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Victorian Aboriginal Child Care Agency Co-Op. Ltd

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**Victorian Aboriginal Child Care Agency (VACCA)
submission in response to:**

**Victorian Parliamentary Inquiry into the Children,
Youth and Families Amendment (Restrictions on the
Making of Protection Orders) Bill 2015**

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Victorian Parliamentary Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

Terms of Reference

That the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* be referred to the Legal and Social Issues Committee for inquiry, consideration and report by 4 August 2015, and in particular the Committee examine the extent to which the Bill along with current legislation will protect vulnerable children.

Introduction

VACCA welcomes this opportunity to provide input to the Victorian Parliamentary Inquiry into the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015* and has a strong interest in this legislation.

VACCA is the lead Aboriginal child and family welfare organisation in Victoria, protecting and promoting the rights of Aboriginal children, young people, families and the community. We provide programs and services to strengthen Aboriginal culture and encourage best parenting practices, and advise government in relation to child abuse and neglect in the Aboriginal community.

The *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*, if passed, will reinstate provisions that were removed in legislation passed last year in the *Children Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014*. The provisions relate to the powers of the Children's Court of Victoria to make a protection order based on reasonable steps taken by the Secretary to provide the services necessary in the best interests of the child or to enable the child to remain in their parents' custody (section 276 of the CYF Act, 2005). The Bill has not yet come into effect and will be implemented on 1 March 2016.

VACCA believes safety, stability and security are required for all children and need to be a focus of legislation, policy and practice for children who have experienced abuse, neglect and violence resulting in the intervention of the care and protection system. Culture is essential to Aboriginal children's wellbeing. Connection to culture is also essential to ensuing Aboriginal children's safety, stability and security. Aboriginal children living with their families and within their communities should be the ultimate goal.

Over-representation of Aboriginal children in Victoria's care and protection systems

Unfortunately, Aboriginal children are significantly over represented in Victoria's child protection system. Victoria currently has a higher number of Aboriginal children in out of home care than in any other time, including during the Stolen Generations (*Koorie Kids: Growing Strong in their Culture: Five Year Plan for Aboriginal Children in Out of Home Care, 2103*). In 2012-13, in Victoria, compared to non-Aboriginal children, Aboriginal children were:

- Almost 10 (9.4) times more likely to have a Child Protection report substantiated (68.6 compared with 7.3 per 1,000 children).
- Over 15 (15.6) times more likely to be on care and protection orders (82.0 compared with 5.3 per 1,000 children).
- Over than 15 (15.7) times more likely to be in out of home care (69.5 compared with 4.4 per 1,000) (AIHW, 2014).

The reasons for the over-representation of Aboriginal children in the child protection system are complex and include the legacy of past government policies of the forced removal of Aboriginal children from their families, intergenerational trauma, intergenerational cycles of poverty, and cultural differences in child-rearing practices (HREOC, 1997).

Under-representation of Aboriginal children in the care of Aboriginal organisations

The Department of Health and Human Services (DHHS) is the largest provider of out of home care placements for Aboriginal children, followed by mainstream community service organisations (CSOs). Aboriginal Community Controlled Organisations (ACCOs) provide a minority of out of home care placements for Aboriginal children in Victoria. There has been a 10% decrease over the past decade in the number of Aboriginal children in placements provided by ACCOs. During the same period, placements provided by DHHS have increased by 268% and placements provided by mainstream CSOs have increased by 156%. In 2012 7% of Aboriginal children in out of home care were in placements provided by ACCOs, compared to 22% in 2002 (*Koorie Kids: Growing Strong in their Culture: Five Year Plan for Aboriginal Children in Out of Home Care, 2013*). This is despite government and community sector policy supporting the expansion of ACCOs and an increase in their share of service provision.

Resource allocation that intentionally grows the capacity of Aboriginal communities, including the transfer of out of home care resources from government and mainstream organisations to Aboriginal organisations needs to be a priority. This is in acknowledgment that Aboriginal people are in the best position to make decisions about their children. Aboriginal agencies are well connected to their communities, know the families they work with, are able to effectively engage and provide culturally safe and responsive services.

As well as being against the principle of self-determination an additional concern with the majority of placements being provided by DHHS, is that DHHS kinship care is not subject to the auditing against service standards that the community sector is, meaning there is not the same standard of regulatory oversight and review. VACCA believes all out of home care providers should be subject to the same level of independent monitoring.

Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

If passed, the *Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015*, introduced to parliament earlier this year, effectively reinstates section 276 of the CYF Act, 2005. The overall impact is to restore the requirement that - *the Court must not make a protection order unless it is satisfied by a statement contained in a disposition report that all reasonable steps have been taken by the Secretary of DHHS to provide services necessary to enable the child to remain in the care of his or her parent.* VACCA supports this recent amendment of restoring oversight powers of the Children's Court and sees this as an important and necessary power to restore to the Court. Ensuring independent decision making of the court affords a level of accountability of DHHS and is fundamental to ensuring the best interests of children in the protection and care systems.

However VACCA believes the new Amendment Bill does not go far enough and this amendment is very limited. The Bill does not address any of the other concerns surrounding last year's changes to the CFY Act, included in the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* in relation to permanency arrangements.

Children Youth and Families (Permanent Care and Other Matters) Bill 2014

Last year the previous Victorian Government announced legislative amendments to the *Children Youth and Families Act, 2005* with the stated purpose to promote planning, decision making and permanency for vulnerable children and young people, referred to as *Children Youth and Families (Permanent Care and Other Matters) Bill 2014*.

VACCA was a major contributor to and supporter of the legislative and service reforms that were introduced in 2005-6. The *Children, Youth and Families Act, 2005* included a series of major reforms, particularly in relation to Aboriginal children and families. The *Children, Youth and Families Act* recognises that for Aboriginal children their cultural identity and connection to family and community are seen as part of the best interest of the child principles. VACCA has always supported the implementation of the Aboriginal Child Placement Principle and the principle of the right of Aboriginal People to self-determination and self-management in all areas including child welfare. This was acknowledged and recognized in the CYF Act, 2005.

VACCA initially supported the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* as we have always been supportive of the rights of children in out of home care to stability, safety and security. This support was without having had the opportunity of being involved in meaningful, genuine discussion and consultation and without having seen the Bill. Having now seen the specifics of the Bill, VACCA has significant reservations about the amendments, and these are outlined in this submission.

Timeframes

In relation to the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* VACCA is opposed to the timeframes included in the changes to the Act and strongly believe this will have a detrimental impact on Aboriginal children in out of home care. The amendments make it too easy to sever the connection between an Aboriginal child and their family, Aboriginal community and country. These amendments are a backwards step towards reducing the over-representation of Aboriginal children in care and are not in the best interests of Aboriginal children.

The amendments mean after two year time period we can no longer reunify children with their parents or place them with kin. Parents may now be in a position to be able to care for their children or kin may now be in a position to provide care or may be found when previous attempts at finding family did not identify any available family. An example of changing circumstances is family that may not be able to provide the care for an infant but once the child is school aged may be able to provide care.

The two year timeframe imposed on when a family preservation order or family reunification order can be applied for significantly jeopardize the stability of relationships for the child. Legislative changes that result in severing family relationships will only result in increased permanent care placement breakdowns during early adolescence as children explore their identity. This was certainly the experience with adoptions of Aboriginal children.

Practice constraints

The changes to legislation assumes a well-functioning, well-resourced and highly skilled and culturally sensitive service system at universal, secondary and tertiary service levels. Well-resourced, evidence-informed and culturally-informed prevention and early intervention services are essential to provided supports to families to prevent children being removed. Where children do need to be removed, culturally appropriate, and intensive family support services working towards reunification need to be provided. However we know all too often parents are not provided with the services they require. System reform is needed that places more emphasis on providing intensive support to families to avoid children needing to be removed and where children do need to be removed they are placed with kin who are provided with the necessary supports and resources to be able to continue to care for the

children while at the same time working towards reunification by providing intensive support services to parents. Services provided need to be culturally safe and responsive. Aboriginal services provided to Aboriginal families have been shown to be what works. This is clearly articulated in the recent Child Family Community Australia paper *What works in effective Indigenous community-managed programs and organisations* (Morley, 2015). Furthermore the recent Victorian Auditor General's report clearly demonstrated that mainstream services are failing to engage and provide services to Aboriginal people (VAGO, 2014).

