

Submission

No 86

INQUIRY INTO CHILDREN AND YOUNG PEOPLE 9-14 YEARS IN NSW

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Response to the calling of submissions to the:

Inquiry into Children and Young People 9-14 Years in NSW

Role of AbSec

The Aboriginal Child, Family and Community Care State Secretariat (NSW) Inc (AbSec) is a peak body primarily funded by the NSW Department of Community Services (DoCS) to advocate on behalf of Aboriginal Children and Young People families, communities and Aboriginal agencies involved with the Out Of Home Care (OOHC) system of NSW. AbSec also deals with wider welfare issues relevant to Aboriginal Children and Young People, families and communities in NSW and nationally¹.

AbSec was formed out of a recognised need, identified by its member agencies and the broader Aboriginal community to enable Aboriginal Children and Young People, carers, communities and OOHC agencies to have an independent voice in the welfare sector.

Submission

As a peak Aboriginal agency it was intended that this submission should not only focus on the broader issues outlined in the terms of reference of this inquiry, but would also more thoroughly submit on issues that more directly affect Aboriginal Children and Young People, Aboriginal communities and Aboriginal OOHC agencies. As outlined in the covering letter computer problems have resulted in a much reduced submission to this Inquiry. The original submission attempted to highlight how the broader concept of disadvantage and the implementation of past and present policies and practices - resulted in poor outcomes for Aboriginal people in general but more specifically has the propensity to impact to a greater degree on Aboriginal Children and Young People.

Unfortunately, whilst various government departments record information on the number of Aboriginal Children and Young People affected by various issues – neither DoCS nor Juvenile Justice were able to supply a breakdown of data by both age and Aboriginality.

It is intended that this current submission will focus on two main areas which significantly impact on Aboriginal Children and Young People 9-14 years. These being:

- **The incarceration of Aboriginal Children and Young People in the Juvenile Justice System**

Approximately 50% of all Children and Young People incarcerated in the Juvenile Justice system are Aboriginal - with ½ of that 50% being on remand².

AbSec has serious concerns that for this second group (the remandees) - there are often no “safe” placement options for these Aboriginal Children and Young People who might otherwise be granted bail - which often results in these Aboriginal Children and Young People (some as young as ten) being remanded in custody, thereby exposing them to the corrections system at a very impressionable stage of their development. This early exposure to the system can generally have no other outcome other than these children being placed on the treadmill of the Justice System.

¹ AbSec Vision Statement as contained in the Constitution of AbSec

² Brendan Thomas – Assistant Director General – NSW Attorney General’s department at the Indigenous Communities Forum – Special Commission of Inquiry into Child Protections Services in NSW 24 April 08.

It is further concerning that the last remaining Aboriginal youth bail house (Ja-biah at Mt Druitt) has ceased to operate (closing in December 2007 after funding from Juvenile Justice was discontinued). AbSec maintains that if problems are encountered with innovative programs enabling Aboriginal Children and Young People to be safely placed, whilst on remand – every effort should be made to ensure these programs can continue. There is no benefit for Aboriginal Children and Young People in throwing the baby out with the bath water. AbSec has the facilities to assist “at risk” agencies to overcome governance or program delivery difficulties - if asked to intercede by the relevant funding agencies.

The concerns regarding “safe” placement options for young Aboriginal remandees was reiterated by Justice Woods at the Special Commission of Inquiry into Child Protection Services in NSW where he stated³:

“[t]here is the question of provision of Aboriginal juvenile bail houses. There was one such place funded, but, for various reasons, it became de-funded. For adult offenders who are facing potential trial, there are various places where they can be sent, subject to fairly strict bail conditions, particularly for drug rehabilitation and so on, but are there now, in this State, any juvenile bail houses reserved for Aboriginal offenders, funded by DoCS or otherwise?”

(MS Anne Marie SABELLICO- DoCS): *“We don’t have any funded.”*

(MR Brendan THOMAS – NSW Attorney General’s): *“Commissioner, no.”*

The Commissioner continued: *“It is a real problem if the consequence is that the young person is held for a lengthy period in detention, in a detention centre or otherwise. There are various reasons why the particular place which did exist was de-funded, and I think we know the reasons for that, but are there any other views in relation to this question of out-of-home care for those who are not in potential custodial situations?”*

MR Brendan Thomas – The assistant Director General of the NSW Attorney General’s department also stated: *“Commissioner, the problem of children not having safe places to stay is a real problem, as we are finding out on a regular basis. We have seen a significant increase in the number of Aboriginal juveniles being placed on remand in detention centres. I think just over 50 per cent of the Aboriginal Children and Young People in detention centres are remandees, not sentenced young people, and we have a constant, regular problem of trying to find safe and stable accommodation for Aboriginal juveniles appearing in criminal court to enable them to get bail conditions.*

The bail house that you spoke of did address that to some extent in one place. I think that at any given time there were only three or four people actually in it, so it couldn’t really address the volume of young people who come before the court.”

