



VACCAs response to ‘Issues Paper: The Experiences of First Nations Peoples with Disability in Australia’

October 2020

The Victorian Aboriginal Child Care Agency (VACCA) welcomes the opportunity to contribute to the important discussions about the treatment and challenges of Aboriginal people with disability and the strategies and investments that can help support our most vulnerable community members.

VACCA's submission offers the following observations and recommendations particularly as they pertain to the Aboriginal children and families with whom we work. All children have a right to feel safe and live in an environment free from abuse, neglect and violence. VACCA is committed to promoting and upholding the rights of Aboriginal children to maintain and celebrate their identity and culture, recognising that connection to culture is critical for children's emotional, physical and spiritual wellbeing.

More Information

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About VACCA

VACCA is the lead Aboriginal child welfare organisation and the largest provider of Aboriginal family violence services in Victoria. As an Aboriginal Community Controlled Organisation (ACCO), VACCA provides services to vulnerable Aboriginal children, families, and communities. Our purpose is supporting culturally strong, safe and thriving Aboriginal communities. VACCA believes in the principle of the right of Aboriginal people to self-determination, the rights of the child and commits to upholding Victorian Aboriginal cultural protocols. Our values are; Best interests of the child, Aboriginal Cultural Observance, Respect, Self-determination, Healing and Empowerment and Excellence.

VACCA's key areas of work are in service delivery, advocacy and training. Working across the spectrum of prevention, early help, early intervention, targeted support and tertiary level services. Our approach is underpinned by principles of; prevention, early intervention and therapeutic healing, premised on human rights, self-determination, promoting client voice, cultural respect and safety.

VACCA delivers cultural training and develops resources for the Aboriginal community and for a range of organisations. VACCA advocates at a policy level for better outcomes for Victorian Aboriginal children, families and community members for their right to be connected to culture and to ensure that their needs are represented in culturally appropriate ways through service delivery. VACCA believes culturally based services that support the safety and social and emotional wellbeing (SEWB) of children, young people and families can minimise involvement in tertiary systems such as Child Protection and justice.

Across the service system, VACCA supports the needs of over a thousand Aboriginal children and young people, many of which present with a diagnosed or undiagnosed disability. This experience has built VACCA's capacity and expertise in supporting Aboriginal children with disability and strongly advocate for an inclusive and responsive disability system embedded in Aboriginal self-determination and human rights. The disability sector must work with and build on the strength of the ACCO sector to include specific disability supports.



VACCAs approach to the issues paper

VACCA's submission has considered the questions posed by the Royal Commission in the 'Issues Paper on Experiences of First Nations Peoples with Disability in Australia' and has based our response on the following questions;

1. How do Aboriginal people think about, identify with, and respond to disability in their communities? What role Aboriginal languages and culture play in the inclusion and protection of people with disability in the community?
2. What are the experiences of Aboriginal peoples with disability involved with Child Protection and their experiences of violence, abuse, neglect and exploitation?
3. What are your key concerns for Aboriginal peoples involved with Child Protection who have a child or carer/parent with disability?
4. How can current systems better prevent and respond to experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability?
5. What are some promising practice examples of culturally appropriate responses for supporting Aboriginal people with disability and their families/carers?

Further to answering these questions, VACCA asks that the Royal Commission;

1. Establish a partnership between VACCA and the Department of Health and Human Services (DHHS) to hold Yarning Circles. Similar to those that were held for the Mental Health Royal Commission, for client service staff to reflect on key learnings from direct service delivery as well as identifying some of the challenges and barriers to accessing support services for clients with a disability
2. Have an official and coordinated process for respectful engagement with ACCOs and Aboriginal people with disability.

VACCA's submission has adopted a social model of disability as used by the First Peoples Disability Network¹ in which disability is understood to be the result of barriers to equal participation in the physical and social environment. Rather than focusing on diagnosis, a social model alternatively looks at barriers and how they can be dismantled to improve outcomes.

This approach is different to that of the NDIS which does not recognise barriers affecting disability such as housing, systemic racism, or experiences of the Stolen Generations. According to the NDIS, 'a prospective participant will meet the disability requirement if they meet each of the following;

- Has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory, or physical impairments *or* to one or more impairments attributable to a psychiatric condition
- Impairment/s are, or are likely to be, permanent
- Impairment/s result in substantially reduced function capacity to undertake, or psychosocial functioning in undertaking, one or more of the following relevant activities, communication, social interaction, learning, mobility, self-care, or self-management
- Impairment's affect their capacity for social or economic participation
- Likely to require support under the NDIS for their lifetime'

Rather than adopting a holistic approach to the concept of disability and diagnosis, recognising the role of physical and social environments on the needs of people with disability, the NDIS looks at disability with a Western, siloed perspective, focusing specifically on the disability or impairment.

¹ FPDN, 'About Us', *FPDN*. (Sydney, 2019) <<https://fpdn.org.au/about-us/>> [17 February 2020]



Definitions

For the purpose of this submission, the term ‘Aboriginal’ is used to refer to Aboriginal and Torres Strait Islander people in Australia. When referring to official data sets or legislation, the use of Indigenous or First Nations peoples is used to maintain consistency with these sources.

Disability is a western constructed term that often neglects to recognise the intersection of multiple experiences of Aboriginal people with disability including how colonisation itself is disabling from participating in society. Culturally specific factors including discrimination and colonisation influence whether and how Aboriginal people identify with disability and how they respond to diagnosis.

Currently, the Royal Commission is looking into disability language and its meaning for Aboriginal people, including an understanding of disability in Australian First Nations culture. As this has not been finalised, when referring to disability the following will be adopted;

- ‘Physical disability - affects the way your body moves or works
- Sensory disability - affects your sense such as sight or hearing
- Intellectual disability - affects the way you think
- Psychosocial disability - mental health anxiety²

² First Peoples Disability Network, ‘Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability’, *FPDN* (Sydney, 2019) < <https://fpdn.org.au/royal-commission/> > [17 February 2020]



Questions

1. How do Aboriginal children and young people identify with, and respond to disability in their communities? What role do Aboriginal languages and culture play in the inclusion and protection of people with disability in the community?

Disability is a western concept, with many Aboriginal languages and cultures having no equivalent word or concept.³ Traditionally, disability is seen as an integrated part of the person, unique to the individual and embraced as part of their SEWB.⁴ With their connection to body and mind encompassing any physical or intellectual disability⁵. This aligned with feedback from VACCA staff who indicated that often clients have different ways of communicating and their ‘way of being’ is not always understood by the disability sector or support services.

Aboriginal peoples tend to adopt a strengths-based approach, building on skills rather than focusing on limitations⁶. This is contrary to the NDIS model which adopts a deficit approach, focusing on the functional impact of disability and what a person cannot do. Aboriginal peoples prefer to be recognized for their abilities and strengths⁷, rather than their perceived limitations. Anecdotally, VACCA found that for Elders, having a disability could mean they were regarded with greater value and given preferential treatment from family and community to care, protect and nurture them. As Elders are highly respected and valued amongst community, accordingly all children and young people with disability were treated with higher levels of respect. This creates differences in how Aboriginal peoples identify and treat people with disability and the types of supports required within community.

A paper written by Stopher and D’Antoine for the Western Australian Government, states that rather than Aboriginal cultures having a generic term for ‘disability’ that can be considered to be a devaluing experience, ‘people were referred to as having a specific impairment or sickness that prevented them doing certain tasks, but that they were still involved in the kinship system with roles and responsibilities’⁸.

The disability sector needs to have a better understanding of how Aboriginal people identify with disability and the role of culture within these beliefs. Connection to culture, including language, plays a pivotal role in supporting positive SEWB and acting as a protective factor for all Aboriginal peoples, particularly Aboriginal children who are still discovering their identity.

