



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

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Enhancing justice and
health for Aboriginal and
Torres Strait Islander people

Response to the Federal Circuit
and Family Court of Australia
(Consequential Amendments and
Transitional Provisions) Bill 2019

SUBMISSION

April 2020

About NACCHO

NACCHO is the national peak body representing 143 Aboriginal Community Controlled Health Organisations (ACCHOs) Australia wide on Aboriginal and Torres Strait Islander health and wellbeing issues. NACCHO's work is focused on liaising with governments, its membership, and other organisations on health and wellbeing policy and planning issues and advocacy relating to health service delivery, health information, research, public health, health financing and health programs. Our members provide about three million episodes of care per year for about 350,000 people across Australia, including about one million episodes of care in very remote regions.

Sector Support Organisations, also known as affiliates, are State based and represent ACCHOs offering a wide range of support services and Aboriginal and Torres Strait Islander health programs to their members including advocacy, governance and the delivery of state, territory and national primary health care policies.

ACCHOs range from large multi-functional services employing several medical practitioners and providing a wide range of services, to small services which rely on Aboriginal Health Workers/Practitioners and/or nurses to provide the bulk of primary health care services, often with a preventive, health education focus. ACCHOs contribute to improving Aboriginal and Torres Strait Islander health and wellbeing through the provision of comprehensive holistic primary health care, and by integrating and coordinating care and services. Many provide home and site visits; medical, public health and health promotion services; allied health; nursing services; assistance with making appointments and transport; help accessing childcare or dealing with the justice system; drug and alcohol services; and help with income support.

Collectively, we employ about 6,000 staff, 56 per cent of whom are Indigenous, making us the single largest employer of Aboriginal and Torres Strait Islander people in the country.

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Introduction

We welcome this opportunity to respond to your inquiry into the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019*.

Access to family law services, and justice in general, is a large determinant of the health and wellbeing of Aboriginal and Torres Strait Islander people. With this in mind we make a number of recommendations about how the newly created Federal Circuit and Family Court (FCFC) may better remove barriers and increase access to services for Aboriginal and Torres Strait Islander people.

We have developed this submission by drawing on proposed ways forward suggested by the Central Australian Aboriginal Family Legal Unit (CAAFLU) and the Central Australian Aboriginal Legal Aid Service (CAALAS). We would appreciate the opportunity to discuss this submission and its recommendations with you.

Why this inquiry is important to the health and wellbeing of Aboriginal and Torres Strait Islander people

- Access to justice services, including family law services within the new FCFC, is a major determinant of the health and wellbeing of Aboriginal and Torres Strait Islander people.
- Aboriginal and Torres Strait Islander women and children experience family violence at rates significantly higher than other Australians, which increases their exposure to homelessness and poverty, adversely impacts their mental and physical health, and makes it hard for guardians to keep their children in school and to succeed in employment.
- Closing the access to justice gap between Aboriginal and Torres Strait Islander people and other Australians goes a long way towards closing the gap in health and wellbeing.

Recommendations

1. That legal education, information, options and processes be made more accessible to Aboriginal and Torres Strait Islander people in Aboriginal and Torres Strait Islander languages, plain English and formats appropriate to particular communities and age groups.
2. That Aboriginal Community Controlled Health Organisations (ACCHOS) are funded to provide Family Dispute Resolution Practitioners programs.
3. That Aboriginal and Torres Strait Islander cultural competency training and practices be embedded throughout the FCFC.
4. That service collaboration be enhanced, including via referral pathways into culturally safe support services and the creation and dissemination of a 'roadmap' of local services.
5. That the Aboriginal and Torres Strait Islander workforce across the FCFC be built and strengthened.
6. That the court be de-formalised and culturally safe and appropriate for Aboriginal and Torres Strait Islander clients, including by accommodating greater participation of extended family members, elders and other respected community leaders in court hearings and other settings.
7. That ACCHO staff be trained to provide referrals to Aboriginal and Torres Strait Islander clients to culturally safe family law and legal services.

To achieve optimal justice, health and wellbeing outcomes for Aboriginal and Torres Strait Islander individuals and families, the implementation of these recommendations must occur in genuine and ongoing partnership with Aboriginal and Torres Strait Islander people and service providers. NACCHO acknowledges that the Federal Circuit Court was the first court in Australia to enter into a Reconciliation Action Plan. The Court's path to reconciliation will be strengthened by implementing the above recommendations. By showing a willingness to recognise and foster the relationship between the

Court and ACCOs, the Court will help to drive change in our communities on our terms, not just the Court's terms.

Barriers to accessing family law services

Many Aboriginal and Torres Strait Islander people do not access the family law and other legal services that they require, which can be due to their distrust of police and the justice system and services, and geographic and economic barriers.

