Genocide submission:

NON CONFIDENTIAL

Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024

Contact information:
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LJ is a proud Quandamooka and Wiradjuri woman, deeply rooted in her heritage as a First Nations Healing Practitioner and advocate based in Wadawurrung Country. She is a mother, a sister, an aunty, a tidda and a friend.

LJ and her organisation, First Nations Healing Practitioners, aim to amplify Aboriginal voices and address systemic injustices through grassroots-level advocacy. By focusing on anti-oppressive and intersectional principles, she seeks to ensure that frontline services provide culturally safe, trauma-informed care that actively addresses the intersections between intergenerational trauma, colonial violence, family violence, and sexual assault; LJ hopes to make a positive impact. Her lived experience as a survivor drives LJ's work, and she incorporates cultural practices to promote sharing, caring, and renewal within her advocacy efforts.

Acknowledging Colonial Scars: The continued impact of residential care: an active act of genocide.

The ongoing practice of disproportionately removing Aboriginal children from their families and placing them into residential care and out-of-home care (OoHC) constitutes a contemporary form of genocide. This systematic removal, often without proper justification or consideration for cultural connections, perpetuates intergenerational trauma and disrupts the continuity of Aboriginal cultures and communities. By separating children from their families, communities, and cultural practices, these policies not only undermine Aboriginal identity but also contribute to higher rates of abuse, neglect, and cultural isolation within the care system itself. This pattern of removal and institutionalisation directly impacts the health, well-being, and future prospects of Aboriginal children, perpetuating a cycle of disadvantage and harm that echoes historical colonial practices. Recognising and addressing this issue is crucial for advocating for the rights of Aboriginal communities and ensuring a future where Aboriginal children can grow up in culturally safe and nurturing environments within their own communities.

Concerns:

When it comes to out-of-home care (OoHC) and residential care, many of the kids I work with are considered to be some of the highest 'at-risk' young people in the state. However, the department fails to acknowledge that they are at risk because of the system and what it has done to them. These kids aren't bad. I don't believe in the concept of 'bad kids' - these kids have been and are actively being traumatised by a system that continues to harm them, some might argue purposefully. Multiple practitioners, organisations, systems, and structures are complicit in this practice; Indigenous and mainstream organisations have a role to play. This practice involves the literal forced removal and detainment of our children, causing the behaviours and reactions that these same kids are being punished for. While this is done in the name of protection, the systems in place ultimately fail to protect them; instead, they continue to harm them.

Here in Victoria, there are 2595 identified First Nations children in OoHC (excluding those on CBC orders who are not with family). The number is likely much higher - but since they changed the counting rules (nationally), we have no way of knowing the actual numbers - we must demand accountability from the agencies (DFFH, VACCA, and MCM, - to name just a few). I don't mean in the form of statistics, though; I mean in the forms of the names, faces and stories. I mean direct accountability for our children trapped within these violent structures; they deserve justice, softness and love and should not have to wait to be further institutionalised, criminalised and traumatised to get it.

This situation is only getting worse; kids now than ever before, are getting trapped in residential care. It's not like we don't already know this, but once you see it first-hand, you can't unsee it. While I am very familiar with those systems, professionally and from a lived experience, I could never have imagined being complicit or a part of the war zone they are trapped in, with no escape plan.

These systems are letting these kids down in every way imaginable. They deny them love, nurturing, care, and family. They are conditioning them into thinking relationships are transactional and that everything comes at a price, and sometimes that price is themselves.

They're at risk of significant criminalisation, they're getting sexually exploited and trafficked directly from these houses, and they're getting exposed to drug use from really early ages. These agencies and departments blame the kid, avoiding responsibility and accountability using deficit narratives. Our babies are being denied the right to education, the right to healthcare, the right to connection to culture, to family, to community. The system pays enormous amounts of money to secondary agencies, which are contracted to care for these kids, but they do not care. These organisations have profitability margins, and it's safe to say they are making bank. They don't care about these kids, their families or trajectories, so the kids pay the price with their lives and livelihoods.

