

**UTS:Jumbunna**  
**Indigenous House of Learning**  
PO Box 123 Broadway  
NSW 2007 Australia  
City Campus  
Building 1, Level 6  
15 Broadway, Ultimo  
T: +61 2 9514 1902  
F: +61 2 9514 1894  
[www.jumbunna.uts.edu.au](http://www.jumbunna.uts.edu.au)

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**“It’s like the Stolen Generations again”: The forced removal of Aboriginal children by Child Protection services under the NT Intervention**

Prepared by Senior Researcher Padraic Gibson on behalf of Jumbunna Indigenous House of Learning, UTS as part of evidence provided to the NT Royal Commission.

Jumbunna Indigenous House of Learning, Research Unit (“Jumbunna”) undertakes research and advocacy on Indigenous legal and policy issues of importance to Indigenous people, their families and their communities.

Jumbunna has provided research assistance and advocacy for Indigenous families who have had their children removed across a number of jurisdictions, including in the Northern Territory. We were a partner in an Australian Research Council funded project investigating the civil and family law needs of Indigenous communities across Australia (Cuneen 2012), that has held focus groups with hundreds of Indigenous people and documented a glaring lack of access to justice for many Indigenous families who have had children removed. Jumbunna has also provided research assistance for the advocacy group “Grandmothers Against Removals”, first established in Gunnedah NSW and now a growing national network.

This report focuses on the dynamics driving the rapidly increasing numbers of Aboriginal children in out of home care in the Northern Territory since the NT Intervention in 2007. We hope our casework experience in this jurisdiction will provide insights for the Commission on the deeply discriminatory operation of this system and the urgent need for change. The submission opens with testimony from three Aboriginal women who have had children taken from them by the then NT Department of Children and Families (DCF). This testimony was taken in 2014 for a similar submission that we put in to a Commonwealth Senate inquiry into the out of home care system. The circumstances of these families have now changed, with all children being successfully restored to their families after a long process of advocacy, and we are happy to discuss these experiences with the Commission, but the original testimonies have not been altered.

## Report Summary:

1. **Testimony from Aboriginal women who have had children removed:** Aboriginal mother in Alice Springs, Warlpiri Grandmother in Alice Springs, Aboriginal mother from a remote community.
2. **Sharp rise in Aboriginal children in care:** Since the Northern Territory Intervention in 2007, there has been an almost fourfold increase in the number of Aboriginal children in out-of-home care. Territory Families efforts to place children on protection orders and into the out of home care system have come to focus almost exclusively on Aboriginal children, with a marked *decrease* in the numbers of non-Indigenous children on such orders over the same period. Aboriginal children who have been removed are staying in out-of-home care for much longer periods and a smaller proportion are being placed with Aboriginal families.
3. **Lack of access to justice:** Many families who have children removed struggle to secure legal representation and therefore have no access to justice. For those who do have representation, delays in the court process mean that many months or even years can pass before family voices have a chance to be heard.
4. **Aboriginal self-determination and social justice is the key:** There is a chronic lack of support services available to struggling families and no formal processes for involvement of the Aboriginal community in decisions relating to the protection of children. Ensuring that resources are available to Aboriginal support services and shifting control over child welfare to Aboriginal controlled agencies are key steps needed to meet the twin crises of escalating child removal and deteriorating conditions for Aboriginal children. Following the recommendations of the Bringing Them Home report in 1997, significant public investment in community development to help lift families out of poverty is needed to deal with the shocking social conditions which so often manifest in child protection notifications for 'neglect'.

### 1. Testimony from Aboriginal women who have had children removed – testimony taken in 2014.

#### Mother living in Alice Springs

My children were forcibly removed by the NT Department of Children and Families in March 2014 and restored to my care 8 months later.

These removals were completely unjustified and have put my family through an enormous amount of disruption and trauma. The allegations were never tested in court. I finally regained full custody of my children after a decision by DCF not to proceed with their attempt to have two year removal orders placed on my children.

The initial allegations which led to the removal were based on a judgement made by DCF

staff that health issues suffered by my children, including the low weight of my two year old daughter, were the result of my negligence as a parent.

These allegations were completely untrue. Immediately following the removal, I had obtained expert medical opinion which demonstrated the allegations to be untrue, but DCF refused to listen, despite having no medical opinion that supported their case.

