



ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited

Royal Commission into Violence, Abuse,
Neglect and Exploitation of People
with a Disability



Table of Contents

Executive Summary	3
1. About QATSICPP – Who We Are	6
2. Our Children Our Rights	6
3. What this submission will cover	7
4. The Impact of Disability on the lives of Aboriginal and Torres Strait Islander Children	7
4.1 Numbers of Aboriginal and Torres Strait Islander Children with a disability	7
4.2 Numbers of children living in households with a family member with a disability...	10
4.3 Historical reasons for over-representation in disability.....	11
4.4 Punitive nature of responses to disability	13
5. Receiving adequate support	15
6. Critical Issues	17
6.1. Lack of Cultural Capability.....	17
6.2. Child Rights Framework.....	17
6.3. Development of Aboriginal and Torres Strait Islander models	17
6.4. Cumulative Impact of disadvantage	18
7. Our Solutions	18
History does not define us	18
7.1 Self-determination.....	18
7.2 Children’s right to culture and identity – Culture is protective	19
7.3 Embedding supports where families receive services.....	19
7.4 Addressing the needs of Aboriginal and Torres Strait Islander families caring for children with a disability	20
7.5 Greater engagement with PHN’s with Aboriginal and Torres Strait Islander services – improving mental health supports.....	20
7.6 Improving Queensland data collection.....	21
7.7 Improve access to increased assessment for Aboriginal and Torres Strait Islander children in care to ensure they are getting the right supports	22
7.8 Community awareness initiatives	22
7.9 Trauma Informed Service delivery	22
References	24



Executive Summary

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak is the peak body representing, advocating and supporting the Aboriginal and Torres Strait Islander child protection and family support sector in Queensland. QATSICPP provides leadership in advocacy and the development of policies, strategies and programs to resource, support and strengthen the capacity and capability of Aboriginal and Torres Strait Islander community controlled child protection agencies in the interests of our children, families and communities.

For QATSICPP at the foundation of our organisation is the commitment that our children have the opportunity to fully realise their rights and have access to all of the resources that they require to live a full and happy life.

However, for many Aboriginal and Torres Strait Islander children and their families sadly the enduring impacts of colonisation including discrimination, socio economic disadvantage and intergenerational trauma continue to feature predominately in their lives.

No more is the case than in the area of disability. We know that Indigenous children and young people are more likely to live with a disability. Nationally, Aboriginal and Torres Strait Islander children aged 0 to 14 had **double the rate of disability** than non-Indigenous children. We also know that our children have limited access to early intervention services, are unable to access culturally attuned disability assessment, and that their families are provided limited support. This is creating undue stress and distress in the lives of our children and families.

As a result of the systemic neglect in disability service provision and therapeutic treatment our children's behaviour is often seen as obstructive and difficult rather than as a result of cognitive or learning difficulties they may experience. This brings them into greater contact with the police and is often an entry to juvenile detention.

Unfortunately, due to the levels of trauma evident in our communities many of our children and families are subject to increasing into punitive systems of care such as child protection and juvenile justice due to the failures in the disability system to provide adequate support.

We hold significant concerns about not only the cultural capability of the Child Protection system but their capacity to make skilled disability assessments or understand trauma and its impact when they are making decisions to increase intervention in our families lives. This includes focusing on hierarchy of needs in their assessment of our children's wellbeing, often privileging every other need over their cultural identity and connections.

For our families parenting under the strain of managing their own disability and often extreme financial pressures we are concerned that they have limited ability to access legal counsel to challenge decisions that are made by departments given the limited knowledge and skills they have in relation to disability.

Of increasing concern to us is the fact that the state of Queensland does not have accurate data on the numbers of Aboriginal and Torres Strait Islander children in care or juvenile detention that have a disability. This creates real concern that the rights of our children are being ignored resulting in a failure to get effective assessment or supports to ensure that their social, emotional, physical wellbeing is being cared for adequately.



It also creates difficulties in reunification given that the longer disabilities are not diagnosed nor attended to, the worse both children's cognitive skills and behaviour becomes, creating difficulties in developing the system of care and support that is adequate within their family and community.

There is significant concern from our members that the rights of our children are seen as discretionary and subject to available resources. In our opinion our children's rights are not debatable and they should be afforded the full complement of resources they require to grow up strong and safe and proud of who they are.

Our submission therefore highlights the following critical concerns:

- Cultural capability of the Health and Child Protection workforce
- A lack of focus on Children's Rights
- The need for development of Aboriginal and Torres Strait Islander models
- Cumulative impact of disadvantage

We recommend the following actions to address the concerns raised in this submission:

1. Self Determination

Self-determination must be the governing principle that guides all decisions regarding funding, models and access to disability supports. This requires in practice weighting given to the voice of Aboriginal and Torres Strait Islander people and their cultural aspirations for their children.

2. Children's right to Culture – Culture is Protective

Preservation and support for strengthening Aboriginal and Torres children's cultural identity must be at the cornerstone of disability support for children and their families. In practice this requires weighting given to the voice of Aboriginal and Torres Strait Islander people and their cultural aspirations for their children within the disability system and funding provided to ensure the cultural continuity of children is upheld in all decisions.

3. Embedding supports where families receive services

In Queensland there are 33 Aboriginal and Torres Strait Islander Family and Child Wellbeing services that are responding to the needs of our most vulnerable children and families. To support children and families holistically strong consideration should be given to embedding disability services within these services. Given that many of the children and families that these services see are also likely to have contact with the child protection system, this will ensure greater access to appropriate diagnosis and culturally secure services.

4. Addressing the needs of Aboriginal and Torres Strait Islander Families with a disability

Families should not need to beg for a service, nor should they be reliant only on informal care structures to provide them with respite. Families should be adequately resourced to support each other including having greater access to services. This would draw on the strengths of culture and create a culturally strong system. Children should be maintained within their family and cultural system as a priority and additional availability of family supports would enable this.