Child Protection has demonstrated an inability to undertake the active intensive work with families at entry into care to maximize likelihood of reunification that this legislation assumes. The findings of the 2013 DHS Stability report indicate poor legislative compliance by Child Protection in areas that would assist return home:

- 35% of Aboriginal children had been subject to an Aboriginal Family Led Decision Making (AFLDM)
- 84% did not have a Cultural support plan
- 15% had no current case plan
- 58% had not been subject to any reunification attempts
- 58% had over 6 practitioners during their current care experience

The resourcing and implementation of ACCOs to provide intensive family support prior to Aboriginal children needing to be removed and immediately when children have been removed would reduce the number of Aboriginal children in care, reduce placement changes and placement instability, increase the number of children successfully reunified with their parents and reduce the time taken to be reunified.

Non-compliance with the Aboriginal Child Placement Principle (ACPP)

The Aboriginal Child Placement Principle (ACPP), previously accepted as policy and subject to a protocol between DHHS and VACCA, was given legislative force in the CYF Act, 2005. It is specifically detailed in section 13 but sections 10,12 and 14 are also relevant. All Aboriginal children who are clients of child protection services and in out of home care are governed by ACPP to ensure that their Aboriginal identity is preserved. Despite being enshrined in the CYF Act the ACPP is not implemented in practice. In 2013 the percentage of Victorian Aboriginal children placed with relatives/kin, other Aboriginal carers or in Aboriginal residential care was 51% (reduced from 56% the previous year and well below the still too low national figure of 68%) (AIHW, 2014). Furthermore 16% are placed with non-Aboriginal family meaning only 35% of Victoria's Aboriginal children were placed with Aboriginal carers in 2013. This alarmingly low figure indicates reasonable steps are not being taken to comply with the ACPP.

The Secretariat of the National Aboriginal and Islander Child Care (SNAICC, 2013) report that there is poor understanding of and inadequate commitment to the ACPP which undermines its broad intent. The intent of the ACPP is to ensure that an Aboriginal child's safety is never compromised and that securing a child's safety also includes cultural safety. It must ensure children removed from their parents have strong connection to family, community and culture. The intent of the ACPP is therefore also about permanency of relationships. Common misunderstandings of the ACPP are that it only applies when children are first removed from their parent's care rather than providing principles for Aboriginal children's long-term care and that it is only about placement hierarchy rather than also being about *maintenance of the child's culture and identity through contact with the child's community*. The ACPP needs to transition with the children. It should not be something that is considered at one point in time only. Incorporating culture needs to be developmentally appropriate and looks very different for a toddler compared to a primary school aged child compared to an adolescent. The ACPP must apply beyond the first days of a child's admission to care and must be regularly revisited to check if there are Aboriginal family members able to care for the child.

VACCA recommends the development of updated practice guidelines, specific training and standards in implementing the ACPP in its fullest intent in practice for Child Protection and mainstream CSOs. Furthermore, VACCA recommends that monitoring of compliance with the ACPP be introduced.

Importance of connection to family, community, culture and country

Children that are strong in culture and celebrate their identity and culture have a strong voice and are empowered. Community that is strong in culture values their children, and recognises the importance of the whole community in raising children and keeping families together. A service system that values Aboriginal culture and is culturally competent is one which can lead to a better future for our children.

It is a consistent finding that children in out of home care long for connection with family and community (Neil & Howe, 2004; Higgins et al, 2005) and that most children who leave care seek to return home and that this is more successful where the relationships have been maintained. A CREATE survey of over 400 young people who were in the process of transitioning from care found that many respondents particularly Aboriginal young people, valued contact with siblings and grandparents and wanted more involvement with these family members. This raises concerns about whether permanent care serves the long-term best interests of these children. It will all too often see young people exiting care without any long term relationships or family support to assist them as in too many cases their families would have had no opportunity to develop any relationships with them for many years. The process of reconnecting with family may be more hazardous and unsettling if a long period of disconnection has occurred for both the child and family. An Aboriginal child's learnings

about their culture may have been interrupted by their placement, and critical information that helps them return comfortably to their community lost.

Stories from the Stolen Generations are testament to the painful process of trying to reconnect with family as an adult (HEREOC, 1997).