De-identified Case Study: This submission highlights concerns about the challenges faced by First Nations children in out-of-home care (OoHC), emphasising abuse, neglect, cultural isolation, systemic failures, denial of the most basic of human rights (health, education, family, cultural connection, safety, security, family etc). This case study will focus heavily on the high levels of Child Sexual Exploitation that are occurring within the out-of-home and residential care systems - this disproportionally impacts First Nations children/young people and is grossly under-reported due to the continued implications of colonial violence and systemic abuse.

The case study will outline all steps taken, such as advocacy efforts and academic involvement, and seek assistance through the Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024 to hopefully force the system to create meaningful change for ‘AD’ and all the children and young people who are trapped in the violence hands of child protection, but more specifically the out-of-home and residential care systems.

‘AD’s Story’

I will refer to the young person as ‘AD’, She’s a young, Blak Aboriginal person.

She's 16, and she's been in care since she was 12, but surveillance since birth; her story is not overly unique, but she is -

I have been given verbal and written consent from both the young person and her mother to submit and share some of their story through this submission. However, due to confidentiality laws and the removal of all autonomy of young people in care, I can't mention her name, nor is she or her mother able to share their own stores - so at their request, I will do my best to share it in an honouring way and where that respects legislation.

1. AD came into contact with DFFH due to her mental health issues, challenging behaviours, her Aboriginality, and her status as the child of a teenage mother. She was just 11/12 years old at this point. Her mom struggled and reached out for help time and time again but was denied, or the help that was provided was inadequate, unsafe, and/or discriminatory.

2. AD’s mum was just a baby when she had her; she was 15 and was struggling and in need of support; she lost her mum to cancer and had a limited family to guide her. AD's dad, who is Aboriginal, wasn't hugely involved in her life due to his own systemic and Intergenerational trauma. Currently, Mum is involved in AD's life, and Dad comes and goes - the department, which is her 'legal guardian', has done nothing to foster AD's relationship with anyone in her maternal or paternal family to date.

3. When AD began experiencing mental health challenges at the age of 10 or 11, her mother also faced struggles. They sought help from various organisations such as CAHMS, Headspace, AD's school, GPs, and the hospital, but nothing seemed to work. Eventually, the Department became involved after AD's school reported her behaviours, which led to AD being removed from her home due to her parent's mental health issues and suspected neglect. The allegations against AD's mother have not been proven formally based on the available documents. AD's mother fought to have AD returned and requested support for AD, but unfortunately, AD never returned home despite the lack of support for her. AD had short placements with her paternal family, but these placements were not adequately supported. Due to AD's complex issues, high distress levels, and behavioural challenges, these placements failed. To date, AD has been under the care of five different agencies and has had two contingency placements, all but one breaking down and resulting in the relinquishment of her “care.”

4. After being removed, AD has been in youth detention and has spent a significant amount of time in secure welfare. She has been assaulted by residential staff and has also assaulted residential staff. Additionally, she has struggled with polysubstance abuse and is currently using Methamphetamine, GHB, pharmaceuticals, marijuana and alcohol, sometimes consuming upwards of 4 points (meth) and 6-10 mils of ‘Juice” a day - AD has overdosed over 8 times in the past 2 months - roughly once a week.

5. AD has been and continues to be severely affected by the experiences of child sexual exploitation and abuse while in care, and I would consider her a trafficked person. She is regularly sexually exploited multiple times a week (sometimes multiple times daily) and was assaulted for

the first time in a residential placement. She has experienced intimate partner/domestic violence and has witnessed the sexual assault of other young people (the majority of whom are also Aboriginal and are also in care). AD is systematically isolated from her peers and lacks developmentally appropriate support. She has not attended school since grade 6 (age 12) and is now 16.