This will require investment in Aboriginal and Torres Strait Islander designed, developed and operated services— including better engagement by the NDIS with Aboriginal and Torres Strait Islander children and families services.

5. Greater engagement by PHN's with Aboriginal and Torres Strait Islander Children's services

Children impacted by trauma have difficulty learning and often disengage from school. The challenges they experience in effectively regulating their emotions is symptomatic of trauma and is a key factor in the increasing incarceration rates of young Aboriginal and Torres Strait Islander people. Public Health Networks across Australia have been funded to provide better public health responses including a focus on joined up responses with a focus on both Indigenous health and suicide prevention.

As a result, we believe that the PHN's should broaden their networks and engage with Aboriginal and Torres Strait Islander child and family services across the state to build an effective early intervention mental health and wellbeing plan that will ensure our children receive quality culturally designed services.

6. Improving Queensland Data

What gets counted matters. If you cannot understand the numbers of children and young people who require a service, then you cannot design an appropriate service system to assist them. The lack of data also results in an accountability gap – where it is difficult for community members to hold government and service systems accountable for the lack of service provision without accurate data.

There is an urgent need to ensure adequate and timely data is collected, and responded to, to enable the development of the right system of support. To not to attend to this issue is a form of systematic neglect and continues to perpetuate the lack of adequate diagnosis and access to service provision for Aboriginal and Torres Strait Islander children and families.

7. Improve access to increased assessment for Aboriginal and Torres Strait Islander children in care to ensure they are getting the right supports

There has consistently been concerns raised in inquiries into child protection in relation to the lack of comprehensive assessments provided to children in the child protection system. There is an urgent requirement for the Queensland Department of Child Safety, Youth and Women to ensure comprehensive assessments are undertaken for all Aboriginal and Torres Strait Islander children in care and that appropriate disability and mental health supports are provided as a priority. This would need to include attention to training and development of the disability workforce to ensure they are culturally competent, with particular attention paid to recruiting, training and supporting an Indigenous workforce.

8. Community awareness initiatives

The stress on Aboriginal and Torres Strait Islander families in having to navigate the system to seek disability support is immense. Many Aboriginal and Torres Strait Islander organisations and services also do not have the information or resources to support families to understand the labyrinth of disability terminology or diagnostic criteria. It is therefore incredibly important that to increase accessibility and early intervention options including community awareness campaigns that are culturally appropriate are initiated. Most importantly funding service navigators within Aboriginal and Torres Strait Islander



Community controlled services should be a priority. This would increase community accessibility and eliminate barriers to seeking and receiving a service.

9. Trauma Informed Services

Trauma informed practice ensures that services are able to form partnerships with Aboriginal and Torres Strait Islander people based on a truthful understanding about the impact of the past on the present, creating safe, empowering and supportive environments that ensure Aboriginal and Torres Strait Islander families and children feel honoured and respected and their cultural needs prioritised. To achieve this services must be prepared to address systemic racism and have a willingness to build the cultural capability of their teams.

1. About QATSICPP – Who We Are

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak is the peak body representing, advocating and supporting the Aboriginal and Torres Strait Islander child protection and family support sector in Queensland.

The principal purpose of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak is to, above all, promote and advocate the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and their families, through effective partnerships and strategic collaborations.

QATSICPP provides leadership in advocacy and the development of policies, strategies and programs to resource, support and strengthen the capacity and capability of Aboriginal and Torres Strait Islander community controlled child protection agencies in the interests of our children, families and communities.

2. Our Children Our Rights

QATSICPP believes that the rights of Aboriginal and Torres Strait Islander children, of all children, should be at the heart of our nation. We believe that Aboriginal and Torres Strait Islander children and families have special rights under the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and upholding these rights should be of utmost priority in all government decisions and actions.

The Queensland government has made substantive efforts in recognising these rights ensuring that the principle of self-determination and the Aboriginal and Torres Strait Islander Child Placement Principle (ABTSICPP) are embedded with the Child Protection Legislation. The five elements of the ABTSICPP connection, participation, partnership, prevention and placement are the means to enshrine the rights of Aboriginal and Torres Strait Islander children to their cultural identity and recognition that children's identity is strengthened and supported when their families and communities are strong.

Children in the out of home care system also have a charter of rights embedded within the Child Protection Act 1999. This charter includes the right to access appropriate health, medical and therapeutic services as needed.

Despite these stated rights, a lack of active efforts on behalf of Queensland Departments including Child Safety, Women and Youth to uphold and enact these rights often results in systemic failures and negative outcomes for Aboriginal and Torres Strait Islander children and families.



3. What this submission will cover

- a) The impact of disability on Aboriginal and Torres Strait Islander Children
- b) Numbers of Aboriginal and Torres Strait Islander children with a disability
- c) Numbers of children living in households with a family member with a disability
- d) Punitive nature of State response to disability experienced by Aboriginal and Torres Strait Islander families
- e) Historical reasons for over-representation in disability
- f) Barriers to receiving adequate support
- g) Critical issues for consideration
- h) Our solutions

4. The Impact of Disability on the lives of Aboriginal and Torres Strait Islander Children

4.1 Numbers of Aboriginal and Torres Strait Islander Children with a disability

The Australian Bureau of Statistics has found that Indigenous children and young people are more likely to live with a disability. Nationally, Aboriginal and Torres Strait Islander children aged 0 to 14 had **double the rate of disability** than non-Indigenous children.

Queensland Health estimates that there were 203,045 Aboriginal and Torres Strait Islander Queenslanders (Indigenous Queenslanders) in 2014. With the population projected to increase by 34% in to 271,000 in 2026. Over half (57%) of the Aboriginal and Torres Strait Islander population in Queensland are aged under 25 with 35% below the age of 14.¹

Disability impacts Aboriginal and Torres Strait Islander children's lives in multiple ways they experience greater levels of hearing loss, developmental vulnerability, impacts of Fetal Alcohol Syndrome, autism and intergenerational trauma. Responding appropriately to disability is further compounded by many data deficiencies at state and national levels.

