

Chapter 7

Specific needs of particular groups

7.1 Particular grandparents raising grandchildren have needs additional to those experienced by all grandparents with the primary care of their grandchildren. In this chapter, the specific needs of Aboriginal and Torres Strait Islander grandparents are examined.

Aboriginal and Torres Strait Islander grandparents raising grandchildren

7.2 Aboriginal and Torres Strait Islander children are over-represented in out-of-home care placements, compared to non-Aboriginal and Torres Strait Islander children. According to the Australian Institute of Health and Welfare (AIHW), in 2012-13, Aboriginal and Torres Strait Islander children were 10.6 times more likely to be in out-of-home care, at the rate of 57.1 per 1,000 children.¹ It is therefore likely that there is a large number of Aboriginal and Torres Strait Islander children in the primary care of their grandparents.

7.3 Further, according to witnesses, a significant proportion of Aboriginal and Torres Strait Islander grandparent provided care is likely to be informal. For example, Mrs Gillian Bonser said 'there are as many kids in informal arrangements with grandparents as there are in formal ones'.² Mr James Pilkington from the Larrakia Nation Aboriginal Corporation gave the following evidence:

Most of the people we talked to were informal...These grandparents become primary carers mainly because parents—'choose' is a funny word, but—choose it or are unable to care for their children. That is due to a number of reasons. Often it is a relationship breakdown, the parent is in a new relationship with new kids or the old kids are not welcome in the home anymore. Often alcohol or drugs are involved. The parents might have a problem with some of those substances. Mental health also is a significant reason; parents may have mental health issues, and the grandparents often end up being informal carers.³

7.4 Women's Legal Services NSW explained the children rearing and kinship practices in Aboriginal and Torres Strait Islander communities, together with grandparents' role in the lives of their grandchildren, as follows:

Grandmothers, grandfathers, aunts, uncles and any other significant family member play significant roles in the parenting of grandchildren, so even when they are not the primary carer of the grandchildren they always have a significant role in the child rearing practices of children

1 Child protection Australia: 2012-13, Child Welfare Series No. 58, Cat. No. CWS 49, Canberra: AIHW, p. 51. Rates across Australia varied widely from 22.2 per 1,000 in the Northern Territory to 85.5 per 1,000 in New South Wales: see Table 5.4.

2 Winangay Resources Inc. (Winangay), *Committee Hansard*, Sydney, 13 June 2014, p. 56.

3 *Committee Hansard*, Darwin, 5 August 2014, p. 13.

within those family groups, but this also extends to great grandparents and, as I said before, aunts and uncles, and it can even be extended further into relatives that are not blood relatives but still within that kinship group.⁴

7.5 Data published by the AIHW shows also that the rate of Aboriginal and Torres Strait Islander children placed in out-of-home care has steadily increased since 2009 from 44.8 to 57.1 per 1,000 children, compared with a slight increase in the non-Aboriginal and Torres Strait Islander rate for the same period (from 4.9 to 5.4 per 1,000 children).⁵

7.6 There are long-standing and complex reasons for the number of Aboriginal and Torres Strait Islander children in out-of-home care, including: the inter-generational effects of previous separations from family and culture; poor socio-economic status; and systemic racism in broader society. The Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission (AHRC)) has previously explained:

These causes combine to produce cultural differences between welfare departments and Indigenous communities, substance abuse, violence, poor nutrition, alienation from social institutions including the education system, family services and the criminal justice system, limited and poor housing options and a loss of hope, particularly among younger people.⁶

7.7 Participants in the inquiry referred to these factors, with particular reference to their effect on Aboriginal and Torres Strait Islander grandparents raising grandchildren, including fostering a distrust of government and non-government organisations which provide supports and services. The Central Australian Women's Legal Service, for example, stated:

It is important to acknowledge the ongoing impact of the Stolen Generation within remote Indigenous communities, and the negative first hand experiences that some grandparents may have had with welfare-associated organisations at that time. These experiences have created widespread reluctance and distrust, regarding the involvement of both government and non-government organisations within domestic life. This context needs to be considered in the development of appropriate support networks. Investment in community-owned, localised support initiatives would go some way towards alleviating these barriers.⁷

4 Ms Shannon Williams, Senior Community Access Officer, Indigenous Women's Legal Program, *Committee Hansard*, Canberra, 20 June 2014, p. 23.