At VACCA culture is understood as;

‘central to identity. Culture defines who we are, how we think, how we communicate, what we value and what is important to us. My culture, like all Aboriginal cultures, is the longest continuing culture in the world. It is sophisticated and holistic— linking spirituality with politics, education, economics, land care and the law... Every area of human development which defines the child’s best interest has a cultural component. Your culture helps define HOW you attach, HOW you express emotion, HOW you learn and HOW you stay healthy’⁹

Being connected to culture is not only recognised as a protective factor but as a human right protected under Article 30 in both the *United Nations Convention on the Rights of the Child* (UNCRC) and the

³ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social justice and Native Title report 2015*, AHRC (2015).

⁴ Angelina Ferdinand and others, *Understanding disability through the lens of Aboriginal and Torres Strait Islander people – Challenges and opportunities*, Melbourne: Melbourne University, 2019

⁵ State of Victoria, DHHS. *Balit Murrup, Aboriginal social and emotional wellbeing framework 2017-2027*, Melbourne, Victoria: State of Victoria (2017).

⁶ Ravindran and others, *Conceptualising disability* (2017)

⁷ Ibid

⁸ Kerry Stopher and Heather D’Antoine, *Aboriginal people with a disability: Unique approaches to unique issues* (2009)

⁹ Muriel Bamblett, ‘Speaking up not talking down: doing the “rights” thing by strengthening culture as resilience for indigenous children’, Melbourne: VACCA (2006)

Convention on the Rights of Persons with Disabilities (UNCRPD). Both articles declare recognition and support of their specific cultural identity, with the UNCRPD explicitly articulating that a child who is Indigenous ‘shall not be denied the right, in community with *other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language*’. Article 23 of the UNCRPD also states that a “*disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development*”.

A recent report for the Disability Royal Commission revealed these rights are not being upheld for Aboriginal peoples with disabilities and that Australia was not fulfilling its responsibilities under the UNCRPD¹⁰. A child’s rights to culture and the protection of their identity should be part of any service system which supports and protects children. This right is recognised in the Victorian Child Protection system and legislated through the *Children, Youth and Families Act* (2005). The Act is premised on the ‘Best Interests of the Child’ recognises that it is in the best interests of Aboriginal children to maintain cultural and community connection. This is not a new revelation; however, we are yet to see the disability sector be responsive to the needs of Aboriginal children with disabilities.

It is impossible to understand and meet the needs of Aboriginal children and young people with disability if those who support them do not understand their lives and their definition of identity and wellbeing¹¹. The Ngaga-Dji report released by the Koorie Youth Council show this through an Aboriginal Social and Emotional Wellbeing Wheel, reflecting the self as inseparable from culture, family and community. Guiding this framework is three key principles of self-determination, youth participation and culture, family, Elders and community. By using this tool, the disability sector and other support systems can understand their needs and appropriate responses to make a meaningful impact. VACCA believes protection, promotion and access to Aboriginal culture is key to children and families being able to thrive in all aspects of life, irrelevant of any challenges or disability they have.

2. What are the experiences of Aboriginal children and families with disability involved with Child Protection and their experiences of violence, abuse, neglect and exploitation?

Over-representation

It is widely accepted that children and young people with disability are over-represented within the Child Protection system¹², though the prevalence specifically of Aboriginal children with disability is less clear. It was only recently that the annual *Child Protection Australia* report published by the Australian Institute of Health and Welfare (AIHW) even disaggregated data on the basis of disability¹³. The recent report showed 12 per cent of children in OOHC were reported as having disability¹⁴. However this figure only encompassed 58 per cent of children in OOHC with a diagnosed disability and consequently fails to reflect the enormity of the issue.

Taskforce 1000¹⁵, a systemic inquiry into services provided to Aboriginal children and young people in OOHC in Victoria, revealed 14 per cent of Aboriginal children were identified as having a known disability. Intellectual disability featured prominently, accounting for 65 per cent of disabilities, whilst 10 per cent recorded a physical disability, 10 per cent reported having both a physical and intellectual disability and 15 per cent were noted as having ‘other disability’. There is also anecdotal evidence that

¹⁰ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Research report, The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance* (October 2020)

¹¹ Koorie Youth Council. *Ngaga-Dji young voices creating change for justice*, Melbourne: Koorie Youth Council (2018)

¹² Create Foundation, ‘*Supporting children and young people with a disability living in out-of-home care in Australia*,’ Brisbane (2012).

¹³ AIHW, *Child Protection Australia 2018-19*, Child welfare series no. 72. Cat. no. CWS 74. Canberra: AIHW (2020)

¹⁴ Ibid

¹⁵ CCYP, *Always was Always will be Koori Children*, 2016

First Nations women and girls with cognitive, psychosocial and communication disabilities are particularly vulnerable to violence and abuse at particularly high levels.¹⁶

Taskforce 1000 also found 22 per cent of Aboriginal children reviewed had mental health issues¹⁷. This data appears lower than would be expected from census data (14.2 per cent of Aboriginal children aged 0-14 years had disability) considering the interconnectedness of disability with mental illness for young people and the impact of trauma for children in care. This raises questions about how disability is identified by Child Protection services and whether disabilities remain unidentified when referred to support services such as VACCA. *'It became clear ... that children with a disability living in, or at risk of entering, out-of-home care are not highly visible.'*¹⁸

A brief examination of Aboriginal children in VACCA's foster and kinship care programs in the Melbourne Northern metropolitan region indicated one in four children (or 25%) has disability that impacts their functional capacity. Similarly, a quarter of young people in VACCA's therapeutic residential care units have a diagnosed disability. These figures are more consistent with census data and our experiences of the impact of trauma for children in care.

Lack of culturally safe, accessible services

One of the most consistent themes across literature and amongst VACCA staff has been the need for culturally safe services, support and group activities¹⁹. Unfortunately, not all disability services are culturally safe or offer culturally appropriate services, creating a barrier for children and their parents and/or carers to access support. Like in child and family welfare or health services, disability services are at various points of the cultural safety continuum, leading to Aboriginal families being exposed to racism, stereotyping and a lack of cultural awareness. Between 2014-15, 42 per cent of Aboriginal and Torres Strait Islander peoples with disability reported experiencing racism.²⁰ These negative experiences deter families and create unnecessary barriers for receiving support. If Aboriginal people do not receive culturally appropriate treatment, they are less likely to look to those organisations for any support or treatment.

Conversely, mainstream service providers have reported feeling uneducated about their capacity to engage with Aboriginal people in a culturally appropriate manner²¹. Appearing as though they are unwilling to support Aboriginal children and families, exacerbating distrust between families and mainstream providers. These experiences amount to systemic neglect and consequently create a greater risk to abuse and violence. This is a well-known barrier with both *Korin Korin Balit Djak* and *Balit Narrum* including increasing accessibility of culturally safe services as key priorities. Yet it is still one of the most common concerns raised by VACCA staff and families.

The NDIS has two core documents that address cultural competence in service delivery, the *Aboriginal and Torres Strait Islander Action Plan* and the *Aboriginal and Torres Strait Islander Engagement Strategy* although there is limited evidence that this strategy has been translated into a practice framework, particularly for Victoria.

Difficulty navigating the NDIS and disability sector

Based on NDIS participation rates and anecdotal evidence from VACCA staff, Aboriginal children and families are not accessing disability services or the NDIS to their fullest capacity. Alternatively, family and/or carers are taking the responsibility of caring upon themselves without the necessary supports. Carers/parents have difficulties navigating the NDIS including knowing how or where to have a

¹⁶ Leanne Dowse et al, 'Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia: Background paper' (25 October 2013), p.17; Aminath Didi et al, 'Violence against women with disabilities: is Australia meeting its human rights obligations?' (2016) vol.22(1) Australian Journal of Human Rights, pp.159-177

¹⁷ Ibid

¹⁸ *Always was Always will be Koori Children*, p.95.

¹⁹ DiGiacomo and others, "Experiences and needs of carers," (2017).

²⁰ Jeromey B. Temple and others. Exposure to interpersonal racism and avoidance behaviours reported by Aboriginal and Torres Strait Islander people with a disability, *Australian Journal of Social Issues* (2020), 1-20.