The disability system as a whole lacks cultural nuance and understanding. In his 2015 report the Social Justice Commissioner highlighted the complexity of this issue

There is no equivalent word for 'disability' in many Aboriginal and Torres Strait Islander languages ... Consequently, some Aboriginal and Torres Strait Islander communities may not have a general concept of disability, resulting in underreporting of disability and underutilisation of disability services.²

¹ Queensland Health Aboriginal and Torres Strait Islander Health and Wellbeing Services Plan 2018–2023

² Australian Human Rights Commission's Social Justice and Native Title Report 2015



The lack of research and understanding also results in poor service provision. In the recently released report by Macquarie University “We look after our own Mob Aboriginal and Torres Strait Islander Experiences of Autism”(2019) they found that the lack of research into culturally-specific understandings of autism, especially among Aboriginal and Torres Strait Islanders, had potentially far-reaching implications for how autism was assessed by health professionals and how children, adults and families are supported within health, education and social care systems, as well as in communities.

This report also outlined concerns about the quality of data available due to difficulties in diagnosis and a failure to have culturally safe diagnostic tools.

Information from QATSICPP members indicates that schools, especially within remote and regional contexts, are not able to provide appropriate educational and behavioural input to support Aboriginal and Torres Strait Islander children and young people with Autism. This increases poor educational outcomes and limits future opportunities for young people denying them active and whole lives.

Case Study

One of our families has a young person with Autism, they are not verbal and can struggle behaviourally within the classroom. Instead of the school accessing resources to support the young person, they just regularly send them home to their parents as the means to manage their behaviour. This means the young person is consistently missing out on educational opportunities and this is not acceptable with further stress being placed on the family rather than them being supported. The school have struggled to see that it is their responsibility to educate the child and seek resources to enable this.

Data Deficiencies

All the data for Aboriginal and Torres Strait Islander children is attributed to national data. Concerningly the Australian Institute of Health and Welfare has detailed that their efforts to assess the health and wellbeing of Indigenous young people is difficult.

“Although there are a number of surveys specifically relating to the Indigenous population, such as the ABS National Aboriginal and Torres Strait Islander Health Survey and the National Aboriginal and Torres Strait Islander Social Survey (NATSISS), these surveys do not collect information for many of the indicators or for the relevant age group covered in this report. Other surveys that collect information from Indigenous people often have inadequate sample sizes and this can result in high variability in the data, and apparent differences between Indigenous and non-Indigenous young people may not be statistically significant. These data deficiencies may mask true differences in these populations.

As a result, for many areas considered integral to the health and wellbeing of young people there is a lack of robust national information to assess how well Indigenous young people are faring, and how they compare with non-Indigenous young people.”³

³ AIHW 2011 report Young Australians their Health and Wellbeing



One of the key areas that the AIHW could not assess effectively due to data deficiency was disability.

As of the 30th of June 2019 4,430 Aboriginal and Torres Strait Islander children were living in out of home care in protection of the state. This is 43% of the total of all children in out of home care.

Aboriginal and Torres Strait Islander children are significantly more likely to be living away from home than non-Aboriginal and Torres Strait Islander children. As a rate per 1,000 children aged 0 to 17 years, 46.2 Aboriginal and Torres Strait Islander children were living away from home, compared with 5.4 for non-Aboriginal or Torres Strait Islander children as at 30 June 2019. The higher rate for Aboriginal and Torres Strait Islander children has been a consistent trend over the last five years.

Despite the overarching intervention of the state in Aboriginal and Torres Strait Islander children's lives, it is not possible to find out how many Aboriginal and Torres Strait Islander children in care have a disability as this data is not recorded or available publicly.

Youth Justice

There has been much written about the links between juvenile justice and the criminalisation of children and young people with a disability.

On an average day in 2017–18, in Queensland:

- Indigenous young people made up 7% of those aged 10–17 in the general population, but 58% of those of the same age under supervision
- Indigenous young people aged 10–17 were 17 times as likely as non-Indigenous young people to be under supervision (233 per 10,000 compared with 13 per 10,000)
- Indigenous over-representation was higher in detention (32 times the non-Indigenous rate). (AIHW Youth Justice in Queensland 2017-2018)

As far back as 2005 the Human Rights Commission began investigating this issue. In their paper *Indigenous Young People with Cognitive Disabilities and Australian Juvenile Justice Systems* it detailed that submissions made to the Senate Community Affairs References Committee Inquiry into children in institutional care had noted that a large percentage of juvenile detainees have a disability:

a lack of assessment, treatment and services for children with a mental illness means that many of these children fall through a range of service systems and end up in the juvenile justice system, 'consigned to incarceration rather than treatment.'

The Human Rights Commission drew evidence from the *Young People In Custody Health Survey* conducted by the NSW Department of Juvenile Justice which revealed the following:

- 88% of young people in custody reported symptoms consistent with a mild moderate or severe psychiatric disorder;
- 30% reported symptoms consistent with Attention Deficit Hyperactivity Disorder;
- 21% reported symptoms consistent with schizophrenia;
- 10-13% were assessed as having an intellectual disability;
- 8% of young men and 12% of young women reported having attempted suicide in the previous 12 months;



- 21% of young men and 56% of young women reported drinking in the hazardous/harmful range; and,
- 51% reported that drug use had caused them problems. ⁴

In the 10 years since this report there appears to have been little change or improvement to Aboriginal and Torres Strait Islander children and young people's plight. In the 2018/2019 annual report of the Public Guardian in Queensland they raised significant concerns about the numbers of young people in detention with intellectual disability and neuro developmental delay and the lack of service support.

“Community visitors remain particularly concerned about the lack of access to the NDIS for children and young people both in youth detention centres and in watch houses, given the high prevalence of intellectual disability and neuro-developmental delay. Access to appropriate post-trauma support and mental health support are also key concerns for children and young people in these settings” ⁵

Given the over-representation of Aboriginal and Torres Strait Islander young people in detention it is easy to assume that many young people with a disability are equally resident in State detention centres but again given the poor availability of reliable data this is very difficult to quantify. This raises real concern about the level of appropriate treatment and quality support that young people are receiving that could change their life trajectory into the future.