5 Child protection Australia: 2012-13, Child Welfare Series No. 58, Cat. No. CWS 49, Canberra: AIHW, p. 55 and Figure 5.6.

6 Human Rights and Equal Opportunity Commission (1997), *Bringing them Home Report: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, Sydney, p. 432.

7 *Submission 104*, pp 4-5. Also see: Ms Paula Hayden, Public Officer, Winangay, *Committee Hansard*, Sydney, 13 June 2014, p. 52.

Aboriginal Child Placement Principle

7.8 Submitters and witnesses referred to the Aboriginal Child Placement Principle (Principle), which outlines a preference for the placement of Aboriginal and Torres Strait Islander children who have been removed from their birth parents:

That in the foster placement of an Aboriginal child, a preference be given, in the absence of good cause to the contrary, to a placement with:

- a member of the child's extended family;
- other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal customary law;
- other Aboriginal families living in close proximity.⁸

7.9 The Secretariat of National Aboriginal and Torres Strait Islander Child Care (SNAICC) has noted that the Principle aims to ensure that government intervention into family life does not disconnect children from their family and culture:

The [Principle] establishes the basis for keeping children within their families and communities to provide the link between the past and the future for Aboriginal and Torres Strait Islander cultures and the assurance that if separation or removal is necessary, the child's links with their family, community, and culture are actively maintained.⁹

7.10 The Larrakia Nation Aboriginal Corporation¹⁰ and the Aboriginal Family Violence Prevention and Legal Service Victoria (AFVPLS Vic) endorsed the objectives of the Principle, with the latter explaining:

Aboriginal culture conceptualises family differently from non-Aboriginal cultural understandings which prioritise the nuclear family unit. Children are the responsibility of the entire family rather than the biological parents alone...[G]randparents hold significant cultural knowledge that may not have been passed on to the younger generations. This is largely due to intergenerational trauma and the multiple forms of disadvantage that lead to disconnection from cultures and communities. Kinship care by grandparents is very important for Aboriginal children who have special rights to access and maintain cultural and traditional practices.¹¹

8 Lock, J.A (1997), *The Aboriginal child placement principle: Research Report 7*, NSW Law Reform Commission, Sydney, p. 60. An Aboriginal and Torres Strait Islander child can only be placed with a non-Aboriginal and Torres Strait Islander carer if an appropriate placement cannot be found from the three preferred groups: see p. 50.

9 *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*, June 2013, pp 3-4.

10 Mr James Pilkington, *Committee Hansard*, Darwin, 5 August 2014, p. 14.

11 *Submission 140*, pp 3-4.

Implementation of the Principle

7.11 The Principle has been adopted throughout Australia,¹² and its impact is reflected in the relatively high proportion (67.9 per cent) of Aboriginal and Torres Strait Islander children placed with relatives or Aboriginal and Torres Strait Islander carers in many jurisdictions.¹³ The AIHW noted however:

The Principle is just one of the many considerations taken into account when making decisions on placements for Aboriginal and Torres Strait Islander children. Where placement options outlined in the Principle are not optimal for a child's safety and wellbeing, the child may be placed in an alternative care arrangement; this is usually only done after extensive consultation with Aboriginal and Torres Strait Islander individuals and/or organisations.¹⁴

7.12 Participants in the inquiry expressed some concerns with the general implementation of the Principle. The CREATE Foundation, for example, noted that Aboriginal and Torres Strait Islander children in out-of home care are more likely not to be placed with Aboriginal and Torres Strait Islander carers in Tasmania and the Northern Territory, compared to other jurisdictions.¹⁵

7.13 According to the Department of Health and Human Services, Tasmania, it is difficult to find Aboriginal and Torres Strait Islander placements.¹⁶ A representative from the Foster Carers Association NT Inc. gave evidence that the Principle is:

...not always available or not always reasonable—no-one steps up or family cannot be found. There are quite a number of reasons [why the Department of Children and Families (NT)] places children where they do. In the interim, while they are looking for family, they are quite often placed with non-Indigenous carers.¹⁷

7.14 The AHRC urged the full implementation of the Principle,¹⁸ noting that the United Nations Committee on the Rights of the Child has expressed concern about:

12 See: *Children and Young Person's (Care and Protection) Act 1998* (NSW); *Children, Youth and Families Act 2005* (Vic); *Child Protection Act 1999* (Qld); *Children and Community Services Act 2004* (WA); *Children's Protection Act 1993* (SA); *Children, Young Persons and their Families Act 1997* (Tas); *Care and Protection of Children Act 2007* (NT); *Children and Young People Act 2008* (ACT).

13 Australian Institute of Health and Welfare 2014, *Child protection Australia: 2012-13*, Child Welfare Series No. 58, Cat. No. CWS 49, Canberra: AIHW, p. 52 and Table A32. Rates across Australia varied widely from 40 per cent in Tasmania to 81.7 per cent in New South Wales.

14 *Child protection Australia: 2012-13*, Child Welfare Series No. 58, Cat. No. CWS 49, Canberra: AIHW, p. 52.

15 *Submission 136*, p. 5. Also see: Australian Institute of Health and Welfare 2014, *Child protection Australia: 2012-13*, Child Welfare Series No. 58, Cat. No. CWS 49, Canberra: AIHW, Table A32.

16 *Submission 32*, p. 4.

17 Ms Ann Owen, Executive Director, *Committee Hansard*, Darwin, 5 August 2014, p. 11.

18 *Submission 133*, p. 16.

...the large numbers of Aboriginal and Torres Strait Islander children being separated from their homes and communities and placed into care that, inter alia, does not adequately facilitate the preservation of their cultural and linguistic identity.¹⁹

7.15 Comments from a few participants reflected this concern, narrating case examples of children placed in the care of non-Aboriginal and Torres Strait Islander grandparents.²⁰

The Winangay Kinship Care Tool

7.16 As discussed in Chapter 4, Winangay Resources Inc. (Winangay) contended that the difficulty in placing Aboriginal and Torres Strait Islander children in kinship care is attributable to the 'paucity of specific Aboriginal kinship carer assessment tools',²¹ where carers' suitability is assessed using Anglocentric tools which are not culturally appropriate or sensitive. Consequently, and in conjunction with the continuing effect of intergenerational trauma, potential carers are alienated:

Current practice paradigms and culturally inappropriate tools are a major barrier to many grandparents, particularly Aboriginal and Torres Strait grandparents, having the opportunity to raise their grandchildren. This not only results in loss and grief for the grandparents and families but also trauma for the children removed from all that is familiar to them. At such a stressful time, when support is required, grandparents and children alike are often left feeling alienated and excluded.²²

7.17 In evidence, Ms Paula Hayden, Public Officer for Winangay, warned:

If we do not do something, when you look at the number of Aboriginal children being born and the rate of Aboriginal children coming into care, we are facing an avalanche of children being disconnected and removed from family and kin like we have never seen before. We are seeing another stolen generation, but much more. That is an absolute disaster for Aboriginal people and communities.²³

7.18 In view of its concerns, Winangay developed an assessment tool known as the WINANGAY Kinship Care Tool:

19 Sixtieth session 29 May-15 June 2012, Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Australia, CRC/C/AUS/CO/4, August 2012, p. 9, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf (accessed 12 September 2014).

20 For example: Community Legal Centres NSW, *Submission 139*, pp 4-6 and 10; Mr Brett Fahey, Area Manager, New South Wales South Coast, Mission Australia, *Committee Hansard*, Sydney, 13 June 2014, p. 42.

21 *Submission 107*, p. 2.

22 *Submission 107*, p. 6.

23 *Committee Hansard*, Sydney, 13 June 2014, p. 56.