²¹ VACCHO, 'No One's Left Out: Improving Support For Aboriginal People with Disability', South Australian Health and Medical Research Institute (2018).

disability assessment, requirements of the NDIS and who they can seek advice from. A lack of awareness leads to misunderstanding the service, not reaping the benefits, and provoking families to withdraw.²² There was also feedback that some choose not to engage with the NDIS due to a history of distrust with Child Protection and mainstream services. Families reported being fearful that engaging may lead to their child being removed if they appeared incapable of meeting their child's needs.

Support staff and case managers also raised challenges in trying to navigate and utilise the NDIS. Uncertainty about where referrals could be made, which services were culturally safe or criteria for disability packages were common challenges and consequently disability packages were not completed properly. Even where case coordination have been funded under an NDIS plan, there has often been insufficient allocation of hours to reflect the total time required²³. Alternatively, families seek help from trusted Aboriginal Community Controlled Health Organisations (ACCHOs) and other ACCOs who often do not have the capacity to support their needs.

Taskforce 1000 also highlighted this concern revealing just over half (57%) of young people who reported having a disability received support from disability services²⁴. This is particularly concerning as almost a quarter (24%) found their disability was impacting on the stability of their placement and consequently may contribute to placement breakdown. It is clear Aboriginal children with disability in OOHC are not fully engaged with disability support services. This onus should not fall on them, but on the system itself.

Lack of choice/inclusion as a form of neglect

Limited availability of disability services capable of meeting the needs of Aboriginal children and families results in exclusion and is a form of neglect on the part of the disability sector. The Royal Commission defines neglect as 'if someone is not helping you the way they are supposed to help you.'²⁵ According to both the 'Australian Government Plan to Improve Outcomes for Aboriginal and Torres Strait Islander People with Disability' and the 'Absolutely Everyone: State Disability Plan 2017-2020', State and Commonwealth Governments have a responsibility to ensuring Aboriginal people with disability attain the highest possible health and wellbeing outcomes enabled by all health and disability services meeting their needs. Currently this is not being enacted and the disability sector is therefore neglecting their needs and not helping in the way they should be.

The NDIA Reconciliation Action Plan also states '*the NDIA is responsible for delivering the [NDIS] Scheme in a way that allows participants to exercise choice and control and improves participant outcomes and experience*'.²⁶ As there are no Aboriginal specific services or programs for Aboriginal children and young people with disability in Victoria and with no alternative but to access mainstream services, it is not possible for Aboriginal children and their parents/carers to exercise their right to self-determination and choice.

Cultural abuse

'When the culture of a people is ignored, denigrated, or worse, intentionally attacked, it is cultural abuse. It is abuse because it strikes at the very identity and soul of the people it is aimed at; it attacks their sense of self-esteem, it attacks their connectedness to their family and community.'²⁷

VACCA contends that the NDIS does not recognise traditional forms of healing and practice to the same value as Western practices. Leading to a disregard of the role of culture and tradition on Aboriginal peoples SEWB. Cultural abuse is particularly harmful for Aboriginal children, impacting on their sense of identity, self-esteem and connectedness to family and community.

²² Angeline Ferdinand and others, *Understanding disability*, 2019

²³ NACCHO, 'Network position on the NDIS from the Aboriginal Community-Controlled Health Sector' (2017).

²⁴ CCYP, *Always was Always will be Koori Children*, 2016

²⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. *First Nations people* (2020)

²⁶ NDIA. 'Innovate Reconciliation Action Plan 2019-21

²⁷ Muriel Bamblett and Peter Lewis, *A Vision for Koorie Children and Families: Embedding Rights, Embedding Culture*, 'Just Policy: A Journal of Australian Social Policy', Edition 41, September 2006, VCOSS, p. 42

A disregard for traditional forms of healing also has a profound impact on the funding of Aboriginal services including VACCA and the types of activities and supports they can provide. Prior to the NDIS, VACCA received funding to conduct a Return to Country for clients, however, current NDIS package's core budget does not include this. Child Protection recognise a Return to Country trips as an integral part of the cultural needs of Aboriginal children and their right to culture but not by the NDIS or disability sector.

3. What are your key concerns for Aboriginal children and families involved with Child Protection who have a child or carer/parent with disability?

Support for carers and families of Aboriginal children or young people with disability

Aboriginal children in care are more likely to have complex issues with disability intertwined with trauma, mental health and alcohol or drug misuse²⁸. When parents and/or carers do not have access to physical, financial and emotional supports, they can feel as though they are not capable of meeting the needs of their child and in unfortunate circumstances can lead to placement break down. Traditionally, Aboriginal families and communities take on the responsibility of caring for mob, with care giving roles and family obligations part of Aboriginal culture.²⁹ Carers and/or parents end up bearing significant financial costs, struggling to meet the needs of other family members and experience adverse social and health outcomes related to high levels of stress.³⁰ Challenges caring for children and kin are exacerbated for Aboriginal families who have often experienced extreme grief and transgenerational trauma themselves and are on their own healing journey.

Not only are Aboriginal families/carers not receiving adequate physical or emotional support, but they are also receiving less financial support than non-Indigenous carers/families.³¹ In particular, Aboriginal women who are lone carers/single parents are one of the most economically disadvantaged groups in Australia. The 2019 NDIS report found that after one year on the NDIS, families/carers of Indigenous participants aged 0-14 had a smaller increase in receipt of Carer Payments compared to families/carers of non-Indigenous participants.³²

Strong informal support from family and community is essential, however, this responsibility can create excessive burden and/or inadequate levels of care, particularly when a family's capacity to offer care is affected by socio-economic disadvantage, carers own health issues or family/placement breakdown.³³ The type of responses required for young people with disability in OOHC and their carers are not the same as those required for parents and this is currently not recognised by the NDIS. It is unreasonable and extremely unfair to expect families/carers to take on the added responsibility without sufficient physical, emotional and financial support.

Poor understanding and coordination between the Child Welfare and Disability sector

VACCA is extremely concerned about the siloed relationship between the disability and Child Welfare sector and poor interagency collaboration. This is evident in barriers brought about by conflicting processes across different sectors. For example, VACCA staff described challenges related to consent as parental consent is often required for disability packages under the NDIS. However, for children and young people in OOHC who may be on a family reunification order and whose parents may be transient or uncontactable, these may not be attainable. Similarly, identification documents are often required which some young people do not have copies of. These challenges significantly slow down the process during which NDIS packages can lapse or a child or young person's needs and circumstances change. When conducting disability assessments, poor coordination between sectors and the adoption of a

²⁸ CCYP, *Always was Always will be Koori Children*, 2016

²⁹ DiGiacomo and others, "Experiences and needs of carers" (2017)

³⁰ Ibid

³¹ Michelle DiGiacomo and others, "Experiences and needs of carers of Aboriginal children with a disability: A qualitative study," *Bio Medical Central Family Practice* 18, no. 96 (2017): 1-11.

³² NDIS, *Aboriginal and Torres Strait Islander report* (2019)

³³ Ferdinand and others, *Understanding disability* (2019)

deficits approach can lead to complex behaviours due to a disability being deemed as difficult and unmanageable. If Child Protection does not conduct a disability assessment whilst the young person is in care and post leaving care they are diagnosed with a disability, it is evident both the Child Protection and Disability sector are failing our young people.

These challenges are shown in Josh's story below, highlighting how poor coordination and drawn out processes impact on a young person and the supports they receive. As children who are on a Child Protection Order are less likely to receive disability assessments and supports, there is an increased risk of further involvement with Child Protection and given DHHS is the largest provider of OOHC, this is a major concern;

Josh's Story

Josh and his carer transitioned to VACCA's Foster Care Program in December 2018. Josh was 12 years old and presented with a range of complex diagnosis including; Autism, Intellectual Disability and Cerebral Palsy. When VACCA's Foster Care Case Manager (CM) first met the carer and Care Team in May at an NDIS planning meeting, Josh had been excluded from school and had limited supports in place. The carer was struggling with his challenging behaviours as they did not have the support networks and training, they needed to meet his needs.

CM emailed the NDIS worker following the meeting to initiate an action plan. Six months later, the NDIA worker last contacted CM, advising that she was in the process of finalising her report. When CM followed up the email a week later, CM was advised that the NDIS worker had gone on maternity leave.