VACCA's experience of non-Aboriginal permanent carers is that in their assessment to take on permanent care of an Aboriginal child they inevitably agree to make efforts towards nurturing the child's Aboriginal culture but that this is not achieved. For an Aboriginal child in placement with non-Aboriginal carers, VACCA's experience is that many of these children are not connected to their Aboriginal family, community or culture. Some carers are not willing to prioritise the child's understanding of their culture or connection to their community. Sometimes, this unwillingness is related to lack of understanding about what disconnection can mean for the child in the longer term. Sometimes it is related to limited understanding of how this connection could occur; some carers believe that providing the child with an Aboriginal flag is enough. Sometimes, carers lack confidence to help the child make connections and are nervous themselves about attending cultural events. Aboriginal culture is complex but in an Aboriginal family and community its transition is simple. This immersion in culture is the vehicle of acculturation;

Family is the cornerstone of Aboriginal and Torres Strait Islander culture and spirituality. The maintenance of connections to family and community forms the basis of the development of the Aboriginal or Torres Strait Islander child's identity as an Aboriginal or Torres Strait Islander person, their cultural connectedness, and the emergence of their spirituality. (Achieving Stable and Culturally Strong Out of Home Care for Aboriginal and Islander Children, Secretariat of the National Aboriginal and Islander Child Care Policy paper, 2005, p8).

If a permanent care order is granted, there is no post placement support and no ability to provide expert help and advice to the family or the young person. There is no ability for VACCA to go back to the family and check how things are going, to see if the family need further support to reconnect the child to family, community and culture. The young person, who has had limited contact with Aboriginal culture or community for some time, is likely to be angry and dislocated, unable to make their way back to their community. We worry about the concerning parallels between the experiences of these young people and the Stolen Generations, and what this might mean for their future.

We know that the impact for Aboriginal children of being removed from community and culture is profound. The Bringing Them Home Report found that Aboriginal children removed from their families were more likely to come to the attention of the police, more likely to suffer low self-esteem, depression and mental illness and more vulnerable to physical, emotional and sexual abuse.

At VACCA, our experience is that when an Aboriginal child is connected to their culture and community, they are proud of their culture, have opportunities to build relationships and develop resilience. Culture and a meaningful sense of community have been identified as key aspects in building resilience by the International Resilience Project (2008). Aboriginal children should be connected to their culture and identity and to their families and communities and that this principle and their best interests including their safety are not mutually exclusive. We need to acknowledge that cultural identity is a provider of stability and belonging. Stability is about building firm foundations. If an Aboriginal child is disconnected from their culture and community, even if they have a stable home environment, there will come a day when they begin to raise questions about their sense of self. Their sense of stability will come into question. So stability must mean cultural stability. Safety must mean cultural safety.

We think this dislocation happens because when Aboriginal children are placed with non-Aboriginal carers and through mainstream organisations, there is limited appreciation of the importance of family relationships for an Aboriginal child. At the heart of Aboriginal culture is the vital importance of family. When an Aboriginal child is removed from their parents, they are also removed from family and community – siblings, aunts, uncles, cousins. While family members may not be able to care for the child, their ongoing involvement in the child's life can lead to lifelong relationships.

These amendments will diminish the decision making power of the court to put conditions on permanent care orders. There is no obligation for carers, particularly non-Aboriginal carers to maintain contact for an Aboriginal child, comply with cultural support plan or native title obligations/rights.

Human rights

Children are our most vulnerable in society and even more so are children in out of home care. The rights set out in the United Nations (UN) Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous People and the Victorian Charter for children in out of home care need to be at the forefront of legislation. Any stability achieved at the expense of removing human rights is not a step forward and not something that VACCA can support.

Whilst not forgetting that children have all the protections of all Human Rights Instruments, Article 30 of the UN Convention on the Rights of the Child, clearly states that: *In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or 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 practice his or her own religion, or to use his or her own language.*

Upholding Indigenous people's rights is key to healing Aboriginal children and families who have experienced neglect, separation and cultural disconnection. Human rights that support self-determination are fundamental to a holistic approach to children's safety. For Aboriginal children in permanent care, without connection to family, community and culture, their basic human right of developing a strong Aboriginal identity, of having a right to learn and practise their culture is compromised. This is in the context of knowing culture is protective, provides resilience and is healing.

The principle of self-determination for Indigenous Peoples was endorsed by the United Nations General Assembly, was the basis for the recommendations of the Royal Commission into Aboriginal Deaths in Custody and reiterated by the Human Rights and Equal Opportunity Commission's Bringing Them Home Report.

Siblings

Given the focus of the legislation is on permanency of relationships, we need to be focusing on parents, siblings and extended family. The 2013 DHS Stability Project found there are difficulties placing Aboriginal siblings together. For instance there were 74 children with three siblings in out of home care but only 26 who lived with three siblings. Of the 15 children in VACCA's permanent care review, only four were placed with their siblings; the remaining eleven children had siblings spread across up to six placements.