[The WINANGAY Kinship Care Tool] is a collaborative, transparent, trauma informed assessment tool which involves carers and workers using a conversational yarning interview format to assess key aspects of kinship care. The WINANGAY Kinship Care Tool uses plain English questions that focus on strengths of the carer, safety for the child, and strategies for meeting needs.²⁴

7.19 The WINANGAY Kinship Care Tool has been widely endorsed, including by SNAICC.²⁵ Subsequent to its launch in late 2011, the tool has been adapted for use as a non-Aboriginal kin specific tool, which is currently in use by Bernardos Australia, The Benevolent Society, UnitingCare, CareSouth and Anglicare, and is being further developed for use by grandparents raising grandchildren with disability.²⁶ Further:

[W]e have written an emergency tool for...Queensland, because the Queensland Government has asked us [for that]...It is being evaluated now by the Australian Centre for Child Protection in Queensland...We are working in partnership with the [Department of Communities, Child Safety and Disability Services (Qld)] and [Queensland Aboriginal and Torres Strait Islander Child Protection Peak].²⁷

Culture and kinship awareness

7.20 In addition to culturally sensitive and kin specific assessment tools, Winangay advocated the need for specialist training for people working with Aboriginal and Torres Strait Islander communities:

A new practice paradigm is required if we are to adequately meet the needs of kinship carers and the children they are raising, one which captures the complexities of kinship care and is responsive to kinship carers' strengths and needs.²⁸

7.21 Other participants in the inquiry similarly advocated the need for culturally appropriate supports and services, which are presented in a respectful and collaborative manner.²⁹ For example, the Shoalcoast Community Legal Centre Inc. called for all policies and programs affecting Aboriginal and Torres Strait Islander families to recognise and accommodate the role of kinship carers, and ensure they

24 *Submission 107*, p. 9.

25 'SNAICC Chairperson launches new assessment tool to assist Aboriginal kinship carers', Media Release, 18 November 2011. Also see: Winangay, *Submission 107* pp 10-12.

26 Winangay, *Submission 107*, p 14; Ms Paula Hayden, Winangay, *Committee Hansard*, Sydney, 13 June 2014, p. 53.

27 Ms Paula Hayden, Winangay *Committee Hansard*, Sydney, 13 June 2014, p. 53. Also see: Winangay, *Submission 107*, p 14.

28 *Submission 107*, p. 13. Also see: Tangentyere Council, *Submission 112*, p. 3.

29 For example: Commissioner for Children and Young People, Western Australia (WA Commissioner), *Submission 34*, p. 7; Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd. (ATSILS Qld), *Submission 134*, p. [7].

have the opportunity to access the best possible resources and culturally sensitive support programs.³⁰

7.22 A representative from Uniting Care Community described its efforts in this regard:

We have a senior Indigenous project officer and she needs to work through a community health or some other service in an Indigenous community for us to be able to get access. She is very familiar with the protocols and what she needs to do to build relationships...We run Indigenous-specific camps and those camps have a strong cultural component. We have developed a training manual for workers who work on that camp. It has the key components of our other camps, but it is done in a more culturally appropriate way. We employ a cultural man, usually, who works quite closely with the children, teaches them about respect for their grandparents, teaches them song and dance and talks about culture and how important that is in their lives. We have a couple of indigenous] workers. One is a respected elder who has worked in child, youth and mental health services and works in one of the Murri schools up here who actually runs healing sessions with the grandmothers. We also have cultural food, fire and song and a celebration night on those camps.³¹

Impact of the Principle on grandparents' health and well-being

7.23 Submitters and witnesses stated that there is a cultural expectation in Aboriginal and Torres Strait Islander communities that grandparents will take on the care of their grandchildren.³² However, this expectation can adversely affect the grandparents across a range of variables, such as their financial circumstances, and their physical and emotional health and wellbeing.³³ Family and Relationship Services Australia, for example, submitted:

In Aboriginal communities in the Northern Territory, grandparents often take on significant roles caring for their grandchildren. In fact there is often an expectation amongst the community that grandparents will support their children by caring for their grandchildren. However, parents sometimes leave their children with grandparents for an extended period without any financial support. This is because parents often retain the Centrelink benefits linked to the children. In such cases caring for their grandchildren

30 *Submission 87*, p. [3].