Distrust of Australia's justice system and services

There remains significant fear among Aboriginal and Torres Strait Islander people of engaging with the family law system as a result of the historical legacy of the forced removal of children and forced resettlement of communities,¹ and ensuing intergenerational trauma.² Ongoing engagement with the criminal justice and child protection systems compounds this distrust of police and the justice system and services.¹ Currently, Family Dispute Resolution practitioners are provided through a mainstream organisation. This is often the first step in an individual's path to the Court. The lack of cultural competency to participate in this initial process is a problematic barrier to many Aboriginal and Torres Strait Islander people's engagement. If ACCHOs had the funding and training to provide this dispute resolution service in a culturally safe manner, it is likely that many Aboriginal and Torres Strait Islander families may not need to proceed to a Court process. Expanding the family dispute resolution program to include ACCHOs as legitimate practitioners will also change the attitude of lawyers and judges to ACCHOs and strengthen the Court's Reconciliation Action Plan.

Geographic and economic barriers to access

The Central Australian Aboriginal Family Legal Unit points out that due to geographic and economic restrictions, many Aboriginal and Torres Strait Islander families have limited or no access to family law services.³ Getting to court and accessing legal services can be difficult for many Aboriginal and Torres Strait Islander people in rural and remote areas who may have limited, if any, public transport options nor easy access to a car. In Alice Springs, for instance, the federal family courts sit only three or four times a year, and the local court does not exercise family law jurisdiction. This presents significant challenges to the ongoing safety of Aboriginal and Torres Strait Islander families experiencing family violence who require urgent family law orders.⁴

Family violence and child protection

While Aboriginal and Torres Strait Islander families have been significantly underrepresented in the family law system, they have been significantly overrepresented in the child protection, criminal and civil law systems.⁵

Aboriginal and Torres Strait Islander families experience family violence at higher rates than other Australians families.^{6 4 7} In comparison with other Australian women, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised as a result of family violence and 10 times more likely to be killed.⁴ Aboriginal and Torres Strait Islander children are seven times more likely than other Australian children to have had contact with child protection services and 10 times more likely to be the subject of state and territory care and protection orders due to having experienced or witnessed violence in their family.⁸

Aboriginal and Torres Strait Islander families and communities remain vulnerable to the removal of their children by state authorities and courts, largely due to them being unfamiliar with the family law

¹ Women's Legal Services Australia (2012). *Submission to improving the family law system for Aboriginal and Torres Strait Islander clients*

² Family Law Council. (2016). *Families with complex needs and the intersection of the family law and child protection systems—Final Report*.

³ Central Australian Aboriginal Family Legal Unit (CAAFLU). (2017). *Committee Hansard*.

⁴ Central Australian Aboriginal Family Legal Unit (CAAFLU). (2017). *Committee Hansard*.

⁵ National Family Violence Prevention and Legal Services Forum (NFVPLSF). (2017). *Committee Hansard*, Melbourne.

⁶ Northern Territory Government, Submission 109, p. 1

⁷ Victorian Royal Commission into Family Violence (2016). *Summary and recommendations*.

⁸ AIHW. (2016). *Child protection Australia*. Child welfare series.

system. In addition, many Aboriginal and Torres Strait Islander children in the child protection and detention system transition into the criminal justice system. To prevent this it is imperative Aboriginal and Torres Strait Islander children remain with their families, within their communities and connected to their cultures.

To uphold the rights of Aboriginal and Torres Strait Islander children as laid out in Article 30 of *The United Nations Convention of Rights of the Child 1990*, families need to be strengthened and children given a safe and stable home. This includes supporting Aboriginal and Torres Strait Islander parents and families with culturally safe therapeutic services to address their concerns about how their children may be at risk of harm.

Recommendation 1 That legal education, information, options and processes be made more accessible to Aboriginal and Torres Strait Islander people in Aboriginal and Torres Strait Islander languages, plain English and formats appropriate to particular communities and age groups.

English language and literacy issues have presented a barrier to Aboriginal and Torres Strait Islander people accessing the family law system and related services,⁹ particularly when English is not a first language or when there are literacy difficulties.³ While appropriately trained and qualified onsite interpreters can be critical to mitigating communication barriers, the availability of interpreters (particularly in some Aboriginal and Torres Strait Islander language groups) is severely limited.⁴ Further compounding and complicating communication barriers is the need for interpreters to be of a particular gender, age or relationship to the client. Technical legal terms and processes, the relationship between a client and their lawyer and conflict of interest issues also make some interpreters inappropriate.¹⁰ Without adequate legal representation, clients may not understand their legal options and may not convey their case effectively in court.¹¹

Legal education, information, options and processes should include plain language explanations about the role of the court and how it can assist. Many Aboriginal and Torres Strait Islander people do not know that the system can help them to seek justice, they believe the Court's main role is to remove children from their families.