³ Special Commission of Inquiry into Child Protection Services in NSW - [http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/DOC080424.PDF/\\$file/DOC080424.PDF](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/DOC080424.PDF/$file/DOC080424.PDF) - pages 53 – 55

The Commissioner continued: *“There is a case which very recently went to the District Court where a magistrate directed that a young girl be given bail and, in effect, directed the department to find accommodation which was suitable for her. The department said, “We can’t find accommodation; we can’t comply and are not going to comply with the bail condition”. Eventually, they appealed to the District Court to argue that the magistrate lacked jurisdiction to impose the particular bail condition and they relied, I think, on a decision in re George, which did place some restrictions on the magistrate’s power to order the Director General to do anything in particular. However, the District Court held that the bail condition was not beyond power. But it is a classic case of a young girl who simply could not be placed by Juvenile Justice or by DoCS or anybody in suitable accommodation pending the hearing. It does seem to us that this has to be addressed.”*

- **Aboriginal Children and Young People continue to be removed from their families and communities and placed in the care system at a rate totally disproportionate to the population demographics.**

The implementation of past and present child protection, removal and OOHc policies on Aboriginal families continues to impact on those families, Children/Young People and consequently on all Aboriginal community structure and functionality.

AbSec believes that the removal and fostering of Aboriginal Children and Young People can in many instances be demonstrated to be as a direct result of the factors associated with the indicators of social disadvantage disclosed in the various previous reports. The systemic failure to implement many of the recommendations of these reports not only continues to impact on the ability of Aboriginal people to overcome disadvantage but in many cases has actually led to the exacerbation of the problems associated with the identified disadvantages including impacting on the subject age group of Children and Young People.

Although a complete statistical breakdown by age of the number of Aboriginal Children and Young People in care is unavailable, it can be assumed that the numbers for the subject age group would be similar to the overall statistics available for 0-18 years. On that basis it can only be stated that:

An Aboriginal Child or Young Person is 15 times more likely to be the subject to a child protection report than a non-Aboriginal Children or Young Person

An Aboriginal Child or Young Person is 10 times more likely to be placed in the out of home care system than a non Aboriginal Child or Young Person

Currently on 5% of Aboriginal Children and Young People in care are supervised by Aboriginal agencies – set to rise to 10% under DoCS’ capacity building initiative

At least 500 Aboriginal Children and Young People are placed in non Aboriginal care. (a figure AbSec would dispute as too low a representation of the true figure)⁴.

⁴ DoCS submission to the Special Commission of Inquiry into Child Protection Services in NSW - [http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/DoCS_Aboriginal_Communities_Submission_April_2008.pdf/\\$file/DoCS_Aboriginal_Communities_Submission_April_2008.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/DoCS_Aboriginal_Communities_Submission_April_2008.pdf/$file/DoCS_Aboriginal_Communities_Submission_April_2008.pdf)

AbSec submitted an extensive submission to the Special Commission of Inquiry into Child Protection Services in NSW on various other issues that may relevant to the current subject inquiry. A brief synopsis of the main issues identified follows.

- **Data collection and data distribution**

AbSec believes that unless government departments implement extensive data collection and reform strategies, then it is impossible to develop adequate policy or programs for Aboriginal Children and Young People.

- **Aboriginal Cultural Care Planning**

AbSec believes that every effort should be made to implement a state wide Aboriginal cultural care planning program for Aboriginal Children and Young People in care. AbSec further believes that this program should be mandated by legislation and should encompass all government and non-government out of home care service providers. These plans should include facilities for confirmation of Aboriginality of Aboriginal Children and Young People in care and include Retrospective Cultural Care Plans for those children and young people already in care. This program should be supervised by a panel of Aboriginal Community visitors, especially for those Aboriginal Children and Young People in non Aboriginal care.

- **Early intervention**

AbSec believes that further funding and support needs to be given to Aboriginal community controlled early intervention programs. These should be community developed holistic services based around current Aboriginal service providers with established links to the communities. The establishment of these services would have the benefit of allowing continuity of service provision. Eg early intervention, family support, education assistance (tutoring), early childhood services, program development for teenagers, child protection, out of home care services and foster care/r support services.

- **Benefits/ better outcomes associated with kinship care**

AbSec believes that better outcomes are achieved for Aboriginal Children and Young People of all ages when those children are placed within the immediate or extended families from which they belong. To achieve these outcomes it is necessary for DoCS to fully acknowledge the worth of these carers by offering the same level of support that is available to statutory/foster carers.⁵ Kinship carers are still unlikely to be offered the support of an out of home care caseworker.

- **Aboriginal Carers perception of treatment**

Allied to the above dot point – AbSec's current research indicates that there is an overwhelming perception amongst DoCS' Aboriginal carers that they are treated poorly by DoCS. This perception can only have the outcome of further alienating Aboriginal people and communities from the "Welfare" and impacting on the department's ability to attract Aboriginal carers.

⁵ It should be acknowledged that DoCS' financial support policies have provided that kinship carers should now receive the same level of support as statutory carers. Although AbSec is receiving a considerable number of complaints indicating that this is not the case.