The removal process itself was very violent. Without any warning, police came to my door with DCF staff and demanded to take my two year old daughter. When I tried to negotiate, they threatened me with a can of pepper spray, pointed at my face, while I was holding my daughter. They then wrestled her out of my arms. There was no thought about the “best interests of the child” that day. My daughter was taken screaming from my arms and two of my other children were taken from school without my permission or knowledge.

The time the children spent away from our family was very chaotic and traumatic. They were in a temporary care home, with workers coming in on shifts. I believe that my children had more than 30 carers over this time. These workers were all driving hire cars - I hate to think of all the money that was wasted.

My access to the children was very limited and could only take place under supervision. I was treated like a criminal.

DCF were seeking a two year order on my children and initially the hearing date was scheduled for September. This means that it would have been six months following the removal of my children that I was given the opportunity to have my side of the story heard by a magistrate.

Luckily, I had a good lawyer who kept trying to find other options. I believe that if I had not been very assertive with the lawyers at the Aboriginal Legal Service (ALS) following the removal, I would not have had such good representation. Initially, it was suggested that the best chance of getting my children back would be to just co-operate with the Department and accept the orders. But I demanded that the legal service fight against the orders. Many other Aboriginal people in my position do not have my good communication skills or confidence and would not get this outcome.

The Department put up serious resistance to our attempt to have the children placed with my family while we waited for the court hearing. My sister is a primary school teacher and she agreed to look after the children. She took time off work to come to court and explain to the magistrate. The Department refused to accept this and argued strongly for the children to stay in the care home. Luckily, after first ordering a failed mediation process, after a number of months the magistrate ruled that my children should be placed with my sister while we wait for hearing.

A final hearing was set down for November, but in the end DCF decided to drop the case against me and I finally now have the children back in my custody.

I believe that my family have been victims of DCF because we are Aboriginal. Through my dealings with DCF I found the staff to be arrogant, dishonest and racist. They seemed far more concerned with justifying their own bad decisions and covering up their mistakes than they did with assisting my family to deal with the challenges facing us.

There is a stolen generation happening all over again. Every day Aboriginal families are suffering what I suffered, I feel sorry for those poor families. They feel they have no where to go, no one to help. Some just go out and drink because they feel so helpless. They are victims just like I am.

### **Walpiri Grandmother 1**

I am a Warlpiri grandmother who was looking after two of my grandchildren, before they were taken away from me by DCF in September 2013. I had looked after both children since they were babies, with my husband. We always had help from family too, from other kids we raised who are now grown up and come back to stay with us.

One child came into my care after both of his parents passed away. Before they died, I promised his parents that I would look after him.

Last year I arrived home in the afternoon and found one of my grand-children very upset. She explained in my language that “the white people have taken those two kids from the school”. There were other family members there and we were all crying.

I did not know DCF were going to take these kids. They never explained it to me. Their removal from school was a shock which has caused deep distress both to me and the children.

DCF workers and workers from other social services reporting to DCF have made judgements on me that I have proven wrong. They can not communicate properly with our family, because they make no effort to understand how we speak with each other. They don't know where these kids have come from, that we love our kids and care for them.

So many workers from social services who said they were helping me wrote long statements for the court about how I couldn't care for my kids. They never raised their concerns with me or helped with a translator so I can communicate in my main language, Warlpiri.

This little boy has had problems with going to the toilet and it has been blamed on me. They don't understand he has had these issues all his life, they think it is because we don't look after him properly. They think we are making him shy, but he is a shy little boy. He lost his parents too which he still gets sad about. Being stolen away from our family has made things worse for him again.

There is a prejudiced attitude towards our family amongst staff at the school, where some of

these reports came from. The principal himself has described my husband “hopeless”, even though he has raised many children and put them through school. Many of them are now adults with their own kids. I have never had any problems with DCF during my time raising any of these children.

In fact, DCF have in the past acknowledged my skills as a parent. They placed a handicapped boy in my care when he was six years old. Despite all the challenges, I raised this boy until he was a young man.

DCF workers are judging us because of my Aboriginal culture. They say I don’t supervise the kids properly, but they don’t understand that we are always making sure the kids are safe. They say family members coming to stay makes the house “chaotic” and means the children have “no routine”.