6. As a result of this compounded trauma, she struggles with substance misuse, mental health challenges, and more. AD openly states that her substance use is triggered by the trauma she has experienced in state care, including being denied education, mental health support, medically supported detox, child sexual exploitation and her continued disconnection from culture, community, and family.

7. These repetitive departmental mistakes have meant purposeful struggle resulting from departmental neglect. I am directly witnessing her trust in anyone, and everyone disappears a little more daily.

8. AD continues to have constant contact with the police, and as a result of all of what has been mentioned above, she's significantly institutionalised, and she knows it. She is incredibly intelligent, insightful, caring and funny, so she knows exactly what this is doing to her. She knows she will have to spend a significant part of her life recovering from her time in state care and, as a result, struggles with the reality of what her life could become if she doesn't "make it out of the trenches". I struggle with this, too. Honestly, I am scared that she might die as a result of all of this, that she might not even make it to 18, let alone out of the trenches.

9. AD continues to struggle with increased self-reported mental health concerns and issues with self-injury and suicidality; she reports weekly sexual assault, with varying levels of violence; her number of purposeful overdoses increases and whilst the risk increases, none of this is addressed by the Department in a trauma-informed and culturally safe manner; or even at all. These experiences for AD are normalised; she is held to the highest levels of accountability for her maladaptive behaviours resulting from institutionalisation, chronic sexual abuse, cultural isolation and removal from all meaningful peer engagement. She is in a space where she is a victim but is openly blamed for ‘choices’ even though we know it is the system itself that made such ‘’choices’ an option.

Stats:
According to the 2016 Royal Commission into CSA, nationally, children in residential care comprise less than 5% of all children. However, they account for over 33% of child sexual exploitation reports on children in care in Australia. - Yet we have heard nearly nothing about how this impacts our communities directly or what is being done to address such a serious issue. - This is purposeful, an act of genocidal and colonial violence.

Victoria specifically:
According to the 'A good parent would do' report commissioned by CCYP and again echoed in the McKillop Family Services outcomes report (2015), there is a continuing high rate of sexual exploitation of children and young people in residential care, with approximately 43% of children and young people reviewed having been a victim or at risk of child sexual exploitation.

According to reports from 2019 that were commissioned by the Principal Commissioner for Children and Young People, there have been 23 incidents of sexual exploitation in residential care reported to the Commission, involving a total of 165 children. Of these, 64% or 241 incidents, involved sexual exploitation and abuse of children under 16, and 11 incidents involved 9 children under 12 (2023, CCYP). According to Commissioner Buchanan and Commissioner Singh, since the report was published in 2019, there has been little to no progress in addressing these issues. Moreover, although multiple investigations have actively emphasised the urgent need to improve the quality of care and monitor the safety of children in care, this is yet to happen.

We must take action to better identify and protect children at risk of sexual exploitation and abuse, as they are currently suffering as a result. In the analysis for this report and specific inquiries centring sexual exploitation, it was found that children and young people in residential care often experience sexual exploitation when they are absent or missing. For instance, the term' sexual exploitation' appears in 37% of the incident reports of absent clients involving children and young people in residential care in the 18 months leading up to March 31, 2020, which amounts to 870 incidents (2021, CCYP). During this time, there were 220 reports of sexual exploitation involving children and young people in residential care, accounting for 3% of all incident reports for that group. In the file review of 12 frequently reported absent children and young people, 10 out of 12 had experienced sexual exploitation (2021, CCYP).

In Victoria, there are 2595 First Nations children in oohc; there are currently just under 9000 children in oohc (inclusive of Indigenous, non-Indigenous and CALD children/young people). (That's 11:1 for mob.) At any given time, at least 450 children are in residential care in Victoria (Yoorook Commission, 2023). Of that 450, approximately 176 children (19.7 per cent) identified as Aboriginal or Torres Strait Islander.

