngala Ganbu state-wide
- Separate the support and investigation/prosecution functions of Child Protection to improve trust in decision-making

Each of these steps is addressed in more detail below.

Ensure compliance with legislated requirements for First Nations Children

We share the concerns of VALS, CCYP and others about a lack of adherence to legislated requirements, particularly the Aboriginal Child Placement Principle (**ACPP**) and cultural plans for First Nations children, which are in place to support connection to culture.[27]

The SNAICC *Family Matters* report shows that in Victoria the proportion of First Nations children placed with First Nations relatives or kin was only 39.6 per cent in 2020-21; while this was the highest rate nationally, it is still unacceptably low.

The Victorian Government's own reporting on compliance with the ACPP should be strengthened. Measures related to the placement of First Nations children and connection to culture are included in reporting against outcomes in the Victorian Aboriginal Affairs Framework, which stated in 2020-21

[25] DFFH's ability to transfer this authority to ACCOs is conferred by *Children, Youth and Families Act 2005* (Vic) s 18. This provision was passed in November 2015, following a successful pilot project through VACCA, Both the CEO of VACCA, Professor Muriel Bamblett, and the Minister for Families and Children, Jenny Mikakos, welcomed the passage of this legislation as an important step for First Nations self-determination.

[26] Signed in 2018, the agreement is a partnership between the Victorian Government, Victorian Aboriginal Communities and the Child and Family Services Sector and includes resourcing select ACCOs to take responsibility for children in OOHC (as authorised under the above provision).

[27] *Children, Youth and Families Act 2005* (Vic) ss 13 & 14.

that 80.6 per cent of First Nations children in care were placed with relatives/kin or other First Nations carers, in contrast to the findings from SNAICC. [28] The CCYP has previously raised concerns with the measure used by the Victorian Government, noting it groups together placement types at different levels of the legislated ACPP placement hierarchy; does not consider other elements of the ACPP beyond placement, such as involvement of an Aboriginal agency, and does not indicate whether placement at a higher level of the ACPP placement hierarchy was considered.[29]

In its submission to the CCYP *Our Youth Our Way* Inquiry, VALS raised examples of apparent non-compliance with the ACPP and recommended the development and implementation of a robust accountability mechanism to ensure compliance with the ACPP.[30] We support this recommendation.

Through our practice, we see ongoing issues with adherence to cultural plan requirements and note that a lack of cultural support planning can delay timely decision making about a child's long-term care arrangements. Our lawyers routinely see protection applications reaching later stage hearings without a cultural plan being prepared or filed with the court, or plans being prepared without critical information, including not identifying a child's community. In one matter where we acted for a child in care with a non-Aboriginal carer, DFFH had not provided a cultural plan nor consulted with the child about their cultural support needs despite proceedings being on foot for over 18 months. Our practice experience is not isolated. In 2021, CCYP found that most First Nations children and young people did not have a cultural support plan in place.[31] CCYP also identified deficits in relation to the respecting and establishing of children's First Nations identity by the Child Protection workforce.[32] Even in cases where a cultural support plan was created, the CCYP found many examples of poor quality plans containing tokenistic cultural activities, often developed without input from the child or their family.[33]

We encourage Government to continue to invest in and support ACCOs to contribute to the development of cultural support plans and programs for every First Nations child in OOHC.

Reinstate the Children's Court's ability to make orders in the best interests of children without time limits on reunification

In August 2014, the Victorian Government passed the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* ('the permanency amendments'). This legislation was intended to ensure that decisions about the care of children were made in a timely manner, and that decisions made promoted permanency of care. While these amendments prioritise family preservation and reunification as the preferred option in the placement hierarchy, in practice there has been an increasing number of children being placed on third-party permanency orders which transfer parental responsibility to a permanent carer. The impact of this trend is particularly acute for First Nations

[28] Department of Premier and Cabinet (2021*)* *Victorian Government Aboriginal Affairs Report 2021*, Measures 2.2.1, 2.2.2 & 2.2.3.
[29] Commission for Children and Young People (2015) *In the Child's Best Interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria*, 86.
[30] Victorian Aboriginal Legal Service (2019) *Our Youth Our Way: Submission to the Commission for Children and Young People Inquiry*, 14.
[31] Commission for Children and Young People (2021) *Our Youth, Our Way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system,* 28.
[32] Commission for Children and Young People (2016) *Always Was Always Will Be: systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, 13 – Finding 5.
[33] Elicia Savvas (2022) 'Child Protection: Protecting vulnerable children', *Law Institute Journal*, 4.

communities, as Victoria places First Nations children on permanent care orders at a rate well above the national average, and second only to New South Wales.[34]

The increase in third-party permanency orders is troubling due to a lack of system oversight for children in permanent care, and an absence of evidence about the outcomes for children placed on these orders.[35] These concerns are particularly acute for First Nations children placed with non-First Nations carers.[36]