Having no alternative contact, CM contacted the NDIS who advised that CM was not a nominee for Josh and therefore were unable to make enquiries due to confidentiality policy and processes. CM contacted the carer to see if the carer could get an update as she was the primary caregiver. When the carer contacted NDIS, she too was advised that she was not a nominee, however was informed that he did have an approved plan. VACCA's CM and carer contacted the Child Protection worker, who with support from her Team Leader was able to gain access to his plan and accurately set up nominees. This process transpired over a period of five months.

In October 2019, the appropriate nominees were registered with NDIS, and Support Coordination and Plan Management were assigned enabling the care team to access and utilise his plan. VACCA sought and identified many supports for Josh and although his plan was approved in May, did not have access until late October which consequently meant that the plan was not able to be fully utilised as intended.

There is uncertainty and concern about how disability is considered by Child Protection when conducting investigations and assessments, both for children, parents and/or carers with disability. For parents/carers with a disability, there is a common perception that intellectual disability affects their parenting capacity and whilst some parents may neglect their child, it is not clear whether children of parents with an intellectual disability are at greater risk than other children³⁴. Although this is unclear, both national and international studies have found children of parents with an intellectual disability are more likely to be removed³⁵. Given Aboriginal children remain ten times more likely to be removed from their families than non-Aboriginal children,³⁶ it is estimated that Aboriginal parents/carers with disability would be even more likely to have their child removed.

³⁴ Alister Lamond & Leah Bromfield, *Parental intellectual disability and child protection: Key issues*, Australian Institute of Family Studies, NCPC Issues No. 31. (2009).

³⁵ Bowden (1994). *Parents with intellectual disability*, CAFHS Forum, 2(4): 19-24; Bullen (1998). *Strengthening families: Statewide data collection 1997*, Family Support Services Association

³⁶ SNAICC. (2019), *The Family Matters Report 2019*



Intersectional discrimination

Evidence shows how the intersection of health, wellbeing and social outcomes impact on Aboriginal peoples with disabilities,³⁷ with systemic barriers for Aboriginal peoples interacting with barriers that affect people with disabilities and consequently create compounded disadvantage³⁸. Scott Avery describes this as ‘intersectional discrimination’, an interaction based on multiple marginalised identities such as disability, Aboriginality³⁹ and involvement in the Child Protection system.

Studies on the intersection of disability with other forms of identity have found people with multiple marginalised identities are exposed to the siloing of competencies with sectors only catering to one particular identity.⁴⁰ This is evident across the disability sector including the NDIS which is currently not competent in meeting the needs of Aboriginal children in OOHC with disability, and consequently does not consider these identities in their service system. Professor McCallum's consolidated analysis of Australia's compliance to the CRPD clearly surmised the CRPD Committee's concern at the lack of legislative protection at the Commonwealth level to protect persons with disabilities from intersectional and systemic forms of discrimination. The Australian Human Rights Committee (AHRC) qualified this assertion, raising particular concern on the impact of intersectional discrimination of First Nations people with disability.⁴¹

A better understanding of how these barriers create obstacles for children and families involved in OOHC is needed including discussions on how to address existing inequalities including the added vulnerability of Aboriginal women and girls exposed to abuse⁴². A more coordinated system between ACCOs, the NDIS and Child Protection needs to be established with funding for ACCOs to ensure they have the resourcing to meet demand such as building infrastructure, staff training, human resources, and IT support. Given ACCOs already support children and families with disability as a part of their core work, the NDIS must engage with the ACCO sector to harness the strength of this service system to include disability specific supports.

To do this, VACCA recommends for the NDIS to set up an Advisory Group with DHHS, ACCO representatives and Aboriginal peoples with lived experiences of disability and/or the child protection system to break down barriers and create a streamlined approach between sectors to help eliminate intersectional discrimination

Young people leaving care

Young people leaving care have been widely reported as one of the most disadvantaged and vulnerable groups in society⁴³. Compared to young people without experiences in OOHC, they are faced with barriers in accessing employment, education and housing, in addition to being at greater risk of early parenthood, becoming involved in the justice system, drug and alcohol misuse and developing a mental illness⁴⁴. Less is known about the disadvantage experienced by young people with disabilities leaving care⁴⁵ though it is predicted they face further challenges.

A study conducted by Monash University with six key agencies found a number of barriers for young people leaving care with disabilities including;

³⁷ Jeromey B. Temple, Heather Wong, Angeline Ferdinand, Scott Avery, Yin Paradies and Margaret Kelaher, ‘Exposure to interpersonal racism and avoidance behaviours reported by Aboriginal and Torres Strait Islander people with a disability’, *Australian Journal of Social Issues* (2020), 1-20, 9.

³⁸ Avery, *Culture is inclusion* (2018)

³⁹ Scott Avery, *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, Sydney: Australia, First Peoples Disability Network (2018).

⁴⁰ Temple and others. *Exposure to interpersonal racism and avoidance behaviours* (2020)

⁴¹ Australian Human Rights Commission, ‘*Information concerning Australia's compliance with the Convention on the Rights of Persons with Disabilities*’ (25 July 2019) [35]

⁴² Leanne Dowse et al, *Stop the Violence: Addressing Violence Against Women and Girls with Disabilities* (2013).

⁴³ Philip Mendes, Dee Michell & Zara Wilson, Young people transitioning from out-of-home care and access to higher education: A critical review of the literature. *Children Australia* 3, no. 96 (2014): 243- 252.

⁴⁴ Campo, M., & Commerford, J. (2016). *Supporting young people leaving out-of-home care* (CFCA Paper No. 41). Canberra: Australian Institute of Family Studies

⁴⁵ Pamela Snow, Philip Mendes & Delia O'Donohue, *Young people with a disability leaving state care – Phase two report*. Melbourne: Monash University (2014).



- Lack of access to a range of stable, long term, affordable housing options
- Lack of adequate income to afford private rental properties, except if they were shared with a lot of people
- Some felt they lacked knowledge about how to access training or employment opportunities
- Lack of independent living skills
- Lack of understanding of own health issues and medication requirements
- Lack of positive role-modelling throughout their childhoods
- Lack of post care support beyond 21 years of age.⁴⁶

Further to these barriers is the harm Aboriginal young people with disabilities who are leaving a mainstream residential unit or OOH, is the impact of acculturation on their SEWB, and their journey to independence.⁴⁷ A child or young person conflicted about their identity can be extremely handicapped and can lead to challenges in functional skills along with severely impacting their mental health and becoming a victim of self-sabotage and self-harming.⁴⁸ Supports for Aboriginal young people leaving care need to be culturally appropriate, recognising this trauma and how it may influence disability assessments and supports needed.

Disability in youth justice

The precise prevalence of disability in the youth justice system is uncertain, however there is a growing body of evidence showing over-representation of children with psychosocial or intellectual disabilities in the youth justice system.⁴⁹ This is alarming as on average, Aboriginal children and young people are detained at 24 times the rate of their non-Indigenous counterparts⁵⁰ and are between 4 and 5 times more likely to have an intellectual disability⁵¹. The CRPD Committee has previously raised this concern, particularly about the over-representation of male Aboriginal children and young people⁵². For those with a history of involvement with Child Protection, the likelihood of becoming involved in the justice system is even greater. Approximately 1 in 3 Aboriginal children sentenced to a custodial order has been involved with Child Protection or had an experience in residential care⁵³.

Systemic barriers along with an absence of support is creating a pathway into imprisonment, rather than into learning and education⁵⁴. Most children and young people who become involved in youth justice come from disadvantaged backgrounds and are dealing with complex issues that can be better addressed outside the justice system⁵⁵. Cognitive impairments are often masked by drug or alcohol misuse or another form of disability such as a learning difficulty, mental illness or a hearing impairment⁵⁶. Diagnosis may occur prior to or on arrival into the system, however this does not ensure appropriate support while in custody or post release⁵⁷. Based on these findings and experiences working with young people in youth justice, it is anticipated that a large proportion have a diagnosed or undiagnosed

⁴⁶ Ibid.