Focusing on permanency means we need to focus on reunification. Reunification needs to be conceptualised more broadly to include parents and siblings. Our most enduring relationships are sibling relationships. However, children in care are often placed apart from their siblings and contact can be limited. The legislation does not address this priority. The Bill includes no increased provisions to ensure siblings are considered when planning for reunification, placement and contact.

Lack of permanent carers

Often permanent carers are not available. This will result in children remaining on long term orders, with the likelihood of case drift and minimal case involvement. This unintended consequence of the legislation will not be in the best interests of children.

Cultural support planning for all Aboriginal children in care

VACCA supports cultural support planning for all Aboriginal children in out of home care. However there needs to be funding attached to this legislative change to resource ACCOs to undertake this work. There also needs to be funding to implement the cultural support plans.

Lack of identification of Aboriginality

A significant issue highlighting the inappropriateness of setting timeframes for family preservation and family reunification orders is the lack of identification of Aboriginal children in out of home care. The findings of Taskforce1000 have highlighted the all too often late identification of children as being Aboriginal. Several cases have been presented that it was only after four or more years in care that children were identified as Aboriginal. Knowing this, means the timelines attached to the legislation are not in the best interests of Aboriginal children, families and communities.

Finding Aboriginal family

Most Aboriginal children are in the care of DHHS and then mainstream CSOs. We know both DHHS and mainstream CSOs have difficulty in finding and engaging Aboriginal family. The experience of VACCA is that within Aboriginal community there is often family that are able to care for children. Under the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014*, after two years there would be no attempt to reunify or find family.

Revoking Permanent Care Orders

As well as DHHS, the Aboriginal organization that recommended a permanent care order should also be able to request to the court the revoking of the permanent care order.

Lakidjeka Child Specialist Advice Support Service (ACSASS)

The Victorian Lakidjeka Child Specialist Advice Support Service (ACSASS), provided by VACCA and an equivalent service provided by the Mildura Aboriginal Cooperative together provide a useful state-wide model; the service provides culturally appropriate ongoing advice and case consultation to Victorian Department of Human Services Child Protection in relation to all significant decisions; such as whether there is a strong need for Aboriginal children to be removed from their families, and relocated to a place of safety. These decisions are made with the advice and knowledge of Aboriginal people and DHHS Child Protection are informed on how best to meet Aboriginal children in out of home care's need and keep them safe, including culturally safe. This is an example in practice of including Aboriginal people in joint decision making processes. ACSASS needs to be strengthened to be more than providing consultation and advice and instead ACSASS views need to be given weight in court proceedings in line with the principle of Aboriginal self-determination (Section 12 of the Act) and must be resourced appropriately to give effect to this responsibility. In other words, we would encourage the Children's Court to formalise the status of ACSASS as a 'friend of the court' to ensure that the self-determining voice of the Aboriginal community is being heard. As highlighted in the *Report of the Protecting Victoria's Vulnerable Children Inquiry* this service is under-resourced limiting its effectiveness (Cummins, Scott and Scales, 2012).

The legislation also assumes that the practice of the Department engaging with Aboriginal Services will inform decision making. Despite current legislation requiring consultation with ACSASS the findings of the DHS Stability Report (2013) indicate poor legislative compliance by Child Protection with only 71% of Aboriginal children the subject of a documented consultation with ACSASS.

Guardianship program, section 18 pilot

The *Children, Youth and Families Act 2005* includes a range of provisions for Aboriginal children, with the goal of *empower(ing) Aboriginal families and communities to make decisions about how best to strengthen their families, protect their children and promote their healthy development* and includes section 18 which enables the Secretary of the Department of Human Services to transfer powers and functions for Aboriginal children on protection orders to the Aboriginal Principal Officer (CEO) of an Aboriginal organisation. Section 18 has not yet been implemented, despite having been in legislation for nearly ten years as legislative amendment is required. The legislation, fully realized, will allow Aboriginal organisations to make plans and decisions for Aboriginal children on protection orders in a way that culturally informed and appropriate and the required amendments should be passed as a priority. Delegation of statutory child protection functions to Aboriginal agencies is seen as clear and effective approach to the over representation of Aboriginal children within child protection system.