There isn't a lot of detailed specific data focusing on the exact rate of sexual exploitation of First Nations children and young people in Victoria, especially in the western region. However, here's the available information: In 2019-2020, there were 188 reported incidents of sexual exploitation. Of these 188, 83 were identified as Aboriginal or Torres Strait Islander, and 30 were identified as residing in the Western region. It's important to note that this data is likely an under-representation, as it requires young people to report the exploitation or identify a person of interest. In 2021, The Victorian Commissioner for Children released data indicating that from July 2021 to the end of March 2023, there were 423 incidents of sexual exploitation in residential care reported to the Commission, involving a total of 165 children - the number continues to grow in epidemic proportions.

Goals:

1. Raise Awareness: Consider systemic issues in residential care (levels of abuse, neglect, substance misuse, sexual exploitation, criminalisation and school disengagement and denial of medical support/treatment)

2. All deaths of children in oohc should be considered and identified as deaths in custody of First Nations people, especially if they are in residential care on care by secretary or permanent car orders.

3. Coronial inquests recommendations reviewed in all deaths of children in Residential care - have they been followed up, or have they been enacted? If not, then WHY?

4. Dismantle Residential Care—More funding should be allocated to preventative care, specialised supports, and reunification; if this is not possible, every other option should be adequately sorted before residential care.

5. Seek Support: Please ask Senator Thorpe's help in initiating actions, with a focus on calling for a Royal Commission in Residential Care and its connection to Child Sexual Exploitation.

6. Accountability for DFFH, ACCHOs and NGOs that hold the responsibility of these children in their hands.

7. Independent investigations into DFFH and its case contracted agencies, including ACCO, on their decision-making around case management, case planning and advocacy for all young people in residential care.

Possible Outcomes:
Increased Awareness: Raise awareness regarding challenges First Nations children face in oohc.

Policy Changes: Advocate for policy changes, potentially through actions like a Royal Commission or State, to address and rectify issues in residential care. - The aim must be to acknowledge residential care doesn't work, never did and is enacting further genocidal violence.

All the requested data outlines the following should be provided to governing bodies such as RAJAC, AJC, Yoorook (etc)

- How many First Nations children/young people are currently in residential care, and how much is this costing (in contrast to reunification, parental/family support and kinship)?

- Data regarding substance misuse and First Nations children/young people are currently in residential care (is this happening before or after entering Resi)

- Look at the risks and rates of sexual exploitation for First Nations children/young people who are currently in residential care.

- Looking at the connection between Youth Justice and residential care - are kids in residential care existing care with criminal records?

- What preventions are in place to make residential care a legitimate 'last resort'?

Recommendations:

- Royal Commission into Residential Care in relation to CSE (not just for First Nations, but for all children)

- First Nations-specific reporting regarding CSE (preventions, interventions, statistics, place-based information)

- As part of the current international response to Child Sexual Exploitation (CSE), we believe it is crucial to invest significantly in Indigenous healing spaces. These spaces should be specifically designed for young people and should include holistic residential facilities that incorporate rehabilitation/detox and intensive therapeutic services such as psychotherapy, counselling, and psycho-education. These services must be co-designed with the community and place-based, providing specialised culturally safe CSE counselling and support. Staff training and up-skilling are essential, aligning with successful models in the UK, Turtle Island, and the USA.

- Aboriginal people/persons are to sit on every board, project, panel, or advisory committee seeking to develop programs, support, or disruptions for CSE.

- Focus on prevention and intervention, reevaluating residential care as a whole, and openly addressing the causation of oohc in connection with CSE.

- Developing youth-specific community hubs that provide a safe space for education and psychoeducation (supports for DV, Substance misuse, sexual health, accessing education, medical services and mental health). Investments in similar services in the UK have successfully addressed child/youth growing CSE and digital-based CSE recruitment.

- Zero tolerance for perpetrators; we would like to see the people who are perpetrating and organising this targeted abuse on our children locked up and punished to the same levels as Aboriginal men and women for significantly lesser offences.