31 Ms Julie Argeros, Service Coordinator, Time for Grandparents Program, *Committee Hansard*, Sydney, 13 June 2014, p. 38. Also see Chapter 4 (in relation to Wanslea Family Services Inc. (Wanslea) and its Narrogin support group).

32 For example: Ms Mary-Jean Kelly, Aboriginal Family Law Support Worker, Shoalcoast Community Legal Centre Inc. (Shoalcoast CLC), *Committee Hansard*, Sydney, 13 June 2014, p. 47.

33 Tangentyere Council, *Submission 112*, p. 1; Ms Julie Argeros, Uniting Care Community, *Committee Hansard*, Sydney, 13 June 2014, p. 36.

can become financially burdensome and can significantly impact grandparents' social and emotional wellbeing.³⁴

7.24 The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld) added that, although a way of life within Aboriginal and Torres Strait Islander communities, grandparents raising grandchildren do not always have the necessary support:

It is our experience that a majority of these grandparents take on an onerous financial, physical and emotional burden with little or no formal support. Given the exceptionally higher numbers of Aboriginal and Torres Strait Islander children requiring extended family care, we often see these arrangements at risk of breakdown due to lack of financial assistance, legal recognition and dedicated support services.³⁵

7.25 The Victorian Council of Social Service and the AASW suggested that additional assistance might be given to Aboriginal and Torres Strait Islander grandparents raising grandchildren, to better support kinship care placements.³⁶

Enhanced practical challenges for Aboriginal and Torres Strait Islander grandparents raising grandchildren

7.26 The AASW questioned whether the Aboriginal Child Placement Principle disadvantages Aboriginal and Torres Strait Islander grandparents raising grandchildren, particularly in the context of enhanced practical challenges (such as: inter-generational trauma; multiple care responsibilities; severe financial hardship).³⁷ Other participants also remarked on these challenges,³⁸ especially in relation to housing and legal matters involving the child protection jurisdiction.

Housing challenges

7.27 Larrakia Nation Aboriginal Corporation informed the committee that, for Aboriginal and Torres Strait Islander people, housing is a big driver of informal care arrangements:

Parents often do not have secure housing, but their [children's] grandparents may have a secure housing arrangement. Often the grandparents we talk to have been carers for virtually all of the lives of the grandchildren...What is also very common is a multigenerational household with parents,

34 *Submission 81*, p. 3.

35 *Submission 134*, p. [2]. Also see: Dr Marilyn McHugh, who noted that Aboriginal and Torres Strait Islander grandparents raising grandchildren experience higher levels of stress and strain, compared with their non-Aboriginal and Torres Strait Islander counterparts: *Submission 17*, p. 3.

36 *Submission 96*, p. 5 and *Submission 132*, p. 9, respectively.

37 *Submission 132*, p. 9.

38 For example: CREATE Foundation, *Submission 136*, p. 5; Ms Meredith McLaine, Shoalcoast CLC, *Committee Hansard*, Sydney, 13 June 2014, p. 41.

grandparents and grandchildren all under one roof, so who the primary carer is becomes somewhat blurred.³⁹

7.28 As discussed in Chapter 5, grandparents might need to alter their housing arrangements when they take on the primary care of their grandchildren, which can be particularly problematic for grandparents in public housing. In Darwin, the committee heard the following example from Larrakia Nation Aboriginal Corporation:

One of [our] recent clients had five dependants, some formally through the system and some informally through family. She was living in a women's shelter at the time—transitional housing—and we have worked with her to get some bond together for Territory Housing. But she is still waiting for a house and she is in two-bedroom transitional housing with five grandchildren...She has been waiting for months to get a three-bedroom house in Darwin...It is such a big issue.⁴⁰

7.29 ATSIILS Qld agreed:

Grandparents taking on the care of grandchildren should be placed on a priority list for housing allocation. Currently long waiting lists are the norm. One grandparent who took on the care of [six] grandchildren states that she had to put beds on the veranda to accommodate her family members.⁴¹