VACCA has been running an 'as if' model of guardianship that has achieved very significant results. The section 18 Aboriginal Guardianship project has returned home nearly half the children who are a part of the project, despite many being in care for five years or more. This indicates not only the success of a model of self-determination but also the inability of Child Protection to successfully undertake reunification work.

VACCA's permanent care program

A review of VACCA's Permanent Care program was conducted in 2012 and examined the case files for 15 children referred to VACCA's permanent care program. VACCA's Permanent Care program was initially established to meet the requirements of section 323, CYF Act, 2005, whereby *the Court must not make a Permanent Care Order to place an Aboriginal child solely with a non Aboriginal person unless the Court has received a report from an Aboriginal agency that recommends the making of the order.*

VACCA's Permanent Care program has one staff member to report and make recommendations to the Court about Permanent Care orders for Aboriginal children across Victoria. When VACCA's permanent care worker becomes involved, the child has often been with the carers for a number of years. VACCA's permanent care worker then faces the dilemma of supporting a placement that has provided stability for the child but has not

provided belonging or identity through the child's connection to family or the child's involvement with community and culture. There is a high level of awareness across all VACCA programs that unless Aboriginal children are connected, the child's placement stability may be compromised in the future.

The key findings from the review are:

1. Aboriginal children primarily enter into Permanent Care through the conversion of already established kinship or foster care placements. Stability of placement has mainly been achieved well before a permanent care order is made. The Permanent Care order signals withdrawal of support which, given the level of vulnerability highlighted through the review, is likely to increase placement instability.
2. Aboriginal children referred for Permanent Care assessment are vulnerable. This vulnerability comes from disability, delay and social and emotional concerns. Vulnerability also comes from the absence of connection to family and community that strengthen a child's sense of identity and belonging. Such vulnerability is unlikely to be addressed through stability of placement alone and placement stability may be effected by a child's vulnerability.
3. Carers of Aboriginal children referred for Permanent Care Assessment are vulnerable. Their vulnerability comes from the emotional and financial cost of caring for children, many of whom have additional needs. It also comes from the carer's personal experiences and histories. Carers are unlikely to be strengthened when support is withdrawn as soon as a Permanent Care Order is made.
4. Children and their carers experiences multiple vulnerabilities compounded by poverty and intergenerational traumas.
5. It is likely that children's vulnerabilities and carers abilities to meet their needs will change. Anticipating the support needs of children and their carers is critical to long term placement stability.
6. VACCA Permanent Care involvement occurs a number of years after a child has settled into a placement; the child has often lost significant connections with their birth families. Finding a child's connections can be complex and requires significant time and expertise. The consensus is that maintaining a child's connections is more effective than attempting to reconnect a child whose connections have been lost.
7. There is reliance on carers to support and maintain the child's connections to family and to culture, including managing conflict with family about connection through

- access. Given the extent of placement vulnerability, the existing burdens on carers and the challenges for professionals in organising and supporting access, it is unsurprising that access between children and their families is generally not occurring.
8. Connections that occur are almost solely through naturally occurring relationships – the kinship carer’s relationship with other family, the siblings who are placed together. Active casework to reconnect children with their families and communities is not occurring.
 9. Processes and practices that have been identified to build a child’s sense of belonging and identity like Aboriginal Family Decision Making and Cultural Support Planning occur infrequently. Attempts by VACCA’s permanent care worker to address this are limited by inadequate resources and pressure to complete carer assessments.
 10. Delaying a Permanent Care Order application to allow for active casework with the child, family and carer, including connecting the child to siblings and birth family, can mean the achievement of strong connections and deeper, longer term stability.
 11. There is a divergence between legislated requirements about Child Protection practice with Aboriginal children and actual practice related to supporting and maintaining an Aboriginal child’s family, community and cultural connections. This is seen as being related to Child Protection not having the skills and knowledge to support these connections for an Aboriginal child and/or the belief that placement stability is a priority and given primacy over the child’s connections. Whatever the reasons, this delays the permanent care process for Aboriginal children. More importantly, it increases the immediate and long term vulnerability of Aboriginal children who remain disconnected from their family, community and culture. The resources to complete the casework outlined currently rest with Child Protection. Yet it is evident from this review that the necessary skills, knowledge and understanding for prioritising this casework rest with VACCA’s permanent care worker.

Following are four case stories which highlight some of the issues and challenges with permanent care.