We are also concerned about the high rates of First Nations children on Care by Secretary Orders (**CBSOs**), short-term (maximum two-year) fixed orders granting DFFH guardianship over a child, including the capacity to determine and change their placement. VLA data shows that four years after the permanency amendments came into effect, the proportion of First Nations children on CBSOs was an average of 22 per cent compared to an average of 17 per cent of non-First Nations children on the same type of order.[37]

Frequent placement breakdown, a failure to include the permanency objective of family reunification in case plans and a lack of cultural supports are noted by CCYP as pressing issues for First Nations children on CBSOs.[38] In particular, First Nations children on CBSOs are highly likely to be placed in residential care, which all too often acts as a pipeline into the criminal justice system (this issue is addressed on p13 of our submission).

Driving the increase in orders placing children in OOHC has been the introduction of a rigid two-year timeframe for reunification when a child enters care.[39] Once the clock has run down, the court's ability to make orders based on an assessment of the child's best interests is restricted. If a child cannot return home and no permanent carer is available at this time, the only option is for a final order conferring parental responsibility on Child Protection, without any court or other independent oversight. We are highly concerned about this erosion of the Court's ability to provide a critical check and balance on the powers of Child Protection. We urge the reinstatement of the Children's Court's ability to make orders in the best interests of children without time-limits on reunification.

Provide intensive support for families to achieve reunification wherever possible

The introduction of the two-year reunification timeframe has put many families in an impossible situation, as they face huge barriers to getting the support they need in time to reunify. Challenges to accessing support commonly include lack of an allocated Child Protection practitioner, slow referrals to services, long waitlists for public or specialist services, lack of culturally safe services, the cost of gap payments for private psychologists,[40] logistical challenges particularly for parents in regional

[34] Secretariat of National Aboriginal and Islander Child Care (2021) , *Family Matters Report 2021*, 34 – Figure 8.
[35] Conley Wright et al. (2022) 'Comparative analysis of third-party permanency orders legislation in Australia', *Australian Journal of Social Issues*, 9.
[36] We note that the *Family Matters Report 2021*, reports that 38 per cent of First Nations children on permanent care orders were placed with non-First Nations kin or carers. It is noted section 321 of the *Children Youth and Families Act 2005* requires that approval of a permanent care order for a First Nations child includes conditions that the carer will preserve the child's connection to family and culture.
[37] Victoria Legal Aid (2020) *Achieving Safe and Certain Homes for Children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experiences of our clients*, 3.
[38] Commission for Children and Young People (2019) *In Our Own Words:* Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system, 92.
[39] This timeframe includes interim placements, before there is even a court finding that a child is in need of protection.
[40] Paying this cost gap is often necessary to avoid waiting several months to access a bulk billing psychologist.

areas or those who do not own a car, and long wait times for public housing.[41] Intensive support must be provided to parents to ensure they have the best possible chance of addressing protective concerns and achieving reunification. This support is particularly urgent for First Nations families given the higher rates of First Nations children in OOHC.

VACCA's Aboriginal Children in Aboriginal Care (**ACAC)** program Nugel, shows what is possible if tailored, culturally appropriate and strengths-based intensive support is provided to families. The evaluation of Phase One of ACAC showed that VACCA was able to achieve a reunification rate much higher than the reunification rate of DFFH (22 per cent compared to 5 per cent).[42]

Our lawyers have seen the benefits to First Nations clients of Nugel's approach, through proactive, creative efforts to maintain connection between children and parents, addressing issues and work toward reunification, even where there may have been a non-reunification permanency objective in place. One of our lawyers also noted the contrast between court reports by Nugel and Child Protection: *"Nugel focus on the strengths of families and anything of concern is framed in a constructive way, whereas Department reports often emphasise the placement (e.g., 'the child is in a stable foster placement') and have less focus on the individual needs of the child and family."*

VLA strongly supports the goal of transitioning all First Nations children to community care and acknowledges the progress to date towards this goal.[43] However as noted, with the majority of First Nations children remaining under the care and responsibility of DFFH, there is an urgent need for elements of the Nugel approach – strengths-based support, intensive focus on reunification – to be adopted more broadly to ensure the best outcomes for First Nations children and their families.

Establish a state-wide specialist Children's Court

Currently, metropolitan child protection applications are heard in the specialist Children's Courts at Melbourne, Broadmeadows and Moorabbin, with a Dandenong location opening in 2023. In regional areas, child protection applications are heard in Magistrates' Courts sitting as the Children's Court.