7.30 Mr Matthew Strong from the North Australian Aboriginal Justice Agency (NAAJA) described how housing issues can affect the placement of Aboriginal and Torres Strait Islander children with their grandparents:

I have a grandmother at the moment who is on the waiting list; she has six grandchildren. She is about nine months away. Once she gets the house her grandchildren will come back with her, so she will be looking after all six grandchildren. She does not smoke, does not drink. She is a senior woman. But because her housing is overcrowded and she does not have locks on the doors—people come and go—the house is not safe for the children. That is the only hurdle.⁴²

Legal matters involving the child protection jurisdiction

7.31 Participants described how assessments conducted by child protection authorities can impede, or prevent, the placement of Aboriginal and Torres Strait Islander children with their Aboriginal and Torres Strait Islander grandparents. The Federal Circuit Court of Australia (Federal Circuit Court), for example, noted that it is often the grandparents who can offer a safe, stable home environment to their grandchildren. However:

Typically the grandparents might live in a household with other family members who have had in the past, or currently have, a criminal conviction.

39 Mr James Pilkington, *Committee Hansard*, Darwin, 5 August 2014, p. 13.

40 Mr James Pilkington, *Committee Hansard*, Darwin, 5 August 2014, p. 15.

41 *Submission 134*, p. [16].

42 *Committee Hansard*, Darwin, 5 August 2014, p. 6.

Even the grandparents themselves in their younger days may have had involvement with the police. This background and family situation will generally mean that the grandparents cannot obtain a blue card for themselves or alternatively for other members of their household as is required by the child protection authority, before they can place a child with the grandparents...This can result in Aboriginal and Torres Strait Islander children being removed not only from their parents, but unnecessarily removed from their grandparents who may be quite capable of providing the appropriate level of care and protective environment. These children will often be instead placed into foster care in a community and household a significant distance away from their grandparents, their community and extended families, all of whom share their culture.⁴³

7.32 One kinship carer reported the deleterious effect this had on her grandchild:

[Six] grandchildren were placed in my care due to concerns about their parents. Child safety initially split the children into three foster homes when they first intervened. This had a very bad effect on the children. I always had a Blue card and no criminal history but child safety took 4 months to investigate and conclude I was suitable. In the meanwhile the oldest child was traumatised when his foster carers locked him in a shed. He has been having counselling ever since. Another child cries every night and another wets her bed daily.⁴⁴

7.33 As noted in Chapter 6, NAAJA explained that the Northern Territory has a legal process by which grandparent carers can challenge the decision of a child protection authority however, alternative non-legal options—such as conciliation—have not been fully implemented by the Department of Children and Families (NT).⁴⁵

7.34 The Department for Child Protection and Family Services (WA) advised that it is implementing a new approach, whereby the assessment process commences 'the moment we become involved in a family':

The child is still with the parents and you are becoming involved both with the parents and the child's network to see what safety can be enhanced so their wellbeing and safety can be assured, hopefully with the parents but, if not, you are already working with the network. So we are compelling caseworkers to work with families much much earlier to identify, should those children not be able to be cared for by their parents, who else in the family could step into that brief. If they have been identified the assessment starts then....Some of them can be quite quick: on average, six weeks.⁴⁶

7.35 In addition, a few submitters noted that there are additional considerations when a matter involves both the family law (federal) and care and protection (state or

43 *Submission 91*, p. 2. Also see: Mr Matthew Strong, North Australian Aboriginal Justice Agency, *Committee Hansard*, Darwin, 5 August 2014, p. 3.

44 Quoted by ATSILS Qld, *Submission 134*, p. [15].

45 *Committee Hansard*, Darwin, 5 August 2014, p. 4.