In short in Queensland there is virtually no reliable or systematic collection of data on:

- **How many Aboriginal and Torres Strait Islander children have a disability**
- **How many Aboriginal and Torres Strait Islander children in care or in juvenile detention have a disability**

4. 2 Numbers of children living in households with a family member with a disability

Many Aboriginal and Torres Strait Islander families are struggling with issues of disability with Aboriginal and Torres Strait Islander people aged 35-54 years 2.7 times as likely as non-Indigenous people of the same age to have a disability.

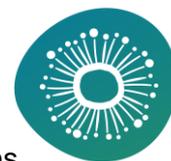
Indigenous parents with disability with co-resident young people aged 12–24 years were more than twice as likely to need assistance with core activities of self-care, mobility and communication as non-Indigenous parents.⁶

The legacy of intergenerational trauma has also had an impact with many community members struggling with the impacts of past trauma including the forced removal of children on their mind, body and spirit. Stolen children were provided with poor diets, poor health

⁴ 2003 NSW Young People in Custody Health Survey – Key Findings Report (2003) NSW Department of Juvenile Justice, Sydney, ISBN:0 7347 6518 5.

⁵ 2018/2019 Annual report of the Public Guardian in Queensland (pg.36)

⁶ ABS 2006 Census of Population and Housing



care and subjected to appalling living conditions and harmed and abused in the institutions into which they were sent.

This has resulted in overwhelming disadvantage. Recent AIHW reports on Stolen Generations have documented the impact of trauma and uncovered chronic health issues, disability and alarming levels of economic and social disadvantage for the Stolen Generations and their descendants. They report that 11% of Aboriginal and Torres Strait Islander people born before 1972 were removed from their families with 21% of survivors resident in Queensland.

Most concerningly the report detailed for the first time the incredible levels of disability evident in this population and poor economic security that was impacting on them and their families. It found that:

- 67% of Stolen Generations live with a disability or restrictive long term condition
- 70% rely on government payments as their main source of income
- 62% of Stolen Generations live in households within the three lowest income percentages
- 62% of working age are not employed
- 39% over the age of 50 report poor mental health⁷

AbSec noted in their report on disability that “It’s also part of our culture to principally lean on family for care and support. It’s been noted by researchers that Aboriginal and Torres Strait Islander people with disability are mostly cared for within their extended family, rather than by professional service providers. This is the same across remote, rural and urban areas of Australia”

This research points to a cumulative disadvantage experienced by Aboriginal and Torres Strait Islander children where not only are they likely themselves to experience disability but living in households with family members who are also disabled with poor supports available and limited resources to respond to the needs of the whole household in adequate ways. This is placing excessive stress on families who are therefore more likely to come to the attention of the child protection system as a result.

4.3 Historical reasons for over-representation in disability

As detailed already in this report Aboriginal and Torres Strait Islander people have been subject to government policies of dispossession, racism and human rights abuses since colonisation. As a result, immense trauma and distress has been experienced across generations. Trauma as detailed by the Healing Foundation not only impacts physically, and emotionally on Aboriginal and Torres Strait Islander people it is experienced collectively and is cumulative in nature.⁸

There are many ways in which Aboriginal and Torres Strait Islander children and young people are impacted by trauma, including the transmission of intergenerational trauma, directly experiencing trauma and by witnessing trauma. The developmental impact of trauma on children can affect emotional regulation, attachment, aggressive behaviour (towards

⁷ AIHW 2018 Aboriginal and Torres Strait Islander Stolen Generations and descendants: number, demographic characteristic and selected outcomes.

⁸ Healing Foundation submission Inquiry into accessibility and quality of Mental Health services in rural and remote Australia 2019



themselves and others), developmental competencies and self-worth.⁹ These impacts have resulted in chronic illnesses being much more prevalent among the Aboriginal population impacting at younger ages.

In Queensland it is estimated that over 10,000 Aboriginal and Torres Strait Islander workers had their wages stolen between 1939 -1972 and it is estimated that over \$500m in wages was stolen from this group alone. On top of this millions of dollars were also removed and stolen from pensions, child endowments and other payments made in this period right up until the 1980's.

With widespread poverty as a result of past government policies in Queensland there is a large economic divide that is growing between non-Indigenous and Indigenous people in the state.

- A higher proportion of Aboriginal and Torres Strait Islander households had incomes of less than \$400 per week (21.1%) compared with Other households (9.9%)
- 7 out of 10 Aboriginal and/or Torres Strait Islander people in Queensland live in the highest ranges of recorded social disadvantage

A report on the experiences and needs of carers of Aboriginal children with a disability found that these disparities also affect carers who are more likely to be an unpaid carer for person with a disability than non-Indigenous Australians. This report also found that the impact of caring was more pronounced due to the high level of socio-economic disadvantage that families experienced.¹⁰

The authors of this qualitative study also found that the strong sense of community and cultural care that is the cornerstone of Aboriginal and Torres Strait Islander families meant that many families would bear a greater responsibility for care as part of their kinship responsibilities. It discovered that many Aboriginal carers relied on family only for respite rather than approaching formal paid services.

In the ground breaking research by the First Peoples Disability Network "Culture is Inclusion" they detailed the experiences of Aboriginal and Torres Strait Islanders with a disability and also found that the past very much influenced the present and was having a cumulative negative impact on the lives of First Nations people. This included experiencing dual discrimination as both an Aboriginal and Torres Strait Islander person and a person with a disability which was pervasive across all support systems including disability services, health education, employment, housing and transport.¹¹

⁹ Healing Foundation 2018 Towards an Aboriginal and Torres Strait Islander Healing Framework for men and boys

¹⁰ DiGiacomo M, et al (2017). Experiences and needs of carers of Aboriginal children with a disability: a qualitative study.