VLA believes the specialist Children's Court must be expanded state-wide, as we see that a lack of specialist knowledge and dedicated Children's Court sittings in regional areas disadvantages vulnerable children and contributes to postcode injustice. Our lawyers have seen a number of issues in practice, resulting from a lack of specialist courts in regional areas. For example, limited listing capacity of regional Magistrates' Courts to hear urgent child protection matters can result in delays to family reunification, and that a lack of judicial knowledge of child protection law can lead to multiple adjournments and unnecessary hearings.

The absence of specialist courts in regional areas disproportionately impacts First Nations families as they are more likely to have their matter heard in a regional court. Our data shows that from 2020 to

[41] This puts some parents in the difficult scenario where their application would be prioritised if their children were on the application, but DFFH will not agree to reunification until housing is in place. As at June 2022, the total number of applications for social housing under the Victorian Housing Register was 64,168: Homes Victoria (2022) *Applications on the Victorian Housing Register.*

[42] Inside Policy (2019) *Aboriginal Children in Aboriginal Care and transition of Aboriginal Children to Aboriginal Community Controlled Organisations Research and Evaluation – Phase One Report*, 13.

[43] In 2020-21, 6.9 per cent of First Nations children on protection orders were under the direct authority of an ACCO (an increase from the 5.7 per cent in 2019-20) and 42.6 per cent of First Nations children in OOHC on contractible orders were managed by ACCOs: Department of Premier and Cabinet (2021) *Victorian Government Aboriginal Affairs Report 2021*, Measures 2.2.3 & 2.2.4.

2022, First Nations clients accounted for 21 per cent of child protection legal assistance files in regional courts, compared to only 10.6 per cent in metropolitan specialist courts.

Expand and appropriately resource Marram Ngala Ganbu state-wide

To address the overrepresentation of First Nations children in the child protection system, it is vital that court processes are culturally responsive and not re-traumatising for First Nations families who have often experienced, directly or indirectly, the devastation of forced child removals in the past.

Marram Ngala Ganbu, the Koori Family Hearing Day at the Broadmeadows Children's Court, which recently expanded to Shepparton, provides an example of an initiative which should be available much more widely. Co-designed with First Nations communities, it provides a culturally appropriate court response that has enabled greater participation by families and culturally informed decision making.[44] VLA lawyers servicing Marram Ngala Ganbu have observed it demonstrates a deep commitment to First Nations self-determination through changes to the traditional court set-up which enable the court to be a more welcoming and culturally safe space for Koori families. With Koori family support workers assisting clients and a more supportive atmosphere, our lawyers see that Marram Ngala Ganbu regularly facilitates more engagement with court processes and prioritises a problem-solving, rather than punitive, approach that enables protective concerns to be addressed and encourages families staying together.

Marram Ngala Ganbu must be offered state-wide, so that culturally tailored responses can be provided to more First Nations families. This expansion must be designed, developed and led by First Nations people. It is also important for any such systemic reforms to be accompanied by increasing availability of culturally appropriate specialist services, particularly in regional and remote areas.[45]

Separate the core functions of Child Protection to improve trust in decision-making

In the current system, Child Protection practitioners hold dual roles: they are charged with ensuring families get the support they need to prevent or address problems, while also having the power to investigate allegations, remove children from their parents' care and take a family to court.

From our practice we see these conflicting responsibilities of practitioners contributes to a mistrust of Child Protection among parents, who often feel that asking for help will lead to their child being removed. This is particularly acute for First Nations people with familial histories of Child Protection involvement and for whom every effort should be made to avoid child removal.

This issue was identified by the Children's Court in its submission to the 2010 Victorian Law Reform Commission inquiry: "*At present the Department performs a number of functions, including the inherently contradictory dual roles of both assisting children and families and initiating and conducting court proceedings involving those same families in child protection cases and sometimes in*

[44] Arabena, K., Bunston,W. et al. (2019) *Evaluation of Marram-Ngala Ganbu: A Koori Family Hearing Day at the Children's Court of Victoria in Broadmeadows,* 3.
[45] Sentencing Advisory Council (2020) Crossover Kids: Vulnerable Children in the Youth Justice System, Report 3, xiv.

intervention order cases ... Given the conflictual nature of those two roles, it is not surprising that tensions often exist between the Department and the family members, particularly at court."[46]

To increase accountability for decision-making and improve trust in the system, we encourage changes to the operations of Child Protection to separate its support function from its investigation and prosecution functions.[47]

Independent support is vital for First Nations families in the Child Protection system

> *We know the child protection system today has resonance with historical practices because Aboriginal people have said so and we must not only listen but hear what they are saying.[…] Often contemporary casework practice reinforces the memory of the authoritarian state that dominated and subjugated Aboriginal lives during the protection era. It animates real fear.*
>
> *Professor Megan Davis, 'Family is culture' report*[48]

We observe a large power imbalance and lack of trust between Child Protection and families. Parents often tell us that it feels like they are under surveillance and are not listened to or offered the help they need by Child Protection. This is more pronounced for First Nations families, due to the trauma of past and ongoing child removals, economic inequality, and structural racism.[49] There needs to be independent support to help families navigate the child protection system, as this experience can be profoundly challenging and disempowering for many.