CASE EXAMPLE: Lack of access to services for children in Permanent Care

This case study shows the importance of early assessment to identify disability or delay and put services in place for the child to achieve their potential. This is even more critical when considering a child’s early experiences of abuse or neglect and the impact of these experiences on her future development. When Jemma is placed on a Permanent Care Order, her grandmother will not be supported to identify and access appropriate services for Jemma.

Jemma is a 3 year old Aboriginal child who resides with her non-Aboriginal grandmother. While she was noted as having significant difficulties with her speech and social development, she had not been assessed for developmental delay. It was noted in her file that her grandmother had been encouraged by the child's case manager to send her to Day Care so that this could be supported and monitored.

CASE EXAMPLE: Inadequacy of payments for Permanent carers

Anne and Gordon care for their six year old granddaughter, Jade. Jade has physical and intellectual disabilities due to non-accidental injuries sustained when she was three months old. She requires a high degree of support with basic day to day tasks.

Anne and Gordon are committed to caring for their granddaughter as long as necessary. An e-mail from Anne describes their concerns about a Permanent Care Order: "We have heard that the Department is trying to reduce our payments. We told them that when and if, we were able to get Permanent Care of our granddaughter her needs would not stop. I believe they want to reduce our payments from 100% to 25%, that is a huge drop, the reason we can care for our granddaughter as well as we do is because of that payment."

Anne and Gordon are now the permanent carers of Jade. While the VACCA Permanent Care worker advocated that carer payments should not be reduced in view of Jade's significant additional needs, Anne and Gordon are now receiving general kinship care reimbursement.

CASE EXAMPLE: Permanent Care increasing vulnerability

This case study highlights that carers can experience combinations of vulnerabilities. In addition, sometimes attempts to secure permanent care orders for children can actually increase placement vulnerability.

Sandra is a 54 year old grandmother who cares for her four grandchildren, aged between eight and 15 years old. She has overcome a history of trauma and long term family violence in her marriage and is committed to caring for her grandchildren in a way that she was unable to care for her own children. Her commitment has meant giving up a well paid job and relocating interstate. It has involved financial costs, including purchasing a new house to accommodate herself and her grandchildren and purchasing a car to transport herself and the children, as well as increased general living expenses.

The children have experienced significant trauma through exposure to family violence, substance abuse, and environmental and medical neglect in their early childhood; they display a range of emotional, psychological and behavioural issues which have needed therapeutic interventions.

The oldest, Christy, has been diagnosed with anxiety and depression. She struggles to make friends at school and has been bullied. The youngest, Jedda, has been assessed as having an intellectual disability and has an integration assistant at school. She has a hearing impairment and a heart disease that requires ongoing medical monitoring.

Joshua, and Cory have significant behavioural issues, struggle at school and both can become very aggressive. Joshua has been expelled from two schools and now attends a school some distance from the family home.

Sandra has major concerns about the limitations of a Permanent Care Order in terms of her ability to access the long-term therapeutic and financial supports that she will need to address the children's complex needs. Despite these concerns, pressure was put on Sandra to proceed to Permanent Care. At one meeting, Sandra was informed that if she would not agree to Permanent Care, Child Protection would take steps to identify other family members that could provide Permanent Care for the children. At this stage the children had been in Sandra's care for over four years and she had clearly expressed her strong commitment to care for them permanently.

CASE EXAMPLE: Lack of support to connect children in permanent care to siblings

This case study is an example of the complex family relationship of children in Permanent Care. After a Permanent Care Order is granted, casework support for connection between siblings placed in different places will not exist. Maintaining connections between siblings will be dependent on carers who, are generally overburdened and may be ill equipped to manage complex family relationships. Connecting children with siblings is time consuming and challenging.

Sam is a 3 year old boy who resides in the care of Edith, a carer with a local Aboriginal organization. Sam has nine siblings, five are related to him through his mother, and four are related to him through his father. His two eldest siblings are now adults and are living independently with their own families. Two siblings are living in a permanent care placement near Sam. Other siblings are living with non-shared birth parents - two siblings are living with their own father and three siblings are living with their own mother. Some of Sam's siblings' whereabouts are unknown.

