Submission to National Children's Commissioner on 2018 Progress Report for Children's Rights

Grandmothers Against Removals (GMAR) seeks to use this opportunity to highlight the way in which Australia's out-of-home 'care' system is failing First Nations communities.

GMAR is a grassroots organisation that advocates against the forced removal of First Nations children from their immediate and extended families. We were founded and are lead by Indigenous women protesting separations within their families and communities. We support families in navigating the child protection system, lobby government and child protection agencies for improved outcomes for Indigenous children and work for self-determination in child welfare.

This submission reflects this work and provides feedback with regard to specific concerns and recommendations noted by the UN Committee on the Rights of the Child in June 2012.

In **Article III.B. 29 a.** the Committee recorded particular concern at *the serious and widespread discrimination faced by Aboriginal and Torres Strait Islander children, including in terms of provision of and accessibility to basic services and significant overrepresentation in the criminal justice system and in out-of-home care.*

GMAR takes this opportunity to note that the number of forced removals of First Nations children has continued to rise since 2012.

Indigenous children are still over-represented in removals and that the number or children in out-of-home care has continued to rise since 2012. According to the Australia Institute of Family Studies, as of 30th June 2016, First Nations children were placed in out-of-home care at 9.8 times the rate of non-indigenous counterparts. The rate of removal for Indigenous children rose from 46.2/1,000 children in 2012 to 56.6/1,000 children in 2016. [1)] In 2015, 5% of First nations children were in out-of-home care. [2)]

Higher rates of removal and incarceration among First Nations youth than their non-indigenous counterparts are manifestations of persistent systemic racism. The Australia Institute of Family Studies reports that Neglect accounts for a greater proportion of removals of First Nations children than non-Indigenous children. GMAR has worked with many families where markers of social disadvantage have been reported as Neglect. We have repeatedly seen that child protection agencies conduct reviews within rigid checklists that do not allow for assessment based on context or lived experiences, such as difficulties arising in social housing. We have seen child protection agencies isolating parents from supportive family members, due to misunderstanding kinship roles and cultural incompetency, while reporting lack of support networks. These concerns are echoed in a number of reports included in Chapter 8 of the 2015 Out of Home Care report to Parliament, where case workers mischaracterised Indigenous families as dysfunctional as they could not recognise the family dynamic. [3)]

In **Article III.B.30.d.** the Committee called upon Australian governments to *ensure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making and implementation processes of programmes affecting them.*

[1)] https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children

[2)] http://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf

[3)] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Report

GMAR has been working for First Nations self-determination in child welfare since 2014. In these four years we have seen numerous government inquiries, reviews and reports addressing over representation of First Nations children in removals without proper consultation with First Nations communities or families.

In NSW, for example, the Department of Family and Community Services is rolling out an overhaul of their out-of-home care program, called Their Futures Matter, that transfers Parental Responsibility from the state to privatised care providers and pushes for permanent placements. At the same time as this program's launch, a statewide review of Indigenous removals, promised by the previous Minister, [redacted], was delayed. Their Futures Matter does not include any cultural competency training programs. It was implemented despite serious concerns about the lack of oversight for privatised care providers, that have been voiced to the government by the Indigenous community. The program's preference for permanent care is problematic to First Nations communities as it creates further hurdles to restoration and echoes the Stolen Generations. This is a clear example of the state government prioritising their budget over the welfare of First Nations families in pushing this program through prior to completion of the review of Indigenous children in out-of-home care.

This is not an isolated incident. The Western Australian Department for Community Development conducted an internal review of the cases of 50 First Nations children in state care, in 2004. The review found widespread understanding that Aboriginal staff should be consulted regarding case practice and that culturally appropriate services must form part of each case plan. However, it found minimal action was taken on either of these counts.[4)]

2017 was the 20th anniversary of the Bringing Them Home report that had hundreds of people report their traumatic experiences of assimilation policies. This was a landmark commission, and yet the majority of the recommendations are yet to be implemented. The Healing Foundation's report to mark the 20th anniversary details how failure to implement the recommendations has caused tangible disadvantage for survivors and their families, and perpetuated intergenerational trauma.[5)]

Again and again, we see Child Protection agencies rolling out reviews and acknowledging the overrepresentation of Indigenous children in out-of-home care, without providing practical training or resources to properly engage with this issue. They conduct internal desktop case reviews with no consultation with Indigenous communities and then don't release the case review reports to the family. Australian Governments need to listen to First Nations communities and relinquish control of child welfare and family support, so that people on the ground can provide services and support that abet this crisis.

In **Article III.D.52.g)** The committee urged the State to *observe the Committee's previous recommendations to fully implement the Indigenous Child Placement Principle and intensify its cooperation with indigenous community leaders and communities to find suitable solutions for indigenous children in need of alternative care within indigenous families.*

From the experience of GMAR, the Indigenous Child Principle is not implemented in a uniform way between states, or even between government districts. According to the Healing Foundation, only two-thirds of First Nations children in out-of-home care are placed in Aboriginal or Torres Strait Islander environments.[5] In cases where families have approached GMAR, it has been clear that child protection agencies have not made attempts to find placements for children inline with the Principles.

Additionally, GMAR's position is that these principles can only be properly implemented when First Nations communities can participate in child welfare, on a policy-level and at the grassroots level with families. It is clear that greater efforts are needed to support families that are struggling. Better efforts are required to find homes with family. According to the Australian government, only 35% of Indigenous children in out-of-home care are placed with Indigenous family, and 15% with non-

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4) https://aifs.gov.au/cfca/publications/cultural-considerations-out-home-care

5) http://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf

Indigenous family. We see the trauma of removal and separation from family and this should not be underestimated.

Finally, GMAR would like to bring to your attention our concern at the misuse of the UN Rights of the Child Article 3 for ‘best interests of the child’ in child protection legislation in NSW. The Children and Young Persons (Care and Protection) Act 1998 Part 2 – Aboriginal and Torres Strait Island Principles uses Article 3 as a catch all to override other rights, such as Rights of Indigenous Peoples, and the Indigenous Child Placement Principle. GMAR has noted that this override, included in legislature, has a dramatic effect on the practice of Child Protection Agencies, reducing accountability for child protection agencies.