The Independent Family Advocacy and Support (IFAS) model

IFAS provides non-legal advocacy to parents at early stages of the child protection system, in northern metropolitan Melbourne, Ballarat and Bendigo.[50] Designed with people with lived experience of the child protection system,[51] IFAS aims to support informed decision-making and engagement

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[46] Victorian Law Reform Commission (2010) *Protection Applications in the Children's Court, 388.*

[47] Two major inquiries have supported removing the prosecution function from Child Protection: The Victorian Law Reform Commission (2010) *Protection Applications in the Children's Court* proposed that the Victorian Government Solicitors Office (VGSO) should be primarily responsible for conducting legal proceedings on behalf of Child Protection in Victoria due to "the VGSO's independence, VGSO lawyers' litigation and case management experience, the significance of the VGSO being the Victorian Government's primary legal service provider and respect for the VGSO among the judiciary and members of the Profession", 394. The VLRC proposal was supported by the Protecting Victoria's Vulnerable Children Inquiry (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry, Volume 2, Chapter 15: Realigning court processes to meet the needs of children and young people,* 388- 9 – Recommendation 59.

[48] Davis et al, as above, xvi.

[49] Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women's Voices), Securing Our Rights, Securing Our Future Report* states "[T]here is a strong sense amongst Aboriginal and Torres Strait Islander women that we are seeing a second Stolen Generation", 177.

[50] An evaluation of IFAS by RMIT noted there is a growing evidence base for non-legal advocacy in child protection settings, particularly for parents with intellectual disability, and that the literature generally indicates advocacy for parents in the child protection system is highly values by all stakeholders and contributes to improved outcomes: see Maylea, Chris; Bashfield, Lucy, et al. (Social & Global Studies Centre, RMIT) (2021) *Final Evaluation of Independent Family Advocacy and Support (IFAS) Pilot,* 7.

[51] IFAS employs a Lived Experience consultant and has a lived experience advisory group (Shared Experience and Support (**SEaS**) informing its design and operations.

between families and DFFH and avoid court proceedings where possible. IFAS Advocates use a representational advocacy model and are led by the client's wishes. They do not make judgements about what may be in the best interests of a client or their family, but support people to speak up for themselves and their families.

IFAS prioritises First Nations parents, parents with intellectual disabilities, culturally diverse parents, and mothers who are the subject of an unborn report, ensuring those who are often most marginalised within the child protection system are supported to understand their options and participate in the process to ensure the best outcomes for their families.

IFAS Advocates refer parents to services that assist them in addressing the protective concerns raised by Child Protection, such as parenting support, drug and alcohol support or men's behaviour change services. IFAS also co-locates with ACCOs in Ballarat and Bendigo[52] and provides secondary consultation support to ACCOs across Victoria.

A 2021 RMIT evaluation of the three-year VLA-funded IFAS pilot concluded that the service is successfully reaching its priority clients and should be expanded state-wide.[53]

First Nations parents involved in the evaluation reported high levels of cultural safety and trust in IFAS. One parent [54] reported that the assistance IFAS provided to link with services was a major factor in helping her to reunify with her child:

> *I was at the point of giving up with DHS… [IFAS] actually turned my eyes around to work with them, maybe open up to different workers, and now, as I said, I've got an Aboriginal worker and I've got a Kids in Focus worker. I actually work with them and I talk with them, and if it wasn't for [IFAS Advocate] opening up my eyes to certain things I probably would've given up, to be honest.*

Another IFAS client and member of the lived experience advisory group, Mikala, said it was only after advice and advocacy from IFAS that Child Protection heard her concerns and she felt believed and seen. Mikala shares her perspective at **Annexure 1.**

See **Annexure 3** for a detailed IFAS advocacy example that was constructed by the RMIT evaluation team to show how IFAS workers assist First Nations clients in practice.

VLA has secured funding from DJCS to continue IFAS until June 2024 in northern Melbourne, Bendigo and Ballarat. IFAS currently assists over 200 families per year. We continue to advocate for funding to expand IFAS state-wide which would enable us to assist approximately 720 families per year. A state-wide IFAS would cost government approximately $3.3m per year; this would be more than offset by savings accrued through diverting families from child protection pre-court.[55]

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[52] Ballarat and District Aboriginal Cooperative (**BADAC**) in Ballarat and Bendigo & District Aboriginal Cooperative (**BDAC**) in Bendigo.
[53] As above, 41.
[54] As above, 39.
[55] In 2021, we calculated that expanding IFAS state-wide would avoid costs to government of over $10m per year by reducing need for protective intervention, out of home care and court proceedings, resulting in a return on investment of $2.29.