⁴⁷ Kenn Richard, 'A commentary against Aboriginal to non-Aboriginal adoption', *First Nations Child & Family Caring Society of Canada* (1), no. 1 (2004),

⁴⁸ Ibid

⁴⁹ AHRC, Information concerning Australia's compliance with Convention on the Rights of Persons with Disabilities (25 July 2019)

⁵⁰ Steering Committee for the Review of Government Service Provision, "Overcoming Indigenous Disadvantage: Key Indicators 2014". Canberra: Productivity Commission, 2014.

⁵¹ Calma, "Preventing crime and promoting rights for Indigenous young people (2008).

⁵² United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Combined Second and Third Reports of Australia, UN Doc CRPD/C/AUS/CO/2-3 (Advance unedited version, 23 September 2019) para 25(d).

⁵³ Sentencing Advisory Council. "'Crossover Kids': Vulnerable children in the youth justice system". Melbourne: Sentencing Advisory Council (2019).

⁵⁴ First Peoples Disability Network, *Final submission to the Royal Commission into the protection and detention of children in the Northern Territory* (2018) Retrieved from <<https://childdetentionnt.royalcommission.gov.au/submissions/Documents/submissions/PIAC-obo-First-Peoples-Disability-Network-June-2017.PDF>>.

⁵⁵ AHRC, Review of the age of criminal responsibility: Submission to the Council of Attorneys General Age of Criminal Responsibility Working Group (26 February 2020).

⁵⁶ McCausland and others, Indigenous people, mental health (2017).

⁵⁷ Ibid.

disability and by detaining them in justice facilities, it means Australia is not upholding Article 14 of the UNCRPD ‘Liberty and Security of the Person’⁵⁸.

‘The criminal justice system is often an ineffective or inappropriate way to respond to people who have a disability or are experiencing poverty, mental illness, drug or alcohol addiction, homelessness or unemployment services like adequate health care, disability supports, employment and training, drug treatment and affordable housing cost far less than prisons and have a substantially better record of success.’⁵⁹ - Change the Record Coalition Steering Committee

This is particularly disturbing for those deemed unfit to plead as the magistrate or judge usually has the power to order for the individual to be detained, only on the grounds that the person is a danger to themselves or others. Even with majority of diversion programs in Australia requiring the periodic review of people who have been detained due to their unfitness to plead⁶⁰. This is not in line with article 14 of the CRPD and is not only expected to be a contributing factor to over-representation but also demonstrates the unfair, dismissive treatment of Aboriginal peoples with disabilities.

4. How can current systems better prevent experiences of violence, abuse, neglect and exploitation of Aboriginal people with disability?

Greater inter-agency collaboration

There needs to be greater coordination and collaboration between the disability sector and government departments at both a commonwealth and state level, including the Department of Health and Human Services (DHHS) and the Department of Education and Training (DET). By providing wrap around support that incorporates all aspects of a young person's life, sectors can better identify and build on the family's strengths and culture as a protective factor. Recognising the systems essential to ensuring children and young people with disability thrive in their physical health, SEWB and education. Having a coordinated response that understands individual needs will enable a more holistic, tailored response, that can be implemented in a timely manner rather.

For example, greater collaboration is required to support Aboriginal children with disability in OOHC to remain engaged in their education. A coordinated response recognising the young person's needs, strengths and how their individual circumstances influence their education. In Victoria under *Marrung-Victorian Aboriginal Education Plan 2016 -2026*, Aboriginal children are required to have an Individual Education Plan (IEP)⁶¹ and similarly so are children with disability under the *Program for Students with Disabilities*. An IEP describes the adjustments, goals and strategies designed to meet the education needs of an individual student to enable them to reach their potential goal. Unfortunately, COVID-19 has recently highlighted that although IEPs are mandatory, they are not being implemented adequately. Data collected by VACCA from Semester Two found 17 per cent of their children and young people in OOHC did not have an IEP. The current National Disability Strategy 2010-2020 is currently under review and VACCA recommends that Individual Education Plans be made mandatory for all students. Plans must be developed with the child, parents/carer and care team, helping to ensure the plan is specific to their needs and learning capabilities.

⁵⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Research report, The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance* (October 2020)

⁵⁹ "Change the Record Coalition Steering Committee, *Blueprint for change* (2015). Retrieved from <<https://changetherecord.org.au/policy-framework-blueprint-for-change> p.6>

⁶⁰ A detailed analysis of the doctrine of unfit to plead/ to stand trial, special procedures and various types of orders for detention, see: Piers Gooding, Anna Arstein-Kerslake, Louis Andrews and Bernadette McSherry ‘Unfitness to Stand Trial and the Indefinite Detention of Persons with Cognitive Disabilities in Australia: Human Rights Challenges and Proposals for Change’, (2017) vol. 40(3), Melbourne University Law Review, pp.816-866

⁶¹ Department of Education and Training. *School operations: Individual Education Plans (IEPS)* (2020) <https://www2.education.vic.gov.au/pal/individual-education-plans-ieps/policy>

Funding and resourcing for ACCOs to become NDIS providers

A lack of culturally safe services is partially due to the very limited Aboriginal-specific disability service providers with no services or programs specific for Aboriginal children with disability. Limited service delivery by ACCOs is partially due to the process and costings of becoming an NDIS provider. Registration with the NDIS is complex, with ‘lean’ funding in some areas, and challenges billing clients and ‘collecting’ payments. The NDIS adopts an activity-based funding model which creates a financial risk for ACCOs when a relatively small number of Aboriginal clients access NDIS packages and is not viable for organisations who do not have the funds, structures, systems, IT infrastructure or staff to offer the service. Consequently, disability services in Victoria are likely to be primarily delivered by non-Aboriginal organisations.

Part of the Federal Government’s policy for the NDIS includes Aboriginal peoples having access to Aboriginal run disability services; however, this requires reviewing the NDIS pricing structures and market principles to address limitation of ACCOs to becoming providers. Following this, funding and resourcing is needed for ACCOs to become NDIS providers as they are best placed to being able to meet the needs of community. This recommendation was also recently included in the CPRD Committees Report on Australia’s Level of Compliance with the UNCRPD, recommending ‘*culturally suitable support for Indigenous children with disabilities and their families should be funded and resourced at the local community level.*’⁶²

Building and training Aboriginal workforce

VACCA strongly believes workforce development must be incorporated into all disability policy reform as building and training an Aboriginal workforce is key to building trust between Aboriginal families and the disability sector. Barriers such as a lack of trust, racism and a lack of culturally appropriate disability services can all be reduced if service system approaches are informed by an Aboriginal workforce, capable of understanding the needs of carers and Aboriginal families whilst also developing responsive strategies.⁶³ Traditional Aboriginal practices, expertise and approaches to supporting children, carers and community must be honoured and respected.

ACCOS require training to build knowledge and expertise in the disability sector including how to efficiently navigate the NDIS. In doing so, staff will be able to support and empower young people and their carers and/or parents to utilise the system to make decisions around what is included in their package. This in and of itself, is self-determination of what knowledge base informs and best supports the needs of Aboriginal children, families and community.

The benefits of having staff well trained in the NDIS and disability sector is shown in Fred’s story below where staff supported and empowered Fred to navigate the system and utilise his NDIS packages to its fullest extent.

Fred’s Story

Fred transferred from a residential care setting into independent living, supported by one of VACCA’s Targeted Care Packages. Fred had an existing NDIS plan, due to a diagnosed intellectual disability, which was due for review in January 2020. Fred had difficulty understanding his package and how to access funding and supports approved within the package. Fred expressed his frustration in trying to understand his NDIS package and was concerned that he did not have the knowledge to attend and advocate for himself at his upcoming NDIS review meeting. Fred’s key worker was able to support him to prepare for and attend his meeting by;

- Building rapport with Fred to establish trust and learn about his individual needs, aspirations and goals

⁶² The Committee on the Rights of Persons with Disabilities, ‘Concluding Observations on the Second and Third Combined Reports of Australia, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) [14].