46 Ms Emma White, *Committee Hansard*, Perth, 6 August 2014, p. 19.

territory) jurisdictions. For example, the Federal Circuit Court highlighted that there is an advantage to commencing matters at the federal level:

The pathway through a court exercising the jurisdiction of the *Family Law Act 1975* can result in Aboriginal and Torres Strait Islander grandparents being [in] a stronger position to seek and obtain orders for their grandchildren, than through the State Child Protection jurisdiction...The *Family Law Act 1975* has various provisions specifically relating to consideration of the child's Aboriginal or Torres Strait Islander heritage.⁴⁷

7.36 However, the Federal Circuit Court noted that Aboriginal and Torres Strait Islander grandparents raising grandchildren are not always aware of, or directed to, the federal jurisdiction where the family law courts are required to consider the grandchildren's heritage:

[R]aising the awareness of Aboriginal and Torres Strait Islander grandparents [to this pathway] is important to assist in providing an opportunity for Aboriginal and Torres Strait Islander children, whose parents are separated, to remain living with their grandparents. Not knowing that Legal Aid might fund such applications and that there are specific legal centres...who may be able to assist Aboriginal and Torres Strait Islander grandparents by providing funding for legal representation, can be a barrier for the participation of these grandparents to the family law legal system.⁴⁸

7.37 ATSIILS Qld submitted:

In the context of the past history of forced removal of Aboriginal and Torres Strait Islander children and the contemporary extent of non-voluntary engagement with the criminal justice and child protection systems among Aboriginal and Torres Strait Islander peoples, there is significant resistance to voluntary engagement with government and justice system services.

...

There is a critical need for the development of civil and family law community legal education and outreach programs that are developed at the regional level, in response to identified local issues and targeted to the needs of Aboriginal and Torres Strait Islander peoples. Community legal education will meet this need to some extent but more immediate assistance is required.⁴⁹

47 *Submission 91*, p. 3. This pathway includes, for example: the appointment of independent children's lawyers and the commission of family reports, to determine the best interests of the child.

48 *Submission 91*, p. 3. Also see: ATSIILS Qld, *Submission 134*, p. [7], which stated that the lack of understanding in relation to family law matters is exacerbated by resistance to engagement with, and fear of, such legal systems.

49 *Submission 134*, p. [7].

Committee view

7.38 Where supports and services are provided to Aboriginal and Torres Strait Islander grandparents raising grandchildren (most of whom are informal caregivers), it is imperative for these to be delivered in a culturally sensitive manner—whether through targeted training of support workers, delivery by appropriate (local) organisations, a combination of both or other. Otherwise, the grandparents may choose not to access the assistance to which they are entitled.

7.39 Consistent with comments expressed earlier in this report, the committee is particularly concerned about the assistance available to and accessed by Aboriginal and Torres Strait Islander grandparents raising grandchildren. In addition to an over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, the committee heard that these grandparents experience heightened levels of disadvantage.

7.40 A particular factor referred to in the evidence was housing. Grandparent-headed families must be accommodated in suitable housing and, if required, priority should be given to these families: no family member should be without a bed or living in accommodation which is suited only to the needs of a single person or couple. Further, this factor should not prevent grandchildren from being placed with their grandparents in the out-of-home care system. Existing policies and practices relating to the priority allocation of public housing should be reviewed to prevent the deplorable situations described to the committee.

7.41 The committee endorses the intentions of the Aboriginal Child Placement Principle but notes that Aboriginal and Torres Strait Islander children are not always placed in accordance with the Principle. To the extent that assessments could increase the number of children placed with their grandparents, the committee sees merit in the potential use of the WINANGAY Kinship Care Tool, which has been both academically verified and field tested.

7.42 The committee also sees merit in the approach recently adopted by the Department for Community Services and Families (WA) of commencing assessments at the earliest opportunity. The committee suggests that child protection authorities adopt a common sense approach to determining whether the results of the associated police check will affect the safety of children placed in the primary care of their grandparents.

7.43 The high number of Aboriginal and Torres Strait Islander children in out-of-home care is alarming. One witness likened the situation to another stolen generation, 'an absolute disaster for Aboriginal people and communities'.⁵⁰ The committee agrees that this is a matter of the utmost concern and one which requires immediate redress.

50 *Committee Hansard*, Sydney, 13 June 2014, p. 56.