The critical need to stop the criminalisation of First Nations

It is well established that once placed in OOHC, many children are funnelled into the criminal justice system and this particularly affects First Nations children, leading to adverse long-term outcomes for individuals and communities.

While the pipeline effect between Child Protection to Youth Justice has largely been attributed to the impact that trauma has on children and young people, after analysing the cases of all children and young people who were sentenced or diverted for at least one charge in the Children's Court in 2016 or 2017, the Sentencing Advisory Council (**SAC**) found 'the experience of care itself may be a contributing factor for many children'.[56] The CCYP has found that behavioural difficulties are exacerbated by the experience of being in OOHC as social connections are disrupted by placements and there is often a failure to provide appropriate therapeutic interventions. It also posited and we see in our practice, that the child protection system necessitates more contact with government interventions such as courts and police. *Our Youth Our Way* states "Even if this engagement is designed to protect children and young people, it can result in interactions and experiences that can be potentially criminogenic and normalise contact with the youth justice system in a negative way".[57]

Children with experiences of living in residential care make up a particularly concerning proportion of criminalised children and young people. The SAC found that approximately one third of the children sentenced to a custodial order, and who have been the subject of a protection order or experienced residential care, were First Nations children.[58]

VLA's own data shows that First Nations children in residential care are criminalised at much higher rates than non-First Nations children.[59]

Numerous reports have found that the residential care system regularly fails to provide a stable, caring home for First Nations children, instead placing them at "unacceptable risk of harm."[60] Many residential care facilities do not adopt a trauma-informed approach,[61] and rely on police to manage children and young people exhibiting challenging behaviour, even where that behaviour is relatively minor.[62]

We are particularly concerned that many children in residential care are charged for minor offences that would be unlikely to attract police attention in a family home. For example, our lawyers have represented children charged with criminal offences for throwing a sponge, breaking a plate, or "theft" of food in communal kitchens. The criminalisation of children has lifelong impacts, with SAC reporting

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[56] Sentencing Advisory Council (2019), *Crossover Kids, Vulnerable Children in the Youth Justice System Report 2: Children at the Intersection of Child Protection and Youth Justice across Victoria*, xvi.
[57] CCYP (2021) *Our Youth Our Way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, 297.
[58] Sentencing Advisory Council (2019) "*Crossover Kids" Vulnerable Children in the Youth Justice System, Report 1*,xxiv & 83.
[59] While First Nations children represented 17.7 per cent of a total 141 child clients in residential care, they made up 25.5 per cent of residential care clients who received help with a criminal matter within 12 months of their child protection matter: VLA internal data, 2020-21.
[60] Commission for Children and Young People (2021) *Our Youth, Our Way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, 46. See also our Care Not Custody report.
[61] CREATE Foundation (2018) *Youth Justice Report: consultation with young people in out of home care about their experiences with police, courts and detention,* 3.
[62] Victoria Legal Aid (2016) *Care Not Custody: a new approach to keep kids in residential care out of the criminal justice system,* 1.

that the earlier a child is first sentenced, the higher the likelihood they will reoffend.[63] As our separate submission to the Yoorrook Justice Commission's investigation into the criminal justice system states "Entry into the criminal justice system is criminogenic for children and adults and perpetuates the cycle of disadvantage and dispossession of First Nations people".[64] It is therefore vital to prevent contact between police and children in state care.

After years of advocacy,[65]we welcomed the introduction of the Framework to Reduce Criminalisation of Young People in Residential Care (**the Framework**)[66] in early 2020. The Framework provides a shared commitment between DFFH, Department of Justice and Community Safety (**DJCS**), Victoria Police and residential care service providers to "reduce unnecessary and inappropriate contact of young people in residential care arising from behaviours manifesting from childhood traumatic experiences and resultant involvement with the criminal justice system."[67] The Framework includes a specific guiding principle that strengthening connection to culture and community should be a key consideration in providing services to First Nations children and young people, in addition to providing a trauma-informed approach to care.[68] However, almost three years on from its release, we are deeply concerned about the slow pace of implementation.

Clear processes for how the framework will be applied in practice for individual children, and mechanisms for accountability and review where there are concerns it hasn't been followed, need to be established as a matter of urgency. These processes, like all responses to the over-representation of First Nations children in both the child protection and criminal justice systems, must be designed and led by First Nations communities, in keeping with the principle of self-determination.[69]