⁶³ Green and others, “Navigating the journey of Aboriginal childhood disability” (2016)

- Communicating with school staff, previous case manager, and other support services to obtain cognitive assessments and gain a greater understanding of Fred's specific needs
- Communicating with NDIS agency and planning staff to gain access to Fred's plan and communicate on his behalf
- Empowering Fred to attend the NDIS planning meeting, set goals and speak confidently about his wishes
- Advocating for Fred's best interests during the planning meeting and ensuring his understanding throughout the meeting
- The provision of the approved 2020 NDIS plan and explanation of funded items to Fred
- Discussion of alternative support available for items not funded (e.g. Registration with Disability Employment Service to access education and employment support)
- Meeting with support coordination providers, to allow Fred a voice in choosing a service provider he feels comfortable working with and to ensure culturally appropriate service provision

During this process the key worker became aware that, whilst funding was available in Fred's 2019 package for support coordination, this position had not been allocated. As a result, most of the funds from Fred's 2019 package had not been used.

Fred's approved 2020 NDIS package now includes funding for;

- Plan management: set up and financial administration
- Support coordination: 50 hours, level 2 core supports: house and/or yard maintenance, house cleaning and other household activities, access community, social and recreational activities
- Improved daily living: assessment, recommendation, therapy and/or Training
- Increased social and community participation: individual skills development and training, inclusive of domestic tasks and financial management and budgeting.

Fred's key worker will continue to support him to engage with his preferred support coordinator to ensure he utilises funds approved in his current plan and continue to do so once his TCP package ceases in June.

To support staff and families, it is recommended that organisations have an Aboriginal Disability Support coordinator who is well trained in the NDIS and disability sector. This would be an advocacy role, responsible for ensuring a culturally safe response and giving guidance to families and ACCO's, ensuring they have sufficient information and supports.

Cultural safety training for NDIS providers

In order to reduce the abuse, neglect, violence and exploitation of Aboriginal peoples with disability, it is critical for mainstream service providers to be able to build trust and relationships through culturally safe services⁶⁴ including recognising how intersecting vulnerabilities of Aboriginal children with disabilities influence the supports required.

Cultural safety involves mainstream services and employees being educated on Aboriginal culture as well as Aboriginal people and their representative organisations being given equal power through equal strategic relationships, funding, policies, programs, joint decision making, procurement and evaluation⁶⁵. Cultural safety is based on the client's perspective of how consistent and responsive the service and staff are with Aboriginal beliefs, values and practices, as well as creating a physical environment that reinforces and reflects their culture and values⁶⁶.

⁶⁴ Rozanna Lilley, Mikala Sedgwick & Elizabeth Pellicano, *We look after our own mob: Aboriginal and Torres Strait Islander Experiences of Autism*, Sydney, Australia: Macquarie University (2019).

⁶⁵ Phillips Gregory, "Australia must embrace 'cultural safety' if we are to close the gap", *The Guardian*, May 16, 2019

⁶⁶ Aboriginal Healing Foundation, *Final report of the Aboriginal health foundation: Volume III promising healing practices in Aboriginal communities* (2006)

A project was undertaken by VACCHO on ways of working with Aboriginal people with disability that could lead to changing the capability and capacity of mainstream community services⁶⁷. The project found that delivering cultural safety training to mainstream organisations with a specific disability lens rather than accompanying information in siloed sessions helped staff to relate and apply the training to their specific practice.

Gilroy (2008) and the National Disability Services (2010) made a number of recommendations for effective cultural competence training, including:

- Being locally focused
- Being practical in nature and relating specifically to disability services
- Involving the local community in training
- Providing information on important people (such as elders) and organisations (such as other not-for-profit service providers or aboriginal-owned business) with whom to establish networks
- Covering a range of relevant topics such as appropriate communication styles, appropriate topics for conversation, myths and misconceptions, cultural taboos or sensitivities, and gender roles (such as men's business and women's business).⁶⁸

VACCA has expertise in developing cultural standards and delivering cultural competence training, albeit not in the disability sector. Key training messages⁶⁹ are generic and should be consistent across child and family and disability services for Aboriginal people:

- Taking a strengths-based approach - asking a person about themselves – what is your story - rather than focusing on problems – what is wrong with you.
- Informality and flexibility at entry points and ‘starting from where people are at’.
- Being there for the “long haul”; committing to consistent relationships.
- Allowing for traditional ways of doing things (using storytelling, listening deeply).
- taking time to engage and build relationships informally

Early intervention and prevention

In order for Aboriginal young people and their carers/families to receive appropriate treatment and reduce the risk of abuse, neglect, violent or exploitation, early intervention and prevention of problems contributing to disadvantage and disparities is essential. This includes a whole of government response to health and living situations including; housing, health, substance abuse, mental illness, poverty,⁷⁰ effective antenatal care, early diagnosis and over-representation in youth justice and OOHC.

Practices must draw on protective factors to improve the health and SEWB of children and support resilience in overcoming adversity.⁷¹ When Aboriginal peoples are connected to their culture, family and community, they are able to thrive within themselves and within their communities. Protective factors can be strengthened through being immersed in culture, family and community involvement, Aboriginal health and support workers and the incorporation of culturally appropriate practices.⁷²

Whilst VACCA does not currently offer disability services, protective factors have been embedded into all programs and we can see how they support and empower our most vulnerable children and families. VACCA’s cultural programs such as Cultural Camps and the Possum Skin Cloak Project⁷³ help to strengthen children and young people’s connections to culture, Country and community, ensuring they know who they are, where they come from and can feel proud in their identity. Teaching them about their history and culture creates a sense of belonging and provides opportunities to connect with

⁶⁷ VACCHO, ‘No One's Left Out: Improving Support For Aboriginal People with Disability’ (2018).

⁶⁸ John Gilroy, *Service Delivery for Aboriginal People with a Disability and their Families. Disparity: Policy, Practice and Argument*, 5, 24-27 (2008); National Disability Services, *Final Report on the National Disability Services NSW Aboriginal Resources and Pathways Pilot*, National Disability Services NSW, Sydney (2010).

⁶⁹ FACSIA research into Communities for Children program.

⁷⁰ Productivity Commission, *Disability Care and Support* Report no. 54, Canberra (2011)

⁷¹ The Lowitja Institute, *Journeys to healing and strong wellbeing: Final report*, Melbourne (2018).

⁷² DiGiacomo and others, “Childhood disability in Aboriginal and Torres Strait Islander peoples” (2013).

⁷³ VACCA, ‘Cultural strengthening programs,’ (2020), <https://www.vacca.org/page/services/cultural-strengthening-programs>

Victorian Aboriginal community members. Many Aboriginal children and young people have experienced significant trauma prior to and after entering OOHC and culture can support this healing journey⁷⁴. Cultural programs such as these need to be expanded across Victoria, encouraging preventative, long-lasting change.

Flexible support for families and/or carers of children and young people with disability

To prevent and better protect Aboriginal children in care with disability, there needs to be more flexible support for parents and/or carers. In particular, VACCA staff raised the need for Aboriginal specific support groups to provide practical and emotional information, experiential knowledge as well as empathy through peer support.⁷⁵ Aboriginal peoples thrive most when connected to culture and community and support groups can be tailored to meet different needs including; groups for kinship carers or Aboriginal parents who are lone carers.

Program models such as playgroups should be adopted within the disability sector. VACCA Playgroups currently offer a culturally safe, empowering and fun environment for families with children aged five years and under. Aboriginal children, families and carers are supported to ensure they have the confidence to enrol their children to regularly attend kindergarten and school. This is an opportunity for parents and/or carers to meet, share their experiences, concerns and knowledge in a safe and supportive space.⁷⁶

There is a drastic need for both informal and formal respite for carers, parents and families who are caring for a child or young person with disability. VACCA staff stressed the need for culturally specific respite options not only for carers but also other family members and young people in the household, including residential care settings. NDIS packages need to have flexibility about what is included as respite as these vary between young people, families, and carers. For example, respite for young people in Foster Care or a family outing to connect to Country together. Supporting carers and/or parents, gives them greater capacity, financially, physically and mentally to care for their children.

