

INQUIRY INTO REPARATIONS FOR THE STOLEN GENERATIONS IN NEW SOUTH WALES

Organisation: Aboriginal Child, Family and Community Care State Secretariat
(AbSec)

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The Director,
General Purpose Standing Committee No. 3
Parliament House
Macquarie Street
SYDNEY NSW 2000

2 October 2015

Re: Reparations for the Stolen Generations in New South Wales (Inquiry)

The Aboriginal Child, Family and Community Care State Secretariat (AbSec) is an incorporated not-for-profit Aboriginal community organisation and is recognised as the peak NSW Aboriginal body within the child protection sector. AbSec supports Aboriginal communities to develop and operate accredited out-of-home care (OOHC) agencies within their communities, as well as providing policy advice and advocacy on behalf of our member agencies and communities to the government and non-government sectors on issues affecting Aboriginal families involved in child protection and OOHC systems. In addition to this focus, AbSec is also committed to promoting the participation of Aboriginal families and communities in decision making about Aboriginal children. This is achieved through ongoing advocacy and policy advice, as well as two significant projects: Protecting Aboriginal Children Together and Family Group Conferencing. AbSec is in the process of arguing for the redevelopment of the Aboriginal child welfare sector in NSW, supporting the evolution of accredited Aboriginal community-controlled OOHC agencies into holistic Aboriginal child and family services that provide universal and targeted prevention and family preservation services in addition to OOHC services in a way that is child focused and tailored to the needs of families. Central to these initiatives is the importance of local community control and empowering Aboriginal communities to identify the approaches most relevant to them.

AbSec is pleased to make a submission to this Inquiry into reparations for the Stolen Generations in New South Wales (the Inquiry). As we approach the 20th anniversary of the landmark 'Bringing them Home' report (the Report), it is important that we take this opportunity to reflect on whether we are meeting the commitments to Aboriginal families and communities that 'Bringing them Home' represented, in particular the response of the State and sector to the recommendations and spirit of the Report. AbSec notes that reparations outlined in the Report includes acknowledgement and apology, guarantees against repetition, measures of restitution, measures of rehabilitation, and monetary compensation, and recommends that it is available to all who suffered as a result of policies of forced removal, including individuals, families, communities and their descendants. Given the widespread nature of past removals over numerous generations, as well as the fear and distrust of Aboriginal people towards Government services intended to support children and families (such as Police, Education and Child Protection authorities), all Aboriginal families have been touched in some way by these past policies of forced removal.

While acknowledging this broad definition of reparations and the critical importance of each of the included elements for those affected, our submission, as the peak Aboriginal NSW body in the child welfare sector, will focus on two key elements; guarantees against repetition and measures of rehabilitation, as these elements are most relevant to the current child welfare system. This is not to minimise the importance of restitution and monetary compensation, which we agree are a critical element of reparations, however reflects our organisation's role and our responsibilities to our members and communities.

In considering these issues, we are guided by the recommendations of the Report, particularly those that relate to policy and processes regarding the care and wellbeing of Aboriginal and Torres Strait Islander children and young people, including:

- Recommendations 33a-c, which emphasise the importance of healing and Aboriginal community control of health and well-being services through Aboriginal community controlled organisations and partnerships between government services and local Aboriginal community-based services
- Recommendations 43a-c, which emphasise the importance of Aboriginal self-determination in relation to the wellbeing of Aboriginal and Torres Strait Islander children through an appropriate national framework including empowering and resourcing communities to deliver essential community services, such as child welfare services
- Recommendations 44 - 52, regarding the establishment of binding minimum standards and accreditation processes across all jurisdictions regarding the treatment of all Aboriginal and Torres Strait Islander children. These include issues around the best interests of the child (including the importance of ongoing connection to family, community, culture and Country), the inclusion of appropriate Aboriginal community-controlled organisations in all aspects of decision making, the Aboriginal Child Placement Principle, and the establishment of adoption as only an option of last resort and where it is overseen and implemented by Aboriginal people for Aboriginal children.