But this contact with my extended family is very important for the kids. They love their family and are always very happy to see them. Being raised with the extended family is important for their identity as Warlpiri children.

Since taken into foster care, the children have been forced to move between at least seven different foster care households. This has been incredibly disruptive and distressing for the children.

The children consistently complain about their treatment in foster care when they come to our houses for visits. They cry when they visit us, saying that they want to return to live with us and that they miss their family.

Both children have complained about being hit by foster carers. They were extremely worried when they visited us, saying that they did not feel it was safe to return to that carer. The children also tell us that DCF workers have smacked them.

The children often come to visits with us complaining that they are hungry and are not being fed properly while in foster care.

The children have reported to us that they were instructed not to call me and my partner “Mum and Dad” by foster carers. This has been incredibly distressing for the children. The children have reported to us that they have been instructed not to speak us about the conditions that they face in foster care.

There has been no involvement from my kinship group or broader Warlpiri community whatsoever in decision making about these children. They are currently being denied access to their culture, language, family and country as a result of being in the care of DCF.

[NOTE: Section 12 (2) of the NT Care and Protection Act says:

“A kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision

involving the child”]

DCF supervised visits to our household have been infrequent and inconsistent, taking place without adequate notice for me to arrange proper cultural activities for the children to participate in. Sometimes, DCF supervised visits to our household stopped without explanation, or because they say they have a shortage of staff.

When I tried to get a lawyer for all the court cases, nobody would help me. All the legal services said they could not represent me because I had no chance. I was lucky that a friend of mine knew a good lawyer, who has now taken on the case. The magistrate couldn't believe what DCF has done to my kids and it looks like we will get them back soon. But many Aboriginal people in my situation would never get legal support and never even make it to court.

This stolen generation happened to us before. Children were taken away from our community and only came back as adults. They were lost, they didn't know how to speak their language and didn't know their family. It was very sad.

It seems that this stolen generation is happening again. Me and my family are extremely distressed at the loss of culture and family connection currently being forced on the children. Our spirit is lost, they are part of our soul. We don't want them living with non-Indigenous people. We want them back with us. We want to take them to be on their land, to be able to speak their own language, to have the love and support of their extended family.

### **Mother from remote Aboriginal community**

I live with my husband and extended family in a remote community in the Northern Territory. It is 400kms to the nearest big town. We speak our language and are proud of our culture.

Almost two years ago now, DCF workers turned up at my house while we were eating breakfast. They had the police with them and they barged into my house and took my young son away from us. They drove him all the way into town. We were all crying. The old people said this is what it was like when the Stolen Generation was happening.

They only took my young son from me who was going to preschool. They left my daughter who is in primary school and my son from high school. But my young boy had been very sick. He had trouble putting on weight. There was a report from the clinic that he was still losing weight so DCF came to take him away. Those workers from the clinic who made the report ended up leaving the community because they felt ashamed about what had happened.

Recently I have had a new baby. DCF haven't said anything about this baby, he lives with me. He is a healthy happy little boy. All my children are healthy and happy, but we are still missing our little boy. He is still living with a white foster family in town.

I have never been to court about this. I don't know how long DCF want to keep him for. If we want to visit him, we have to travel into town to see him.

I have had so many different DCF workers who have made a lot of promises about bringing him back to the community. Sometime I have had case workers that have said they will give him back to me, I just need to wait. Other times they have said they need another family member to take him and I have organised for someone else to try and be a carer. But they have never followed through on their promises. He is still there in town with the white family.

I think some of these case workers are very racist. Even the foster mother for my son thinks that he should come back to me. There is no reason why I can't look after him, I am still raising three other kids including a little baby.

## **2. Sharp rise in Aboriginal children in care under the NT Intervention**

In June 2007, the Commonwealth government initiated the *Northern Territory National Emergency Response* (the Intervention). In 2012, a new policy *Stronger Futures in the Northern Territory* retained many of the control measures and investment priorities of the Intervention. Jumbunna has done extensive research on the impact of the NT Intervention and *Stronger Futures* and has provided a number of submissions to Senate inquiries detailing our findings and policy position. We oppose the overt discrimination of the continuing intervention measures and have documented many adverse impacts on Aboriginal communities experienced under these policies.