Increase Disability Support Payments

Additional support for parents and/or carers must include financial support. Changes to Disability Support Payments (DSP) requirements are necessary that do not place additional financial hardship onto a family. DSP payments need to be increased to meet the demands of families caring for a family member with disability including costs associated with travel, treatment, accessible housing and access to health services⁷⁷. The increase must also reflect challenges arising as a result of COVID-19.

The exclusion of people on the Career Payment and DSP from receiving the Coronavirus supplement has been questioned by disability groups, including the First People's Disability Network⁷⁸. Aboriginal people with disabilities already face increased health risks, and the additional pressures and costs in times of crisis cause further distress and anxiety. It is therefore critical for the Carer and DSP payments to include the Coronavirus supplement to better support Aboriginal people with disabilities through COVID-19 and recovery.

Raising the age of leaving care

A policy reform essential to minimising barriers for Aboriginal young people with disability in OOHC is raising the age of leaving care. VACCA has been persistently advocating for raising the age to 21 as

⁷⁴ Social Health Reference Group (SHRG). *National strategic framework for Aboriginal and Torres Strait Islander People's mental health and social and emotional wellbeing*. Canberra: Department of the Prime Minister and Cabinet. (2017).

⁷⁵ DiGiacomo and others, "Experiences and needs of carers," (2017).

⁷⁶ VACCA, 'Playgroups' (2020), <https://www.vacca.org/page/services/children-and-families/early-years-support/playgroups>

⁷⁷ Maggie Coggan, 'Disability pension pushing Indigenous Australians into poverty,' *Probono Australia* (19 September 2019).

⁷⁸ WDA., 2020. Joint Statement: Increase Disability Support Pension Now To Deal With Coronavirus. People With Disability Australia. Available at <<https://pwd.org.au/joint-statement-increase-disability-support-pension-now-to-deal-with-coronavirus/>>; Michael, L., 2020. 'Calls to extend coronavirus supplement to DSP recipients'. 24th March 2020. *ProBono Australia*. Available at: <<https://probonoaustralia.com.au/news/2020/03/calls-to-extend-coronavirus-supplement-to-dsp-recipients/>>

this has been found to be one of the most effective ways of improving outcomes for young people in OOHC⁷⁹. This is even more crucial for young people with disabilities leaving care who are particularly vulnerable to violence, abuse, neglect or exploitation. Longer time frames provide time to address their complex needs⁸⁰.

This promising practice is currently being piloted through the Home Stretch Campaign in Victoria, promoting changes to leaving care arrangements for young people, through the option of remaining with their carer until the age of 21⁹⁹. In 2018, the Victorian Labor Government announced funding for 50 young people over five years to remain with their carer until their 21st birthday. Recognising that the majority of young people remain dependent on their parents or adults support after the age of 18 and into their 20's. Positive early indications from this Pilot point to policy change that can have a long term, beneficial impact on outcomes for all young people leaving care. Given there is extensive research in Australia and internationally on the benefits of this policy reform, VACCA believes that the age of young people leaving care should be immediately conferred on all young people in OOHC.

In response to the COVID-19 pandemic, the Victorian state government has extended care arrangements to ensure that any young person in OOHC who turns 18 during the pandemic will remain in care⁸¹. These reforms should be retained to the age of leaving care as the impacts of COVID-19 will remain for some time and will assist young people leaving care throughout the recovery process.

Community-based alternatives to custodial settings for young people with disability

In response to disability rates within youth justice, the *'Equality Before the Law'*⁸² report, outlines a set of early intervention and diversion principles essential to any Disability Justice Strategy. The report states;

'Early intervention and wherever possible diversion into appropriate programs can both enhance the lives of people with disabilities and support the interests of justice. Detention is a measure of last resort for all children and young people with disabilities and this is reflected in all legislation, policies and programs.'

*'Where detention is the only sentencing option it is for the shortest appropriate period of time and the support needs of people with disabilities are taken into consideration and addressed appropriately. Viable community-based alternatives to detention should exist for children and young people with disabilities.'*⁸³

Aboriginal children in youth justice with disability require wrap-around support that cannot be implemented sufficiently in custodial settings. Where appropriate, ACCOs should be funded to provide community-based alternatives capable of meeting complex needs and dual diagnosis.

This issue can also be lessened by raising the age of criminal responsibility from 10 to 14 years of age. Evidence has shown the minimum age of criminal responsibility at ten years has a disproportionate impact on Aboriginal children with disability.⁸⁴ Between the ages of 10-14, children are experiencing substantial physical, mental and emotional development and a child under the age of 14 is not sufficiently developed to understand the difference between right and wrong or the repercussions of their actions.⁸⁵ It is also likely that young people with disability are further under-developed and therefore require interventions appropriate to this.

⁷⁹ Anglicare Victoria. *Raising our children: Guiding young Victorians in care into adulthood*. Deloitte Economics Pty Ltd (2016).

⁸⁰ Snow and others, *Young people with a disability leaving state care*, (2014).

⁸¹ Home Stretch, (2020). 'Victorian Government extends care during pandemic', Home Stretch. 23rd April 2020. Available at <<http://thehomestretch.org.au/news/victorian-government-extends-care-during-pandemic/>>

⁸² AHRC, *'Equality before the law,'* Sydney: AHRC (2014).

⁸³ Ibid, p. 33

⁸⁴ AHRC, Review of the age of criminal responsibility (2020).

⁸⁵ Human Rights Law Centre, *'Explainer: Raising the age'* (2018)



‘It is completely inappropriate to detain these children in punitive, rather than rehabilitative, conditions. They are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty, and crime. I found meeting young children, some only twelve years old in detention the most disturbing element of any visit’⁸⁶ - Victoria Tauli-Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples

COVID-19 Response

COVID-19 has highlighted the failure of the current disability sector to consider and respond to the needs of Aboriginal children and their families in a myriad of ways, particularly in Victoria with Metropolitan Melbourne still under stage four lockdown restrictions. The pandemic has highlighted a lack of culturally safe services and the existing lack of service choice, creating further challenges for Aboriginal families accessing support during a time of increased uncertainty and anxiety. Families have been unable to access respite as regular respite carers, group or individual services are currently not available. These challenges are occurring on a backdrop where the NDIS already lacks flexibility for the cultural needs of clients, potentially compounding challenges and raising concern for the longer-term impacts of COVID-19 for Aboriginal families in need of disability support. Professor McCallum’s report reiterated CRPD Committee’s concern that people with disabilities were not considered within emergency planning provisions at a local, state and national level.⁸⁷ VACCA has been advocating strongly for a Disaster Management Plan for the Victorian Aboriginal community and this plan would also encompass the needs of community with disability.

COVID-19 and the response to education has also highlighted the importance of a safe and stable home environment. DET and the education system more generally did not consider the specific needs of Aboriginal children or children with disability in the home environments, especially where grandparents or carers may be caring for multiple children with various needs. Schools often do not understand the impact of mental health and intellectual disabilities and the challenges faced by parents and carers, particularly during home learning. Data collected by VACCA in Term Two about education experiences revealed limited access to resources, appropriate learning stations, devices and reliable internet. All of these have critical implications for engagement and quality of the child’s home learning experience, especially for children with more demanding needs. Attention is needed on ensuring children involved with Child Protection and those engaged with at-risk services are supported to participate in home learning through the provision education supports and services.

5. What are some promising practice examples of culturally appropriate responses for supporting Aboriginal peoples with disability and their families/carers?

Targeted Care Packages (TCP)

VACCA’s Targeted Care Packages provide culturally appropriate support for Aboriginal children and young people to support successful transition from residential care to an alternative and more suitable placement such as a foster or kinship care. TCPs are a promising model of integrated flexible support with the ability to provide holistic, tailored assistance to young people with disabilities. They help to remove the financial and environmental barriers that can disable a person and help to connect Aboriginal children and young people with their family and culture if flexible, responsive support is provided.