This sibling group of nine is separated across six residences, a number of these are interstate. There are approximately eight different families that are related to one or more of these children. While Sam has deep connections to some, he has never had any relationship with others

Amendments to the *Commission for Children and Young People Act 2012*

The *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* includes amendments to the *Commission for Children and Young People Act 2012* that relate to the conduct of inquiries. VACCA supports the strengthening of these provisions. However, VACCA believes these amendments do not go far enough. They still do not provide the Commission with the power and responsibility to receive and investigate complaints directly from children and young people. The Bringing Them Home Report (HEREOC, 1997) highlighted that Aboriginal children removed from their families and placed in care as part of the Stolen Generations lacked access to an independent person to report abuse in care to, and the demonstrated the devastating impacts of this; children not telling of abuse or telling someone and not being believed. This has had life-long and intergenerational consequences. Unfortunately the current Royal Commission into Institutional Responses to Child Sexual Abuse demonstrates this still to be very much a current shortcoming of the care system. Providing the Commission with this strengthened role would be one contribution to addressing this need.

Review of Amendments

VACCA believes that the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* not being based on recommendations relating to legislation from the Protecting Victoria's Vulnerable Children Inquiry (Cummins et. al, 2012) is a wasted opportunity.

VACCA is disappointed there was no release of an exposure draft as this would have allowed for genuine engagement and consultation. It would also have allowed for the review of how this legislation relates to other sections of the Act, or example best interests principles and the ACCP.

Minister for Families and Children, Jenny Mikakos, has committed to reviewing the new arrangements that were introduced via the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*, six months after they take effect on 1 March 2016. VACCA welcomes a review but the timing is inconsistent with the two year timeframes of the provisions from the making of a protection order. It is unlikely such a review will be able to demonstrate constructive findings. Instead VACCA requests an immediate and broad ranging review of the Act. VACCA would be concerned if legislation that is going to have such a significant impact on Aboriginal children, young people and their families involved in the child protection system is introduced without giving Aboriginal people opportunity to be consulted and inform directions. Provisions that impact on Aboriginal children should be the basis for particular discussions with the Aboriginal community.

Conclusion

With the data showing that insufficient effort is being made to: provide intensive support to families to prevent children being placed in care, place Aboriginal children in the care of Aboriginal Community Controlled Organisations, to place children in accordance with the Aboriginal Child Placement Principle and to reunite children with their families, we as a system are clearly not doing what is in the best interests of Aboriginal children. We believe that the impact of the *Children Youth and Families (Permanent Care and Other Matters) Bill 2014* will be to further disproportionately disadvantage Aboriginal children and families.

VACCA has not been sufficiently engaged in discussion about the impacts of the amendments on the care and wellbeing of Aboriginal children. VACCA has had very little time to develop this submission. This submission provides an overview of some of our key concerns. VACCA would welcome a greater opportunity to discuss in detail aspects of the new legislation that leads us to believe that overall, Aboriginal children will be further disadvantaged and disconnected from families, communities and culture as unintended consequences of what may have been well intentioned amendments of the CYF Act, 2005.

Stability that comes at the cost of disconnection from family, community, culture and country is not in the best interests of Aboriginal children and the impacts of the Bill will mean this occurs with greater frequency. The amendments will inevitably see a greater reliance of permanent care as a placement option for Aboriginal children in out of home care. Being a cheap placement option this may be desirable from a government perspective, it is certainly not in the best interests of Aboriginal children in out of home care and their families and communities.

The legislation splits the system and instigates a point in time when we give up on family. We should never give up on Aboriginal families. We know children in care return to family once they exit care. We also know that family is vital for Aboriginal children to maintain their identity and connection to culture. And we know culture is protective, provides resilience and is healing over time. It is disappointing that twenty years after the announcement of the Human Rights and Equal Opportunity Commission Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, and the resulting *Bringing Them Home Report*, that we are once again arguing why Aboriginal children should not be removed from family and why connection to family, culture, community and country must be guaranteed.

We appreciate the importance of stability for all Aboriginal children. However, our experience is that without connection to family, community and culture this stability is not lasting and the long term outcomes for Aboriginal children who do not have these connections are likely to be poor. To avoid these outcomes and improve the life chances of these children, we need strong commitment through our service system to protect Aboriginal child's cultural identity and promote their connection to family and community. We particularly need ongoing cultural support from the beginning of the placement and long term post placement support for Aboriginal children on permanent care orders.

In our view there is a significant need for improvements to the child protection system through increased resources to prevention and early intervention services, an increase in culturally attuned Aboriginal family services, further resourcing of Aboriginal Child Specialist Advice and Support Service (ACSASS) and the fulfilment of Section 18 of the CYF Act, 2005. VACCA believes these reforms will do more to protect vulnerable children than the legislation changes outlined in the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*