

22 March 2024

Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket NSW 1240

By Email: ipart@ipart.nsw.gov.au

Dear Madam Chair,

Re: Draft Terms of Reference for the IPART Review of Out-of-Home Care cost and pricing

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) regarding the draft Terms of Reference (**TOR**) for the Tribunal's *Review of Out-of-Home Care cost and pricing (Review)*. Thank you for the opportunity to provide feedback.

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. More than 280 ALS staff members based at 27 offices across NSW and the ACT support Aboriginal and Torres Strait Islander people through the provision of legal advice, information and assistance, and court representation in criminal law, care and protection law, and family law. We also undertake policy work and advocacy for reform of systems which disproportionately impact Aboriginal and Torres Strait Islander families and communities.

The ALS supports, in broad terms, the scope of the TOR for the Review and has provided feedback that will ensure that the Review addresses matters that are impacting Aboriginal and Torres Strait Islander children and families experiencing the OOHC system. The ALS supports the investigation of the cost efficiency of the OOHC system; however, we recommend that this requires consideration of the provision of a high level of service, quality and innovation within the OOHC sector. The present system is undergoing reform¹, particularly in relation to Aboriginal and Torres Strait Islander families, and it would be prudent for the Review to be considering these unfolding reforms during the review process.

The Context of the Review

In addition to “improving the performance and financial sustainability of the out-of-home care system”, the ALS recommends that the Review should include a guiding principle that mirrors section 9(2)(d) of the *Children and Young Person (Care and Protection) Act 1998* (NSW) (**Care Act**) – namely, that if a child or young person is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests,

¹ <https://dcj.nsw.gov.au/news-and-media/media-releases/2024/nsw-government-and-aboriginal-communities-working-to-improve-saf.html>

the child or young person is entitled to “special protection” and assistance from the State. We recommend that all the objects and principles of the Care Act should be considered in the process of this review.

In taking action to safeguard or promote the safety, welfare and wellbeing of a child, the Care Act requires that “active efforts” are made to prevent that child or young person from entering out-of-home care (OOHC), to restore the child or young person to their parents or, where that is not practicable, to place the child or young person with family, kin or community². We recommend that the TOR specifically refer to the “active efforts” principle found in section 9A of the Care Act.

The Tasks

The OOHC system has been subject to recent evaluations and independent reviews³. Importantly, draft task 1(a) should include specific reference to and note the *Evaluation of the Permanency Support Program* (April 2023)⁴, given that the findings and recommendations made in that Final Report followed a three-year evaluation of the Program. Several of the findings in that report relate also to the lack of available data and mechanisms for collection of data on how PSP funding was being used. This is an important finding in the context of investigating cost efficiency.

Whilst draft task 2(c) refers to “living independently”, the ALS considers it appropriate that the TOR make specific reference to the developing benchmark costs for supporting young people through the leaving care process. This includes casework support up to 21 years of age, and financial support provided through Leaving Care Financial Plans, up to the age of 25 years. Whilst not every young person leaving care has a Leaving Care Plan, they should.⁵ And the cost of providing after-care support as part of those plans, is an additional cost borne by the OOHC system.

Relevant Considerations

Whilst the ALS supports consideration of the possible additional costs for Aboriginal Community-Controlled Organisations (ACCOs) as PSP providers, we note that ACCOs are also performing important functions such as restoration and family preservation work. In addition to this, there are a large number of Aboriginal and Torres Strait Islander children and young people who are case managed by non-Aboriginal, non-government organisations. Whether there are additional costs for those children and young people also should be considered.

We agree that the Review should consider differences in levels of need, case complexity and casework requirements to support children, young people and families. Benchmarking the costs of providing OOHC that ensures the safety, welfare and wellbeing of children and young people,⁶ and

² Section 9A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW)

³ Including the review of two children in OOHC in June 2023 following an interim judgement of Children’s Court Magistrate Sheedy. The review can be found on the DCJ website - <https://dcj.nsw.gov.au/documents/service-providers/out-of-home-care-and-permanency-support-program/about-permanency-support-program-and-overview-childstory-and-oohc-resources/independent-review-of-two-children-in-oohc-summary-report.pdf>

⁴ Rose V, et al (2023) *Evaluation of the Permanency Support Program, Final Report*, Centre for Evidence and Implementation, Sydney.

⁵ *Children and Young Persons (Care and Protection) Act 1998* (NSW), section 166

⁶ Section 9(1) of the *Children and Young Person (Care and Protection) Act 1998* (NSW)

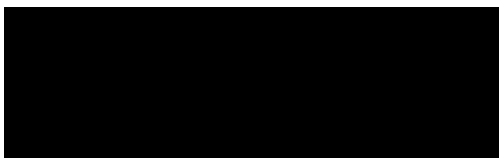
affords them “special protection and assistance”,⁷ should include consideration of factors⁸ such as whether the child or young person:

- is experiencing social/economic disadvantage, whether arising through their location, family or care provider;
- is a member of an Aboriginal or Torres Strait Islander community and whether they are placed according to the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles⁹;
- is experiencing a disability;
- is experiencing, or at risk of experiencing violence, exploitation, homelessness, or disconnection from education; or
- lives in a regional, remote, or rural location where the cost of living or of obtaining services is higher.

Finally, the ALS recommends that the Review also include specific reference to undertaking a costs-benefit analysis of the inclusion of for-profit providers in the OOHC system – particularly in the area of High-Cost Emergency Accommodation. The *Family is Culture Review Final Report* makes reference to for-profit providers and recommends there be no for-profit providers in OOHC.¹⁰ That recommendation is not presently supported by the NSW Government,¹¹ despite Minister for Families and Communities, Kate Washington, indicating in the Budget Estimates on 9 November 2023 that her Department was “trying to take back control of a system that is largely run, especially when we’re talking about alternative care arrangements by private providers – and many of them are for profit – who, in my view, do not belong in the system and ought not be in the system”.¹²

The ALS welcomes the opportunity to discuss this feedback further. If you have any questions, please contact our policy team via email on [REDACTED]

Sincerely,



Nadine Miles

Principal Legal Officer

Aboriginal Legal Service (NSW/ACT) Limited

⁷ Section 9(2)(d) of the *Children and Young Person (Care and Protection) Act 1998* (NSW)

⁸ These factors may appear in other submissions on the draft TOR, and are repeated here because of their importance.

⁹ Section 13 of the *Children and Young Person (Care and Protection) Act 1998* (NSW)

¹⁰ *Family is Culture Review Report: Independent Review of Aboriginal children in OOHC* (2019) -

<https://dcj.nsw.gov.au/documents/children-and-families/family-is-culture/family-is-culture-review-report.pdf>

Recommendation 11: The NSW Government should amend clause 45 of the *Children and Young Persons (Care and Protection) Regulation 2012* (NSW) and all other related clauses to ensure that only a charitable or non-profit organisation may apply to the Office of the Children’s Guardian for accreditation as a designated agency.

¹¹ Department of Community and Justice’s FIC Progress Report (February 2024), at p25.

¹² <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3177/Transcript%20-%20PC5%20-%20Washington%20-%209%20November%202023%20-%20CORRECTED.pdf> – at pp 19 and 20.