Children and young people with disability are considered a particularly vulnerable cohort and consequently receive priority for the allocation of a TCP. This is a promising practice as the TCP team develop creative and innovative care packages providing holistic support to children and young people with a disability and their families and carers. They do this through a care team model that supports and

⁸⁶ Office of the High Commissioner for Human Rights, *End of Mission Statement by the United Nations Special Rapporteur on the rights of Indigenous Peoples*, Victoria Tauli-Corpuz on her visit to Australia (2017) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E>>.

⁸⁷ The Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of Australia, 10th sess, UN Doc CRPD/C/AUS/co/1, 21 October 2013, [22].

follows the child or young person through the remainder of their care experience. The packages aim to enable a child or young person living in a family home, care arrangements to have fully resourced and skilled carers and tailored supports to meet their needs and case plan outcomes to improve their social, emotional, cultural and physical wellbeing.

The benefits of using flexible funding to adopt a holistic approach to supporting children and young people with disabilities is shown through Tommy's story below, and recognising how his physical and social environments impacts on his SEWB;

Tommy's Case Story

Tommy and his two sisters were recently placed into a Kinship Care placement after being diagnosed with an intellectual disability and a severe behavioural disorder. One of his brothers has also been diagnosed with ADHD and his carer receives social supports for her mental health, however neither the children nor Tommy's carer receives NDIS support. Tommy's placement has been an adjustment for his carer, and the house required significant maintenance. VACCA's TCP program was able to organise household renovations to the living, kitchen and bathroom areas as the house had insufficient ventilation leading to mold and dampness throughout the house. The renovations created a warm and safe home and helped the family to maintain the house moving forward.

The renovations and supports enabled Tommy and his carer to have the emotional and physical capacity to seek support to access the NDIS and family support services. As part of Tommy's TCP, his key worker was able to work alongside the family to help source an appropriate NDIS provider they felt comfortable with and attend review meetings to support Tommy's carer. The TCP also included respite for Tommy's carer and brothers and helped to get him involve him in local activities and meaningful cultural activities whilst in placement.

The strength of using TCPs to provide tailored support for Aboriginal children with a disability is also highlighted in Betty's case story showing how the flexible funding supported Betty to not only develop a holistic NDIS package suitable to her needs and interests but to also access coordination support services and training for support staff.

Betty's Case Story

Betty has a mild physical and intellectual disability and requires NDIS support for her daily living, social and educational needs. She has strong verbal skills however is reluctant to draw attention to herself as she struggles to understand and process new information. This has led to her capabilities being overestimated during previous NDIS planning meetings and consequently inappropriate supports have been provided. Betty also has limited understanding about her NDIS package, what supports are included, and how to access them. Her NDIS plan was provided concurrently with her TCP referral documents, however Betty did not have a copy and did not know how to access the provided funds.

Betty's TCP worker contacted the NDIS where they discovered she did not have an NDIS support coordinator and had not accessed any of her funding from the previous year except for minimal school related expenses. A letter was sought from DHHS Child Protection to approve VACCA as a nominee to communicate with the NDIS and obtained permission for Betty's TCP worker to be appointed as her NDIS plan nominee. Following close communication with Betty, her Care Team, schooling staff and TCP worker, Betty was supported to review and develop new goals as part of her refreshed NDIS plan. This was a positive outcome as VACCA staff ensured all supports provided by TCP would continue as



part of Betty's NDIS funding where possible after TCP ceased. Betty's new NDIS package included funding to help with her daily activities and to assist in achieving her goals of living independently, cooking for herself and connecting with her culture and community. Funding was also included in the plan for support coordination fees, plan management fees, individual skills development and training and allied health interventions.

To ensure Betty had appropriate and culturally safe supports as part of her NDIS package, VACCA's TCP worker attended NDIS training and liaised with OONAH NDIS staff to seek advice regarding culturally appropriate support coordination services. As a result, Betty's worker was able to support her to meet with support coordinators and allowed her choice in who would continue to work with Betty to access her package once TCP ceased. Due to her intellectual disability, Betty benefits from clear, simple language and reminders about what she can use her NDIS package for, what supports are already included and how to access them.

VACCA's TCP workers have worked with children and young people with disability on a number of occasions and believe delegated Aboriginal Disability Support Coordinators who are specialised in the NDIS and disability sector is needed for each region to fill an identified gap and to assist and support clients, carers and staff to navigate a complex space. These roles would be well in the NDIS, can communicate information on NDIS assessments, liaison with care teams, review NDIS packages and provide individual advocacy for Aboriginal children and families

VACCA's Aboriginal Children's Healing Team (ACHT)

An example of a culturally appropriate, therapeutic model of care is VACCA's Aboriginal Children's Healing Team (ACHT). The ACHT was funded in 2012 and involves a multi-disciplinary team of Therapeutic Practitioners experienced in working with traumatised children and their families. It is the central point for the development across VACCA of an integrated culturally grounded, trauma-informed and healing-driven approach to working with Aboriginal children and families. This approach acknowledges colonisation practices and how they have impacted on Aboriginal people. Theories of trauma, neurobiology, attachment and resilience underpin the work as they facilitate understanding and appropriate responses to Aboriginal children's trauma.

A sophisticated understanding of the trauma of dispossession and loss of culture and Country is central to the philosophy of ACHT. It operates from a basis that acknowledges the long-term traumatic impacts of colonisation, genocide and dispossession as well as the strength and resilience of the Aboriginal peoples.

Although not disability specific, by creating the ACHT, VACCA has entered a new arena of practice where biopsychosocial, clinically oriented assessments are undertaken, therapeutic interventions are devised and implemented, and their success or otherwise reviewed and monitored. Underpinned by a framework of biology, psychology and socio-environmental factors, the ACHT applies an integrated culturally grounded, trauma-informed and healing-driven approach to working with Aboriginal children and families. This means that culture provides the foundation for the clinical work that VACCA does. The ACHT acknowledges that cultural identity represents who we are, where we have come from, and that connection to people and to Country is central to Aboriginal culture. This type of model should be adopted for disability assessments with a trauma-informed and healing driven approach implemented across the sector



Recommendations

1. Investment in ACCOs to develop, implement and provide disability support services, including
 - a. Community-based alternatives to custodial settings for Aboriginal young people with disability
 - b. Youth programs for Aboriginal children with disability
 - c. Targeted Care Packages (TCPs) to enable holistic, tailored support
2. Address barriers facing Aboriginal peoples in accessing the NDIS
 - a. Investment and support for ACCOs to become NDIS providers
 - b. Funding for ACCOs to employ Aboriginal Disability Support Coordinators
 - c. For the NDIS to set up an Advisory Group with DHHS, ACCO representatives and Aboriginal peoples with lived experiences of disability and/or the child protection system to break down barriers and create a streamlined approach between sectors to help eliminate intersectional discrimination
3. A more coordinated response with relevant government departments, services and NDIS
 - a. For the new National Disability Strategy to include Individual Education Plans that help support Aboriginal children with disability to remain engaged in their education
4. Policy reform to address the social determinants of health in order to reduce social, health and economic disparities
 - a. Raise the age of criminal responsibility from 10 to 14 years of age to be in line with the United Nations Committee on the Rights of the Child
 - b. Increase the maximum age of leaving care to at least 21 for all young people leaving care and up until the age of 25 for young people with disabilities
5. Investment in a culturally safe disability sector responsive to Aboriginal children and young people that incorporates traditional understandings of disability and health, including;
 - a. NDIS plans to include cultural activities that help to strengthen connection to family, community, culture and Country including respite relief and parenting/carers groups
6. An increase in Disability Support Payments to ensure at least a minimum standard of living can be met
7. Investment in training and workforce capacity building to increase Aboriginal workforce participation in disability, health, education and social services- with expertise in trauma and culturally appropriate support mechanisms
8. Develop the cultural competency of mainstream services through cultural safety training-specific to the disability sector
9. Federal and state governments to continue to work with and support ACCOs to deliver COVID-19 responses that are culturally appropriate
 - a. An increase in disability support payments during COVID-19
 - b. Develop and implement a Disaster Management Plan for the Victorian Aboriginal community, one which encompasses the needs of community with disability.