¹¹ Culture is Inclusion Avery S (2018)



4.4 Punitive nature of responses to disability

Aboriginal and Torres Strait Islander carers for children with a disability have outlined the many ways in which their physical and psychological health and wellbeing had been affected over the course of their caring role.¹²

Carers reported feeling very stressed by their children's behavioural problems and the impact of this on themselves and their other children. Stress reported by carers often centred around their child's behavioural problems and concern for the aggressive behaviour causing injury to carers and siblings with family relationships negatively affected by the strains of caring.

Additionally, there is a general sense of social exclusion, or a feeling that services lack cultural safety and are not tailored to their family's needs and therefore many do not seek help.

Unfortunately, the response to this pervasive level of disadvantage and immense stress for Aboriginal and Torres Strait Islander families caring for children with a disability is not generally supportive. It is one that brings them to the attention of Child Protection services.

For many Aboriginal and Torres Strait Islander Queenslanders their past lives have been dominated by state responses that have institutionalised their children, stolen their wages and caused untold harm. It is no wonder that many Aboriginal and Torres Strait Islander people with a disability are under-represented in the support service system.

Many families fear if they seek support their children will be removed by government authorities. This is not an ill founded fear given that within Queensland currently Aboriginal and Torres Strait Islander children are 8.5 times more likely to be admitted to out of home care than Non-Indigenous children. In Queensland this means that over 50% of Aboriginal and Torres Strait Islander families will come in contact with the Child Protection System.¹³

Families who have a disability, especially those with a cognitive or intellectual disability, are particularly fearful of departmental interventions in their lives. Many are frightened that a system with little cultural capability will judge them unfit and many disability providers are also mandatory reporters with limited understanding or capacity to understand the level of community safety and support offered to caregivers.

Free and informed consent is a fundamental human right and the cornerstone to self-determination. There is an onus on the party seeking consent to resource those giving consent to inform themselves – this does not occur often enough in Queensland. We know that many of our families within the Child Protection system are not even afforded the right information in an appropriate format and in timely way to enable them to participate fully in decisions about their children. In particular, QATSICPP has significant concerns about a common failure to adequately support carers with a disability – who are overwhelmed by multiple issues in their lives – to be in a position to truly give **free and informed consent**.

This includes ensuring translators are available for families who speak their own language. Our communities have also reported significant gaps in being able to access culturally safe legal representation. Our own Aboriginal and Torres Strait Islander legal services have

¹² DiGiacomo M, et al (2017). Experiences and needs of carers of Aboriginal children with a disability: a qualitative study.

¹³ Family Matters report 2019



sustained substantive cuts over the past 10 years and to adequately provide Child Protection advice, need to have the resources to build internal legal expertise in this area.

This is increasingly important as even though Queensland legislation allows for an independent entity to attend court to support Aboriginal and Torres Strait Islander families, there is no funding to educate this group on legislation, legal rights and redress, court processes or the how to support a family through a legal process adequately. This leaves our families increasingly vulnerable to continued transgressions of their rights and with limited power or capacity to ensure that the Department has fulfilled their accountability under the act and challenge unfair decision making.

Some families are so overwhelmed by their distress in looking after their children with a disability and the failure to access appropriate services are forced to relinquish their children into state care as they can no longer cope. This carries with it great shame and grief.

For the many Aboriginal and Torres Strait Islander children in care in Queensland an entry into out of home care does not result in better service delivery. As previously outlined, there are scant if no details on the numbers of Aboriginal and Torres Strait Islander children in care with a disability, indicating that little testing or assessment of needs is occurring.

Research also details that many Indigenous young people with an intellectual disability or foetal alcohol spectrum disorder ('FASD') have rarely received an early diagnosis or positive intervention, resulting in their disengagement or expulsion from school at a relatively young age.

This then often results in drug and alcohol misuse, emerging mental health issues and then entries into care as a result of their behavioural responses. Many of these young people experience frequent out-of-home care placements as the out of home care system is not tailored for young people with cognitive disability and this often results in placement breakdown and sometimes homelessness. The consistent bouncing between placements also ensures that young people are not provided any treatment or disability support and their behaviour continues to escalate resulting in periods in youth detention.

Numerous studies have detailed the many Indigenous people who end up in the criminal justice system have undiagnosed cognitive disabilities that have resulted in criminal responses rather than treatment. These issues have not been diagnosed in childhood, no services or supports offered and the escalation of behaviours are then criminalised rather than treated.

Baldry (2015) in her research identified that "Indigenous Australians also have higher rates of intellectual disability and cognitive impairment, with recent research finding that Aboriginal people with cognitive impairment are more likely to have police contact, be charged, be imprisoned and receive longer sentences."¹⁴

In Queensland the interface between child safety, juvenile justice and disability including the NDIS is poor and fundamentally flawed. We are consistently seeing our children's rights transgressed and a system that is increasingly under stress take short cuts in the delivery of services to our children. There is a fundamental need to improve this so children with mental illness and cognitive disability who are often not supported by community services and 'increasingly dealt with by systems of control rather than systems of care and support' is no longer the norm.¹⁵

¹⁴ Victorian Legal Aid 2011 in Baldry et al 2015

¹⁵ Baldry et al 2015:19



5. Receiving adequate support

Every major research study examined to prepare this submission detailed how one of the major barriers to receiving disability support for Aboriginal and Torres Strait Islander families is the lack – or very limited availability – of disability support services, including lengthy waiting lists, especially in, but not limited to, remote areas.

Many Aboriginal and Torres Strait Islander families have often been forced to move from regional areas to seek additional services for their children, leaving behind their support system, or the heartbreaking choice of staying close to their support system, but knowing that their children may not receive vital early intervention services to assist them.

Reports also detailed that access to services is further hampered by social marginalisation, reluctance and mistrust when approaching government agencies, cultural attitudes towards disability and services that are not respectful of cultural differences.