There are very serious social problems facing many Aboriginal communities in the NT, which impact directly on the safety and wellbeing of children. These include very high rates of substance abuse, family violence and chronic unemployment. There is however, no evidence that these problems have improved since 2007 and many indications that they are getting worse. For example, the current Aboriginal unemployment rate in the NT is higher than it was in 2007 (Productivity Commission 2013), the rate at which Aboriginal women are hospitalised for assault has increased (NT Children's Commission 2014), reported incidence of attempted suicide and self-harm has increased dramatically (FaHCSIA 2012), as has the number of Aboriginal being people incarcerated (ABS 2014).

In the field of child protection, the Intervention has seen an almost fourfold increase in the number of Aboriginal children being removed from their families and placed in out of home care (Productivity Commission 2017). This phenomenon is being driven by two factors.

Firstly, there has been a massive increase in resources available to the Department of Children and Families (DCF). With the Intervention, Aboriginal communities started to experience intervention from child protection services far more frequently. The Haven report (2012) detailed a doubling of expenditure by DCF from 2007 – 2011 and pointed to continuing planned increases in Commonwealth funding available for DCF under the *Stronger Futures* policy to 2022. A recent Productivity Commission Report of Government Services bares these predictions out, demonstrating that in 2006-07 "real recurrent

expenditure” on child protection, out-of-home-care and family support services in the NT was \$10,935,000 and in 2014-15 it had risen to \$36,295,000.

Overwhelmingly, this funding has been directed to surveillance of families and removal of children, along with the costs of maintaining out of home care placements. To keep a single child in out of home care for one year in the NT costs in excess of \$100,000. Havnen contrasts these funding increases with the continuing chronic lack of family support and other community based programs to assist struggling families to stay together.

Secondly, it is our submission that the discriminatory policy and rhetoric accompanying the Intervention has served to further pathologise Aboriginal people and culture. The Intervention has bolstered an approach to struggling families that prioritises bureaucratic control over Aboriginal lives as a means of addressing social problems.

These shifts have manifest in data in the following ways.

**i) Increasing number of Aboriginal children in out of home care:**

June 2007: 265 Indigenous children

June 2016: 920 Indigenous children (Productivity Commission 2017)

**ii) Territory families focus is now almost entirely on Aboriginal children**, as evidenced by a decrease in the number of non-Indigenous being placed on protection orders and in ‘out of home care’, despite a sharp increase in notifications for both Indigenous and non-Indigenous children over the period:

2006 – 2007:

1,124 risk of harm notifications for non-Indigenous children

113 non-Indigenous children admitted to protection orders

2015 – 2016:

4,448 risk of harm notifications for non-Indigenous children

48 non-Indigenous children admitted to protection orders (Productivity Commission 2017)

**iii) Decreasing proportion of Aboriginal children in ‘out of home care’ being placed according to the Aboriginal Child Placement Principle (ACPP), particularly with Aboriginal relatives or kin**

2006 – 2007: 56% placed according to ACPP, 33.2% with Indigenous relative or kin

2012 – 2013: 36.2% placed according to ACPP, 30.1% with Indigenous relative or kin

**iv) Children are staying in foster care for longer periods:**

The 2014 DCF Annual Report says, “Children in care are increasingly in care for longer.

Forty eight per cent of the current children in out of home care will be in care until eighteen years of age”.



The 2016 Territory Families Annual Report shows the trend is getting worse, “the number of children in long-term orders (those who are in care until they reach 18 years of age) has grown considerably. On 30 June 2016, more than half of the children in care were in care until they reach 18 years of age. Of these 55 children were younger than five.”

### **3. Lack of access to justice**

In each of the testimonies provided for this submission, there was a disgraceful lack of adequate legal representation available for families who have had children removed. This has meant that the decisions of Territory Families are essentially unaccountable and many children who are in care due to mistaken judgements on the part of Territory Families are kept away from their families unnecessarily.

This lack of legal representation in child protection matters was a serious issue highlighted in a major Australian Research Council funded project *Legal Needs in Indigenous Communities*, in which Jumbunna has been a partner.

In 2011-12, the Legal Needs Project conducted focus groups with 149 Indigenous community members in eight communities in the NT, in both urban and remote areas. We also conducted over 60 stakeholder interviews, with legal services and other Aboriginal and welfare organisations, many of which are involved in family support and advocacy around child protection issues.