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[63] Sentencing Advisory Council (2016) *Reoffending by Children and Young People in Victoria*, 5.
[64] See: Victoria Legal Aid (2022) *Letter to Yoorrook Justice Commission from Victoria Legal Aid – Criminal Justice System Issues Paper* for our recommendations to immediately address the harms of the criminal justice system on First Nations people and to avoid further deaths in custody.
[65] This includes our 2016 *Care Not* Custody report, in which we advocated for Victoria to develop and adopt a similar mechanism to the New South Wales Protocol to Reduce the Criminalisation of Young People in Residential Out of Home Care: Victoria Legal Aid (2016) *Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system*, 15-16.
[66] Department of Fairness, Families and Housing (2020) *A Framework to Reduce Criminalisation of Young People in Residential Care*.
[67] As above, 12; Commission for Children and Young People (2015) ". . . *As a good parent would. . .*" *Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*,14.
[68] Department of Fairness, Families and Housing (2020) *A Framework to Reduce Criminalisation of Young People in Residential Care*, 13 – Guiding Principle 4.
[69] As recommended in: Koorie Youth Council (2018) *Ngaga-Dji (Hear Me): Young voices creating change for justice*; and Sentencing Advisory Council (2020) '*Crossover Kids': Vulnerable Children in the Youth Justice System. Report 3: Sentencing Children Who Have Experienced Trauma*.

Annexure 1: Mikala's lived experience statement

Mikala (not her real name) is a Gunditjmara woman living on Wadawurrung country. Mikala was born in another state and was taken away from her mother when she was 18 months old because of drug use. She spent time in out of home care and was also partly raised in kinship care.

She has had Child Protection involvement with her children.

My great great nan was Gunditjmara but she was part of the Stolen Generation and moved to Wadawurrung lands and got intertwined with their culture and their country. And she started a relationship with a Wadawurrung man so that's our foundation.

But I never knew the details about my Aboriginality because I didn't know my Dad or his family until he died when I was 24 years old.

I struggled a lot with belonging when I was young. I used to see so-called normal families with a Mum and a Dad at the shopping centre when I was a little kid and think 'Why can't I have that?' It's only after my Dad passed away that's when I realised I did have that, but it kind of got lost in translation, it got lost in the fact that adults decided they were gonna make choices and the children of those adults got affected.

What I tend to believe is that Aboriginal children, whether they are in care or not, they deserve the right not to be fucking forgotten about. Like I mean, I think about the whole Stolen Generation debacle and the scenario happened there, the Department are taking part in that because they're not advocating for families when it comes to Aboriginal children and they're not advocating for Aboriginal families when it comes to children being at home.

Being part of the Stolen Gen, I think it leads to more attention on you and every time you go to have a child you get paranoid that they'll want to take that baby away.

In my own experience I was in a violent relationship in the past and my son was removed at birth. I was led to believe by Child Protection that I was the issue and that everything was my problem, so I needed to fix it. So stupid me decided that I would continually go back to him. But that would make them say I was a bad mother. In the end I snapped, I lost it, I lost control of myself, and I lost my sense of belonging again. And I was incarcerated for breaching the Intervention Order. I was in jail for four days. But once I got incarcerated it was weird, that's when I found myself again. I had a lot of thinking time in there.

I was pregnant at that point with a new partner who was never violent, never had anything to do with the law. I knew I wanted him and my two children with me at my home.

Child Protection really treated me like a statistic after I went to jail. They wouldn't speak to me, they didn't want to have a bar of me because I was classified as a criminal. Take your ticket sit down and wait your turn, kinda thing. And that's when it was clear that I really wasn't being heard.

I think I called three Aboriginal Family Led Decision Making sessions after I got out because Child Protection weren't listening to me, they weren't hearing what I had to say.

They say they support people, but they don't! They don't support families; they don't support children in care – they don't. They want the statistical numbers, and they want [to] justify their way when it

comes to the court system. They are worried about their reputation and what their reputation is going to look like inside court and outside.

I had three months to prove myself to keep my baby and I worked my arse off. I worked with IFAS and they were exceptional. [My IFAS advocate] was my biggest asset. She advocated for me and was in my corner 100 per cent of the time when it came to the department and when it came to keeping my baby home. She was the one that originally got him home because the Department was adamant we would live for six months with my in-laws but she advocated that we do three months. So, I had to prove myself, which I did. I reduced off cannabis, I got clean, I was engaging with supports, I did all the drug screens, and they were coming back clean, I did all the programs, so I was proactively trying to gain my way back from where I'd been.

Realistically what broke that cycle was after I had my baby and realised the dynamic I had been in with my ex and what it meant… I did a program at Berry Street called Positive Shift for 18 weeks. And in that program, I learnt that 97 per cent of what I was going through– that wasn't my fault. That was me using force to protect my child.

Child Protection thought I was doing it for the sake of it, but I learned women only use force to protect what's maternally theirs. We're only human at the end of the day. There comes a point in a family violence relationship where you're just going snap and that's exactly what happened.

The Department could start by giving a shit maybe. It's not just about that statistical number and their reputation, it's about whether that family do have a detrimental risk to that child. How about you find out their story and what they're going through and how you might be able to put support services in place before you go ahead and take a child. And if those support services report that they're not exactly succeeding and they're not exactly doing as the Department asked then by all means go ahead and take that child but just remember, it's not all about your reputation.