Numerous studies and reports detail the complex nature of seeking support for children with a disability. The First People's disability network in their submission to the terms of reference for the Royal Commission into Disability highlighted these issues:

“The lack of access to accessible information for First Peoples with disabilities be it in Aboriginal language or disability accessible is also a major barrier which results in many First Peoples with people with disabilities not being able to access necessary social supports such as the NDIS because they simply cannot understand how such systems work because information is not provided accessibly. This is also constitutes a further form of abuse and neglect.”

Our members have reported a lack of culturally safe and supported services as one of the major barriers for Aboriginal and Torres Strait Islander children access appropriate supports.

Further to this a limited understanding of intergenerational trauma, coupled with a disability service system that has poor cultural competence and minimal training in trauma including the impacts on children can also result in misdiagnosis for children and their families.

Even when there is substantive work done on ensuring an adequate and thorough diagnosis for example in the *Lililwan* study in Fitzroy Crossing, there is no adequate investment to ensure that children in remote and regional parts of Australia are receiving the right supports and a lack of political will to ensure this.

As this submission has demonstrated, a lack of support for Aboriginal families caring for children with a disability is having a devastating impact emotionally, financially and on social and emotional wellbeing of family. This is resulting in cascading levels of disadvantage.

Many families are living in poverty and are fully reliant on free and state services which are often over-subscribed and have long waiting lists. In some parts of the state access to Paediatric assessments and supports is so limited that this has a significant impact on accessibility, as often without a medical diagnosis no further support is able to be provided. This is resulting in many Aboriginal and Torres Strait Islander children with a disability missing out on critical early intervention services which can be life changing.

Where disability needs are prioritised, they are often at the expense of the cultural rights of Aboriginal and Torres Strait Islander children and young people. In remote and regional



contexts within Queensland Aboriginal children have been removed from their family, kin and culture to support greater access to services. This means that our children's right to their identity, their place in their cultural knowledge system is underestimated in its importance to their cognitive and emotional development and sacrificed for other priorities. This further highlights problems with assessment frameworks that are based on western methodologies and do not have the right cultural frameworks to assess disability support needs within a holistic framework.

Despite the overwhelming burden of disability being borne in Aboriginal and Torres Strait Islander families and communities the level of funding for Aboriginal and Torres Strait Islander service delivery is grossly inadequate and not proportional to need. Our Aboriginal and Torres Strait Islander child and family wellbeing services are forced to try and respond to the complex needs of children and families to prevent entry into a child protection system without an adequate referral system. This is compounded by limited commitment to integrated models that could better support families holistically rather than having so many multiple service providers involved in their lives

Case study

We were supporting a child who was both deaf and non-verbal. He had supports at the school and special needs supports in place to assist him developmentally. Our service had at our own expense gone to a lot of trouble to ensure we could support the child and his family with sign language signs up, team members learning basic sign language and a commitment to ongoing learning, but this was not seen as enough. The department believed that his cognitive developmental needs would be better met within a local regional centre. We argued that if he was removed from his family it would damage his cultural connections and ostracise him from his family and kin and how critical this was for his development.

We wanted investment in support for his family to learn sign language and additional support for his needs, but the advice of one teacher about the lack of his education needs being met, overrode our cultural knowledge and the child was removed and placed with a non-Indigenous foster family. This was devastating as we knew it would have significant consequences for his cultural continuity and social and emotional wellbeing, and it has. The child now rarely visits because no investment occurred with his family and they cannot sign, and he cannot communicate with them. If he comes to visit, he has to come with an interpreter, and this can rarely occur.

So, this decision has led to the child being distanced from his family, his community and his cultural identity. If we had of had access to proper disability support and his cultural needs given equal weight this would never have happened.



6. Critical Issues

6.1. Lack of Cultural Capability

Within the mainstream health and child protection sectors there is a lack of staff that are adequately trained and culturally capable of supporting Aboriginal and Torres Strait Islander children and families. We are aware from our membership about the levels of structural racism that exist within the service system in Queensland that act as a structural barrier to seeking support. There is significant concern from our members that the rights of our children are seen as discretionary and subject to available resources. In our opinion our children's rights are not debatable and they should be afforded the full complement of resources they require to grow up strong and safe and proud of who they are.

6.2. Child Rights Framework

Whilst the NDIS is an extremely welcome policy change with a focus on person centred directed care there has been little focus on developing culturally strong models of support for Aboriginal and Torres Strait Islander children and families.

In many ways it is our experience that providers of human services are not working from a human rights or child rights-based framework. It has become an industry with a supply and demand relationship with Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander People's disadvantage has become commodified – we are a problem to be solved and unfortunately organisations are thriving when Aboriginal and Torres Strait Islander children and families fail.

There is an urgent need to listen to Aboriginal and Torres Strait Islander children and for them to be involved in developing a disability service response that meets their needs and enables our children to have voice in what is important to them.

6.3. Development of Aboriginal and Torres Strait Islander models

It is important that Aboriginal and Torres Strait Islander children and families have Aboriginal and Torres Strait models to turn to. The NDIS identify this as a key policy but concerted attention, funding and support will be needed to realise this. As has been extensively outlined in this paper, the past history of abuse, intervention and control by government and non-government services in Aboriginal and Torres Strait people's lives has led to a general lack of trust in these service systems.

Failures by State and Federal governments to provide adequate services, or negative experiences had in services provided only seeks to re-traumatise families and limits further engagement. Adequate funding is therefore needed to increase the development of the Aboriginal and Torres Strait Islander disability service sector



6.4. Cumulative Impact of disadvantage

Aboriginal and Torres Strait Islander Children with a disability experience a cumulative impact – they are already marginalised often due to socio-economic disadvantage, racism and the impacts of intergenerational trauma. When they are then diagnosed or suffer from a disability, they experience a cascading level of disadvantage putting them at greater risk of negative life outcomes.

Often the primary response to Aboriginal and Torres Strait Islander children with a disability and their families occurs within a child protection framework or juvenile justice where children's behaviour is criminalised rather than healed. For Aboriginal and Torres Strait Islander families and communities further negative state intervention is experienced as traumatic and unjust, further alienating many from seeking support.