Ten per cent of Indigenous women in focus groups reported having an issue with child removal in the last two years, with some focus group participants describing the increase in child removal under the NT Intervention as “like a stolen generation all over again”. More than 40 per cent of these women had not accessed legal support in relation to their child protection matters. Three percent of men in focus groups also reported having an issue with child removal, with only one third of these accessing any legal support. These ratios accords with testimony from a staff member from an Indigenous Legal Service who said, “On the child protection list this month we had six families in and three were represented - so half. The other parents weren’t even present in court”.

Many legal service providers reported dismay at the lack of resources available to assist Indigenous clients who had their children removed. Others described how DCF routinely fail to communicate with parents, many of whom have limited English, about the court process they were about to enter into and their entitlement to legal representation. This selected testimony from legal service providers gives some insight into the lack of access to justice currently afforded to Indigenous people who have had their children removed in the NT:

With our remote clients, the courts generally don’t hear any civil matters when they go out bush. So for child protection matters, the parents are out bush but we’re here dealing with all the court matters, so they are not participating in that process and not understanding what’s going on or the implications if [they] don’t turn up to court or if [they] don’t give instructions to their solicitor (Indigenous Legal Service staff).

In my opinion, the system that [this legal service] has at the moment is not effective...we don't have the funding for it... We don't know what's going on out in the communities (Legal Service Staff).

The problem that we find is that there is no real interface often between the Department of Child Protection and the parents. Parents are given applications with no interpreters, they are spoken to without interpreters, they're just given a chunk of paper and they don't understand what they are to do with it. Depending on the office you are dealing with in terms of care and protection, some offices will pay for the parents to be brought to court and help them out so they can have access to justice somewhat. Under the legislation and under the policy there is no requirement on the department to assist the family once they have served. The outcome is that it is up to the legal services/caseworkers as to whether they will help them to access a solicitor (Indigenous Legal Service staff).

Legal Services have no funding to fly the parents in for court, the department says they don't have funding, and the courts say it's not their responsibility. And yet there is a legal requirement that parents must be at court (Indigenous Legal Service staff).

Affidavit material is appalling. Failure to genuinely assess family carers is appalling. I had to list something for hearing in order to get them to do an assessment, and they have done that and are looking at reunification... I had to list it to get them to do their job (Indigenous Legal Service staff).

We are having decisions made, like that the educational outcomes in a remote community are low therefore the children should remain with foster carers in Darwin. That's the attitude of the court (Indigenous Legal Service staff).

#### **4. Aboriginal self-determination is the key**

Aboriginal self-determination needs to be at the centre of any effective response to the current crises, both in escalating rates of out of home care and deteriorating conditions for Indigenous children in their communities in the NT. Two papers annexed to this report, prepared by Padraic Gibson provide further insights on this question.

The first paper, "Stolen Futures", published in the *Overland* journal in 2013, details how consistent attacks on Aboriginal community controlled organisations and removal of productive resources from Aboriginal communities over the past twenty years lies at the heart of these crises. It addresses the chronic lack of Aboriginal controlled family support services currently available in communities and the manifest failures of large-scale child removal by Territory Families to deliver improved outcomes for Indigenous children.

The second paper is a short summary of the finding of the landmark *Bringing them Home* report, published in 1997. This report is popularly known for the comprehensive detail it provides about the Stolen Generations of the 20<sup>th</sup> Century. However, a major component of

the report is an inquiry into the continuing phenomenon of forced separation of Indigenous children from their families, by both the Child Protection and Juvenile Detention systems.

The report argued that poverty, driven by government neglect of community development needs in Aboriginal communities, was the major factor driving the large-scale reporting of “neglect” in these communities. It also examined the continuing racist attitudes that permeate contemporary child protection systems, driving unjust removals.

We concur with the central recommendation of *Bringing them Home* on the way forward for Aboriginal child protection:

Our principal finding is that self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems of the States and Territories and to eliminating unjustified removals of Indigenous children from their families and communities... The Inquiry supports the eventual transfer of responsibility for children’s well being to Indigenous peoples and proposes a framework for negotiating autonomy measures (Recommendation 43).

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