We aren't numbers, we're not cattle, we're humans that make mistakes and at the end of the day there is such a thing as a first-time parent and you're not gonna get it right the first time. And that is a very important message that I try and share as much as I can because I know firsthand, I didn't get it right with my firstborn…I got stuck into drugs I went down the road of being traumatised and traumatising behaviour, because I'd lost something that was mine, they'd taken something that was maternally mine.

I'm so passionate about giving back to the community and breaking cycles when it comes to the Child Protection system and children being in out of home care because I felt that myself.

I went through it myself and it wasn't a pleasant experience, it wasn't something I wanted to go through, but I had no choice. And if I can give my children something that I didn't have growing up, that would be my children being at home with their parents and knowing their parents and having a positive thriving relationship with their parents. And why? Because I never had that. I know what it's like to scream blue murder for your Mum and Dad and not have them.

It's not easy and some days my childhood trauma gets the better of me, but we get through it and we manage. But not only that, that's when I'm able to invest *more* time in my children, that's when I'm able to focus on my children and go 'no hang on a minute. You're changing cycles, you're breaking patterns'. And that's when I'm able to say to myself 'No you are making a difference'.

I want my children to grow up with a sense of belonging, I want my children to grow up with their identity being known to them, 100 per cent really open and honest and because why because I never

had that as a child. Adults' decisions and adults' choices got in the way of my identity and my Aboriginality and that's why my children are being taught now.

Now we're reading books and we're putting up flags, so they know. I want my children to know that they are a part of a family that is a part of the Aboriginal community.

Annexure 2: Relevant public reports

- Human Rights and Equal Opportunity Commission (1997) *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.*
- Protecting Victoria's Vulnerable Children Inquiry (2012) *Chapter 12: Meeting the needs of Aboriginal children and young people.*
- Commission for Children and Young People (2016) *Always Was Always Will Be Koori Children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria.*
- Victoria Legal Aid (2016) *Care Not Custody: a new approach to keep kids in residential care out of the criminal justice system.*
- Commission for Children and Young People (2019) *In Our Own Words: Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system.* As part of this inquiry, CCYP spoke to 200 children and young people, 82 of whom were First Nations.
- Megan Davis (2019) *Family Is Culture : Independent Review of Aboriginal Children and Young People in Out-of-Home Care.*
- Australian Human Rights Commission, (2020) Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future.
- Victorian Ombudsman (2020) *Investigation into complaints about assaults of five children living in Child Protection residential care units.*
- Secretariat of National Aboriginal and Islander Child Care (2022) *Family Matters Report*; and Family Matters Report series.
- Commission for Children and Young People Annual Reports
- Maylea, Chris; Bashfield, Lucy, et al. (Social & Global Studies Centre, RMIT) (2021) Final Evaluation of Independent Family Advocacy and Support (IFAS) Pilot. Summary document.

Annexure 3: IFAS advocacy example

This advocacy example was coproduced with the lived experience evaluator on the evaluation team, based on common themes emerging from the interview data with people who had used IFAS. This is an amalgam of multiple experiences and does not reflect one single person's experience, informed by the well-established case study approach of qualitative research.[70]

Steven and June

Background

Steven is a Wurundjeri and Mutti Mutti man and June is a Gunaikurnai woman. They have four children between them. Steven has one son, Damon (15), from a past relationship who lives in a kinship placement with Steven's mother Catherine. June also has a daughter, Lia (10), who lives in a kinship placement with June's sister Tamyka. Steven and June have two children together, Deja (3) and Cyril (7). Although Steven and June do not have custody of Damon and Lia, they see their children frequently at whole family access, supervised by Catherine or Tamyka. Both Damon and Lia are on Care by Secretary orders due to substantial protective concerns in Steven and June's prior relationships. Damon and Lia's kinship placements are managed by the local ACCO, and there is current consideration of reunifying Damon and Lia with Steven and June.

At the last family access, Damon and Cyril got into an argument, and in the kerfuffle, Deja was accidently pushed over and ended up with a significant cut on her arm due to broken glass on the ground at the park. Although Deja received appropriate care, when she was asked at kindergarten about the cut, Deja said it was because of her brothers' fighting. The kindergarten was aware of the family's Child Protection history and made a Child Protection notification about Deja's injury.

Two days later, while Cyril was at school, Child Protection arrived at Steven and June's door. Unaware that any notification had been made and holding trauma and fear since the removals of Damon and Lia, Steven and June refused to open the door. Steven and June yelled for the Child Protection practitioners to leave their house. With all the noise and feeling the fear from her parents, Deja began crying. Child Protection could hear Deja crying from within the house. Child Protection said if Steven and June didn't open the door, they would return with a police escort. The next day, Steven and June kept Cyril and Deja home from school and kindergarten, fearing that Child Protection would attend their schools. In the afternoon, Child Protection arrived at the property with a police escort. Steven and June allowed the practitioners to enter the house, though were very cautious and nervous about having police and CP practitioners in their home. Deja and Cyril were frightened, knowing that Damon and Lia had been removed like this.