Recommendation 2 That Aboriginal Community Controlled Health Organisations (ACCHOS) are funded to provide Family Dispute Resolution programs.

Culturally responsive service delivery that attempt to keep clients out of court, including Family Dispute Resolution services, must be flexible enough to appreciate and accommodate the diversity of Aboriginal and Torres Strait Islander family structures and practices, and acknowledge these may differ from mainstream norms.¹⁰ The process outside of court may be particularly alienating for Aboriginal and Torres Strait Islander families, because it is built on western communication and conflict resolution methods.⁴ NACCHO considers it essential that ACCHOs are able to apply for funding to deliver family dispute resolution in order to provide culturally competent services to our communities. ACCHOs, trusted organisations delivering services by and for their communities, are uniquely placed to provide culturally competent dispute resolution services. While ACCHOs vary greatly in size and the services they provide, there are common principles and practices that reflect Aboriginal and Torres Strait Islander ways of working that are unique to the ACCHO sector, with culture always at the centre. This model is represented in the diagram below:

⁹ Domestic Violence NSW. (2012). *Submission to Improving the Family Law System for Aboriginal and Torres Strait Islander clients*.

¹⁰ Family Law Council. (2012). *Improving the Family Law System for Aboriginal and Torres Strait Islander clients*. URL

¹¹ Central Australian Aboriginal Legal Aid Service (CAALAS) (2012). *Submission to Statewide Children's Resource Program*.



Recommendation 3 That greater Aboriginal and Torres Strait Islander cultural competency training and practices be embedded throughout the FCFC.

Aboriginal and Torres Strait Islander families have often been deterred from using the family law system and its services due to a lack of cultural safety and appropriateness.¹ These barriers start at the very beginning of the process, including common misconceptions about the role of the court as well as culturally incompetent family dispute resolution practices. In addition, culturally inappropriate services can put pressure on Aboriginal and Torres Strait Islander people to accept settlements that do not meet their needs or preferences.⁴

A family law system that comprises cultural awareness training for all professionals, and the incorporation of culture into service delivery, would achieve better outcomes for Aboriginal and Torres Strait Islander people. In cultural awareness training the diversity of Aboriginal and Torres Strait Islander cultures and contemporary barriers they face to accessing needed services must be better appreciated by family law professionals.⁴

Cultural Reports are highly useful in cases involving Aboriginal and Torres Strait Islander children, and should include a cultural plan for the child’s ongoing connection with country and kinship networks.²

Recommendation 4 That service collaboration be enhanced, including via referral pathways into culturally safe services and the creation and dissemination of a ‘roadmap’ of services.

It is important for all services to have strong referral pathways to guide Aboriginal and Torres Strait Islander people into culturally safe support service. This, unfortunately, has often not been the case in the family law system.⁴ The Central Australian Aboriginal Family Legal Unit suggests that to better meet the legal needs of Aboriginal and Torres Strait Islander people, greater collaboration between mainstream services and services specifically for Aboriginal and Torres Strait Islander clients is required across the FCFC.¹⁰

The Central Australian Aboriginal Family Legal Unit similarly support a referral pathway, including mechanisms for a state or territory magistrate to issue an order referring the matter directly to the federal family courts to allow the federal courts to consider the material without further delay. The registries of the federal family courts would then seek to case manage the matter by supporting the parties to progress the matter in that second court, without the client needing to see another lawyer and prepare a Family Court application.

Different services and parts of the new FCFC must work more closely together, including in how to best deal with victims and perpetrators of family violence. The Central Australian Aboriginal Family Legal Unit explains clients shouldn’t be made to re-traumatise themselves and go through the story again and

give further affidavit materials. With greater service crossover and collaboration the account provided by the victim in another court could be considered, which would also assist in avoiding delays. Central Australian Aboriginal Family Legal Unit also suggest there could be a stronger and structured referral mechanism from the courts, and a greater use of court-ordered attendance for perpetrators.

The creation of a FCFC services 'roadmap' and its promotion among Aboriginal and Torres Strait Islander clients, families and communities, and integration with government resources and initiatives, would go a long way in enhancing service collaboration.¹⁰

Recommendation 5 That the Aboriginal and Torres Strait Islander workforce across the FCFC be built and strengthened.