The spirit and principles of these recommendations are intended to safeguard the Aboriginal community from a repeat of the Stolen Generations and promote rehabilitation through empowering Aboriginal communities to take ownership of child and family welfare service provision and healing. In doing so, they seek to address the intergenerational trauma caused by colonisation, dispossession, separations and marginalisation that continues to impact on Aboriginal families and communities and limit their ability to seek help from those systems that are responsible for the harm in the first place. While there has been progress in some areas, there remains a significant way to go to fully realise the right of Aboriginal communities to exercise self-determination with respect to the child and family welfare sector in NSW. This submission will therefore focus on the steps required to place responsibility for Aboriginal children and families back in the hands of Aboriginal people and

communities, and recent developments that support or threaten this process. In particular:

- Ongoing challenges in the application of the Aboriginal Child and Young Person Placement Principle
- Recent legislative changes for legal permanence
- The need for holistic Aboriginal community-controlled service delivery providing tailored Aboriginal child and family services across the continuum of the child and family welfare sector (universal and targeted services, family support and preservation, restoration and out-of-home care).

Aboriginal contact with the child protection and out-of-home care systems

Aboriginal children and young people continue to be over-represented within the child protection and OOHC populations, being 7.3 times more likely to be receiving child protection services, 8 times more likely to be the subject of a substantiation, and 9.7 times more likely to be in OOHC. That is, 1 in 8 Aboriginal children received a child protection service in 2013-14, compared with 1 in 53 of their non-Aboriginal peers, while 1 in 14 Aboriginal children are in OOHC, compared with 1 in 136 non-Aboriginal children. This rate has increased markedly since the time of the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, at which time approximately 1 in 39 Aboriginal children were in OOHC¹. Recent evidence regarding substantiations tend to suggest that Aboriginal children are more likely to be reported for neglect than other types of abuse, compared to their non-Aboriginal peers, and are more likely to come from areas with the lowest socioeconomic status², suggesting that larger social factors play a significant role in the over-representation of Aboriginal children and young people in the child protection and OOHC systems.

With respect to placement orders, the latest available NSW figures³ show that there were 19997 children and young people in OOHC in NSW in June 2015. These figures show that:

- 7447 were placed with NGOs (2211 Aboriginal CYP – approximately 30%)
 - 1127 Aboriginal CYP placed with accredited Aboriginal agency
 - 1091 Aboriginal CYP placed with Aboriginal carers (including relative/kin or foster care)
- 5629 were placed with FACS in statutory relative/kin or foster care (2520 Aboriginal CYP – approximately 45%)

¹ AIHW (2015) Child Protection Australia 2013-14

² Ibid. – SES measures based on the Index of Relative Socio-Economic Advantage and Disadvantage (IRSAD), which assesses 'access to material and social resources and their ability to participate in society' (ABS 2013, cited in AIHW (2015). Socioeconomic data did not include NSW data, as this data was not available, and is therefore based on data from other states.

³ NSW Family and Community Services, NSW OOHC Aboriginal Transition Dashboard June 2015

- 2430 were placed on guardianship orders (number of Aboriginal CYP on guardianship orders not reported)
- 1399 placed in supported care without any orders (number of Aboriginal CYP in supported care without orders not reported)
- 2010 placed in supported care with orders (number of Aboriginal CYP in supported care with orders not reported)

Worryingly, it is not possible to further examine this data with respect to the number of Aboriginal children on guardianship or supported care orders, as these figures are not routinely reported. The lack of robust data on this important issue undermines the ability of AbSec to advocate for the needs of Aboriginal children and families and to better support Aboriginal communities and the Aboriginal sector more generally to build capacity and deliver services that meet the needs of Aboriginal children in OOHC and their families. However, what is known is that too many Aboriginal children and young people are in OOHC, and that too many of those in OOHC are not being supported by Aboriginal community-controlled services, with about 3 in 4 Aboriginal children in foster or kinship care supported by a non-Aboriginal organisation (either NSW Department of Family and Community Services (FACS) or a non-Aboriginal NGO).