Although Child Protection tried to speak calmly and explain why they had come and that they had received a notification, Steven and June were unable to answer any questions, fearing they would say the wrong thing, or that they would be misunderstood. Child Protection said they would be contacting Deja and Cyril's kindergarten and school to get their perspectives and gave June and Steven paperwork before leaving the home.

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[70] Sarah Crowe et al, 'The Case Study Approach' (2011) 11 *BMC Medical Research Methodology* 100. Cited in Maylea, Chris; Bashfield, Lucy; Thomas, Sherie; Kuyini, Bawa; Costello, Susan; Fitt, Kate & Singh, Meena (2021) *Final Evaluation of Independent Family Advocacy and Support (IFAS) pilot*, Melbourne: Social and Global Studies Centre, RMIT University. DOI: 10.25439/rmt.14661216

June called the local ACCO with whom Damon and Lia's kinship placements were managed. The ACCO sought June and Steven's consent to refer them to IFAS. June recognised the name of the service from one of the cards in the Child Protection pack and sought reassurance from the ACCO worker that IFAS were independent.

Response

Rachel from IFAS received the referral and called June that afternoon. Although June was hesitant on the phone, Rachel took the time to explain the role of IFAS advocates, including their independence from Child Protection. Rachel told June that IFAS has significant connections with ACCOs, and once per week, she co-locates with the ACCO through whom Damon and Lia are case managed. Rachel says she knows Damon and Lia's case manager. Feeling more comfortable, June and Steven talk with Rachel about what has happened. June and Steven don't know where the notification came from but feel hesitant to send Deja and Cyril to kindergarten and school for fear that Child Protection will remove them from these places. June and Steven say that nothing has gone wrong, except that there was a small fight at the last access, but that this is normal and is to be expected between siblings. June says that Deja got hurt, but they had taken her to the clinic to have the wound checked. Steven and June told Rachel that they don't want to do the wrong thing as they are close to having Damon and Lia back in their care. Steven told Rachel that Child Protection had come with the police, and they didn't remember what Child Protection had said, but that they don't want Child Protection to attend their home again as Deja and Cyril become really scared. Rachel received Steven and June's consent to attend the upcoming care team meeting, and to speak on their behalf.

As the care team meeting was online, June and Steven attended but were able to just listen and have their camera and microphone off while Rachel explained Steven and June's position to the Child Protection practitioners. Child Protection wanted to interview Cyril and Deja to check if the story matched up, and to gain their insight into any issues at the home.

After the care team meeting, Deja was upset as she had heard her parents talking about Child Protection. Rachel called June after the meeting, and Rachel could hear Deja crying. Rachel asked if she could speak to Deja, June put the phone on loudspeaker and Rachel talked with Deja. Rachel told Deja that June and Steven had done nothing wrong, and that she and Cyril were safe, but that Child Protection practitioners would like to speak with her to check that she is okay after she fell over at the last access. In addressing Child Protection's concerns, June and Steven agreed that Rachel could mediate a video conversation between their Child Protection practitioner and Deja, and then with Cyril. June and Steven both felt comfortable with this happening, knowing that Rachel would be there in case Deja or Cyril became upset.

This conversation occurred, and Child Protection were satisfied that neither Deja nor Cyril was at risk of harm. After gaining the perspectives of the school and kindergarten, Child Protection closed the case with Deja and Cyril. The ACCO continued the work with reunifying Damon and Lia.

Evaluation

June and Steven's story illustrates the continuing tension and presence of legacy issues between Child Protection services and Aboriginal families. June and Steven had strong reactions when Child Protection arrived at their door, and this prompted them to keep Cyril and Deja from school with the intention of protecting the children from being removed. However, keeping a child absent from school without just cause would be a risk factor from a Child Protection perspective. Once the family felt able to trust Rachel, they could have productive and clear communication to and from Child Protection,

albeit they may not have spoken directly with their practitioner. By feeding information through a third party, Child Protection were able to assess risk posed to Deja and Cyril, and close the case. Steven and June engaged in the process by being present on the online platform but relying on Rachel to speak for them. Rachel was also able to ease Deja's fears of being removed from her parents, by speaking with her directly, and being present during her conversation with the Child Protection practitioner.

Although mediating all communication through IFAS is not ideal, it did enable Child Protection to address their protective concerns, and the family to engage in the process and avoid any escalation of intervention solely due to communication barriers. Further, it allowed Steven and June to maintain a sense of power within a setting which often disarms families.