7. Our Solutions

History does not define us

QATSICPP has detailed many of the concerns we have about how Aboriginal and Torres Strait Islander children and families with a disability are faring and the struggle to achieve culturally safe and adequate services.

If you do not understand the scale of the problem, you cannot respond effectively. But as an agency we are not focused on problems but solutions.

Aboriginal and Torres Strait Islander people have shown remarkable skill and resilience in adapting to the many challenges we have faced. This has ensured our survival. We have drawn our solutions calling on evidence and this wisdom. We are committed to our children being able to fully realise their rights across all domains of their life including ensuring their cultural, spiritual and emotional wellbeing is a critical focus in supporting them to have happy lives where they are thriving not surviving.

7.1 Self-determination

Enabling participation of Aboriginal and Torres Strait Islander peoples in decision-making is fundamental to realising their human rights. All Australian governments have international legal obligations to ensure the realisation of these rights. The right to participate in decisions comes primarily from the right to self-determination, which requires the empowerment of Indigenous peoples to have control over the decisions that affect their own lives.

Participation is also critical to realising the fundamental right of all children that their best interests are a primary consideration in all decision making. The United Nations Convention on the Rights of the Child has identified that participation of Indigenous peoples is necessary to ensure a cultural lens in determining the best interests of an Indigenous child.

Self-determination must be the governing principle that guides all decisions regarding funding, models and access to disability supports. This requires in practice weighting given to the voice of Aboriginal and Torres Strait Islander people and their cultural aspirations for their children.



It requires disability services to understand the social, emotional, physical, cultural and spiritual wellbeing of children is intertwined and services must be provided that provide for Aboriginal and Torres Strait Islander Children with this framework embedded. This also requires a focus on ensuring our children have equity in service delivery and that they do not have to leave their families and communities to receive an appropriate service.

7.2 Children's right to culture and identity – Culture is protective

SNAICC has detailed extensively how culture is a protective factor for Aboriginal and Torres Strait Islander children across Australia. Review of data emerging from the Longitudinal Study of Indigenous Children considers what Aboriginal and Torres Strait Islander people say about how culture contributes to grow children up strong. They draw links between the key themes identified as culturally supportive and factors that contribute to resilience for Aboriginal and Torres Strait Islander children.¹⁶

The strengths of Aboriginal and Torres Strait Islander cultures in creating protective and supportive environments for children are evident and strongly recognised. Protective factors common to Aboriginal and Torres Strait Islander cultures have been identified to include:

- Kin and community caring systems where many people are caring, looking out for and supporting children;
- Strong kin and community networks through which Aboriginal and Torres Strait Islander parents and carers are more likely to have support for parenting and less likely to be isolated; and
- Autonomy and community socialisation for young children supporting development

Preservation and support for strengthening Aboriginal and Torres children's cultural identity must be at the cornerstone of disability support for children and their families. In practice this requires weighting given to the voice of Aboriginal and Torres Strait Islander people and their cultural aspirations for their children within the disability system and funding provided to ensure the cultural continuity of children is upheld in all decisions.

7.3 Embedding supports where families receive services

In Queensland there are 33 Aboriginal and Torres Strait Islander Family and Child Wellbeing services that are responding to the needs of our most vulnerable children and families. To support children and families holistically disability services should be embedded within these services. Given that many of the children and families that these services see are also likely to have contact with the child protection system, this will ensure greater access to appropriate diagnosis and culturally secure services. Given the gross over-representation of Aboriginal and Torres Strait Islander children with a disability consideration should be given to provision of access to block funding to facilitate this, including funding for dedicated disability staff within these services.

The failure to provide adequate disability services has led to many families experiencing increased stress and distress. This has resulted for some families in having contact with child protection systems which only increases their level of trauma and disadvantage. If

¹⁶ (LSIC) in Australia by Colquhoun and Dockery (2012)



disability services were provided within a child and family wellbeing framework then many families would be empowered to seek support and many children prevented from entering systems that will limit their potential rather than enhance it.

There should also be a focus on providing training for child and family wellbeing staff in disability to ensure families know their rights and can get access to services. It is critical given the numbers of Aboriginal and Torres Strait Islander children and young people entering care and juvenile justice that more is occurring to provide adequate early intervention, and this will occur when services with access to vulnerable families are resourced and trained to, identify, provide and create the right disability support.

7.4 Addressing the needs of Aboriginal and Torres Strait Islander families caring for children with a disability

This submission has outlined the significant disadvantage that Aboriginal and Torres Strait Islander communities face. Given the historic impoverishment that resulted from widespread government policies including Stolen Wages then families should be provided increased access to care and support.

Families should not need to beg for a service, nor should they be reliant only on informal care structures to provide them with respite. Families should be adequately resourced to support each other. This would draw on the strengths of culture and create a culturally strong system. Children should be maintained within their family and cultural system as a priority and additional availability of family supports would enable this.

This will require investment in Aboriginal and Torres Strait Islander designed, developed and operated services– including better engagement by the NDIS with Aboriginal and Torres Strait Islander children and family’s services.

There is much evidence that many families do not access mainstream supports due to fear and experiences of racism. Aboriginal and Torres Strait Islander families have the right to have access to services they feel comfortable with and will respond to their needs within a culturally holistic framework.

This will require investment in Aboriginal and Torres Strait Islander designed, developed and operated services. Including better engagement by the NDIS with Aboriginal and Torres Strait Islander children and family’s services.

7.5 Greater engagement with PHN’s with Aboriginal and Torres Strait Islander services – improving mental health supports.

The National Review of Mental Health Programs and Services concluded that access to mental health services depends on ‘where you live, who you know, how much money you have and the extent to which you can self- advocate’. Unfortunately for the majority of Aboriginal and Torres Strait Islander people, that translates to very poor levels of service access.