It is essential that there be a greater number of Aboriginal identified positions in order to make family law services more culturally safe for Aboriginal and Torres Strait Islander clients. Currently there 11 FCC staff identify as Aboriginal and/or Torres Strait Islander. These numbers must be increased. There is also a need for professional development and cultural competency training for all family law service providers, and for a cultural competency framework and a good practice guide to be developed and disseminated.¹⁰ The training and framework would seek to increase family court professionals' appreciation and responsiveness to the diversity of Aboriginal and Torres Strait Islander family structures and practices, and acknowledge these may differ from mainstream norms. The training and framework would also increase understanding of the contemporary barriers faced by Aboriginal and Torres Strait Islander people to accessing legal representation and services, and how alienating navigating the court system can be for many Aboriginal clients.

Interpreters

The Central Australian Aboriginal Family Legal Unit points out that shortages in interpreter services can be due to cultural reasons; it may be inappropriate to have an interpreter of a particular gender, age or relationship to a party.³ Shortages can also be due to challenges in interpreting family law concepts and procedures, and conflicts of interest and confidentiality concerns in smaller communities.³

To enhance access of family law service for Aboriginal and Torres Strait Islander people moving through the FCFC, more Aboriginal and Torres Strait Islander language interpreter services and interpreters are required. A key component of this is forming a larger pool of available interpreters for particular language groups who also have knowledge and understanding of family law.¹⁰

Existing legal interpreters should receive family law training as part of their accreditation, and protocols must be established to ensure Aboriginal and Torres Strait Islander clients are made aware of their right to an interpreter and are given access to an interpreter.² Interpreters should be flexible in providing face-to-face as well as telephone interpretation services—the latter being particularly helpful when delivering services to people in hard-to-reach locations.⁴

Consultants and liaison officers

Increasing the number and competency of Aboriginal and Torres Strait Islander family consultants and family liaison officers would improve legal outcomes for Aboriginal and Torres Strait Islander people.¹⁰ The Central Australian Aboriginal Family Legal Unit point out that consultants need adequate hours to conduct comprehensive interviews to fully capture the experiences of the family affected by family violence. Indigenous Liaison Officers must also be made available in court registries.

Recommendation 6 That the court be de-formalised and made more culturally safe and appropriate for Aboriginal and Torres Strait Islander clients, including by accomodating greater participation of extended family members, elders and other respected community leaders in court hearings and other settings.

The new FCFC needs to better empower families to more fully participate in decision making processes to find solutions for the care of their children. This would help in building stronger families and reducing the number of Aboriginal and Torres Strait Islander children in out of home care.

The greater participation of Aboriginal and Torres Strait Islander elders and/or other respected community leaders to provide advice to the Court regarding any children involved in the case would insert heightened cultural competency into the new FCFC.² It is also important to involve elders and/or other respected community leaders in resolution processes outside of court. Family dispute resolution services would achieve better outcomes for Aboriginal and Torres Strait Islander people should elders and other respected community leaders be able to share cultural perspectives. At the moment this does not occur.¹²

Recommendation 7 That ACCHO staff be trained to provide referrals to Aboriginal and Torres Strait Islander clients who are needing to access the FCFC and its various legal services.

ACCHOs provide a wide range of comprehensive primary healthcare services across urban, rural and remote Australia (see page 1). On top of these services, ACCHO staff could also provide non-specialised support and assistance to Aboriginal and Torres Strait Islander clients who are needing to access the FCFC and its various services. At present, some ACCHOs provide more specialised health justice services than others. This support to Aboriginal and Torres Strait Islander clients could largely be in the form of well-informed referrals to local and effective legal service providers. To do this, relevant ACCHO staff would must be trained in regards to the FCFC system and its internal and external services.

The FCFC should also look to better integrate external Aboriginal justice services that can assist Aboriginal and Torres Strait Islander people before coming to court and/or to help them to avoid coming to court. Some ACCHOs provide health-justice specific services, including Wuchopperen Health Justice Partnership run by by Wuchopperen Health Service. Wuchopperen Health Services' Health Justice Partnership provides preventive services aimed at keep families together and strong (see Case Study).

Case study - Wuchopperen Health Service's Health Justice Partnership

Wuchopperen Health Justice Partnership, run by Wuchopperen Health Service, assists Aboriginal and Torres Strait Islander people who are experiencing the stress of having to go to court and other health issues. Often, clients have problems with their hearing and eyesight, which limits their capacity to understand and interact with the police, navigate the court system and read and respond to letters of demand. Wuchopperen Health Service staff appreciate that sickness can prevent Aboriginal and Torres Strait Islander people from being employed and receiving an adequate salary, and from paying fines and accessing legal representation. Through legal advice and representation provided, Wuchopperen has helped: elders through the stressful and technical process of applying to have stolen wages returned to them; tenants of homes with infrastructural issues know and access their rights; and a mother impacted by family violence maintain custody of her newborn.

¹² Central Australian Aboriginal Legal Aid Service (CAALAS) (2017). *Committee Hansard*.