The national review recognised that people with mental illness are ‘moved between disconnected silos of intervention, including hospital wards, patchy support systems in housing, education and employment, and overstretched community and non-government



services'. It also highlighted specific weakness in supports for Indigenous Australians due to the cultural incompetence of services. In particular, services 'lacked a social and emotional wellbeing framework and failed to provide referral pathways from primary health to specialist services'.

Aboriginal and Torres Strait Islander people are commonly 'falling through the cracks' and not being diagnosed with a mental illness until they are at crisis point, or eventually incarcerated.

Children impacted by trauma have difficulty learning and often disengage from school. The limited ability to self-regulate that is symptomatic of trauma is a key factor in the increasing incarceration rates of young Aboriginal and Torres Strait Islander people.

Public Health Networks across Australia have been funded to provide better public health responses including a focus on joined up responses with a focus on both Indigenous health and suicide prevention. Their primary vehicles of engagement in Aboriginal and Torres Strait Islander communities to date have been Aboriginal and Torres Strait Islander Health Services.

Whilst this has been a welcome investment, some of our most vulnerable children and young people are situated in other services and being provided substantive care in Aboriginal children and family services across Queensland.

As a result, we believe that the PHN's should broaden their networks and engage with Aboriginal and Torres Strait Islander child and family services across the state to build an effective early intervention mental health and wellbeing plan that will ensure our children receive quality culturally designed services.

7.6 Improving Queensland data collection

What gets counted matters. If you cannot understand the numbers of children and young people who require a service, then you cannot design an appropriate service system to assist them. The lack of data also results in an accountability gap – where it is difficult for community members to hold the government accountable for the lack of service provision without accurate data. Likewise, the Queensland government can escape accountability to the electorate for failing to meet service delivery targets and provision of quality support if they have not done any analysis on needs, gaps and service requirements.

From the national data we know that Aboriginal and Torres Strait Islander children aged 0-14 are twice as likely to have a disability than non-Indigenous children. This means that many Aboriginal and Torres Strait Islander children in Queensland are not afforded a proper diagnosis, are missing out on vital early intervention, receiving inadequate or worse no service, and many are suffering needlessly due to a failure by the state to have a clear picture of what is needed to support them and their families.

Worse still when the state intervenes in the lives of children such as removing them into out of home care or juvenile detention, they are still unable to provide quality disability support to children as they are unclear of the comprehensive needs of the children in their care. This is a cumulative disadvantage experience for these children having already suffered the distress of being removed from their families.

There is an urgent need to ensure adequate and timely data is collected, and responded to, to enable the development of the right system of support. To not to attend to this issue is a



form of systematic neglect and continues to perpetuate the lack of adequate diagnosis and access to service provision for Aboriginal and Torres Strait Islander children and families.

7.7 Improve access to increased assessment for Aboriginal and Torres Strait Islander children in care to ensure they are getting the right supports

There has consistently been concerns raised in inquiries into child protection in relation to the lack of comprehensive assessments provided to children in the child protection system.

Early intervention is critical in supporting Aboriginal and Torres Strait Islander children with a disability to creating children being able to manage any disability discovered in meaningful and constructive ways. A failure to assess and diagnose disability means that many Aboriginal and Torres Strait Islander children taken into care for their protection are being neglected and not offered meaningful opportunities for growth.

As this submission has outlined, the limited understanding of FASD and cognitive disability means that many children's behaviour are seen as oppositional or behaviourally challenged with limited provision of tailored supports to provide change.

There is an urgent requirement for the Department of Child Safety, Youth and Women to ensure comprehensive assessments are undertaken for all Aboriginal and Torres Strait Islander children in care and that appropriate disability and mental health supports are provided as a priority.

7.8 Community awareness initiatives

The stress on Aboriginal and Torres Strait Islander families in having to navigate the system to seek disability support is immense. Given that families are often engaged in having to address multiple levels of disadvantage additional difficulties in seeking support causes many families to just give up. Many Aboriginal and Torres Strait Islander organisations and services also do not have the information or resources to support families to understand the labyrinth of disability terminology or diagnostic criteria.

It is therefore incredibly important that to increase accessibility and early intervention options that community awareness campaigns that are culturally appropriate are initiated. These should be in accessible formats that raise awareness of signs of disability, what to do if you are concerned, where to receive support, which will support increased access to assessment and therapeutic interventions including respite and support for carers.

7.9 Trauma Informed Service delivery

The consequences of past human rights violations, including the forced removal of children have resulted in Aboriginal and Torres Strait Islander people and communities, experiencing high levels of trauma. This has resulted in documented high rates of self-harm, drug and alcohol abuse, profound grief and loss, high rates of violence, unresolved grief, mental



illness, depression, transience, homelessness, marginalization, discrimination, feelings of insecurity, and feelings of hopelessness.¹⁷

The government has worked for over 10 years to Close the gap and eliminate health disparities between Indigenous Australians within a generation. The latest report indicates whilst some progress there has been very little improvement. Many Aboriginal leaders and academics are now asserting that this is due to a failure to acknowledge trauma and create trauma informed service delivery models.

For practitioners to understand intergenerational trauma and acknowledges it is the key to Closing the Gap for Indigenous people and that trauma informed practice is essential to making sure Aboriginal and Torres Strait Islander people have access to appropriate and relevant health services” (Milroy 2018)¹⁸

Trauma informed practice ensures that services are able to form partnerships with Aboriginal and Torres Strait Islander people based on a truthful understanding about the impact of the past on the present, creating safe, empowering and supportive environments that ensure Aboriginal and Torres Strait Islander families and children feel honoured and respected and their cultural needs prioritised. To achieve this services must be prepared to address systemic racism and have a willingness to build the cultural capability of their teams in an ongoing way.

Without a focus on building trauma informed services it is hard to see how many of the service gaps for Aboriginal and Torres Strait Islander children and families with disability needs can be addressed.

¹⁷ Menzies, K: 2020; Forcible separation and assimilation as trauma: The historical and socio-political experiences of Australian Aboriginal people

¹⁸ Menzies, K: 2020; Forcible separation and assimilation as trauma: The historical and socio-political experiences of Australian Aboriginal people



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