Recommendation:

- 1. That NSW Government agencies need to be more transparent with data regarding the welfare and wellbeing of children in out-of-home care, in particular sharing data regarding Aboriginal children and families with relevant Aboriginal organisations. Data regarding interactions between the child protection system and Aboriginal communities should be disaggregated to allow specific communities to understand the specific challenges they face and to inform setting priorities and strategies for addressing them.**
- 2. Transition case management and support for all Aboriginal children and young people currently in out-of-home care to Aboriginal community-controlled agencies as the best means of promoting family restoration embedded in their community with culturally appropriate supports, as well as ensuring that Aboriginal children that are not able to be restored retain their connection to family, community, culture and Country that is critical to their lifelong well-being and identity formation. Aboriginal community-controlled agencies are the most appropriate provider of out-of-home care services to Aboriginal children and young people.**

The Aboriginal Child and Young Person Placement Principle

The Aboriginal Child and Young Person Placement Principle (ACYPPP) was developed in response to the devastating 'trans-generational' effects of the forced removal of Aboriginal children from their families, built on the intention of keeping Aboriginal children connected to their family, community culture, and Country, and to

empower Aboriginal communities with respect to the care and protection of their children. NSW reports the highest level of compliance with the ACYPPP, with 46.1% of Aboriginal children being placed with Aboriginal relatives or kin, 19.7% placed with an Aboriginal carer, and 15.6 placed with non-Aboriginal relatives or kin. This level of compliance should be applauded, however it should be noted that many members and Aboriginal communities express scepticism at these figures, emphasising the importance of greater transparency between FACS and Aboriginal communities and AbSec, with respect to the placement of Aboriginal children and young people.

Further, this focus on compliance minimises other aspects of the principle regarding the placement of Aboriginal children in out-of-home care, reducing the ACYPPP to a simple placement hierarchy, and does not tell us anything about whether an appropriate decision making process regarding the safety, welfare and wellbeing of Aboriginal children has been followed⁴. For example, an audit of the ACYPPP in Queensland⁵, including processes to accurately identify Aboriginal children, to engage relevant Aboriginal community-controlled organisations, to apply the hierarchy of placement options, to integrate the views of the child's community and properly consider how significant relationships with family, community, culture and Country would be retained, as well as the assessment of the commitment of non-Aboriginal carers to maintain this connection, reported full compliance in approximately 12.5% of cases. In particular, there was a significant gap in the application of the placement hierarchy, with only 13% of cases audited demonstrating evidence of proper consideration of each step, in order, until a placement decision is made. In the same year (2012-13), Queensland reported that 22.8% of Aboriginal children in OOHC were placed with their Aboriginal family or kin, 19% with other Aboriginal carers and 13.6% with non-Aboriginal carers⁶. At this point, full compliance with the ACYPPP in NSW, including the participation of Aboriginal families and communities in decision making about Aboriginal children, is not known. AbSec has recently approached FACS with a proposal for AbSec to conduct a similar audit in NSW to better understanding the current practical application of the ACYPPP. This would lead to the development of a robust decision making and monitoring framework designed by Aboriginal people, community-controlled agencies and communities in partnership with FACS.

The ACYPPP's aim of protecting Aboriginal children's cultural rights is also reflected in AbSec's ongoing commitment to the development and implementation of comprehensive cultural care and cultural support plans. Cultural care planning is seen as a required action prior to final orders of an Aboriginal children or young person entering OOHC, with cultural support plans being an ongoing, regularly reviewed process that facilitates their cultural development. Connection to culture remains a significant positive factor promoting resilience for children and young

⁴ Arney, F., Iannos, M., Chong, A., McDougall, S., and Parkinson, S. (2015) Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations, *Child Family Community Australia* No. 34.

⁵ Commission for Children and Young People and Child Guardian (2013) *Indigenous Child Placement Principle: Audit Report 2012/13*, The State of Queensland

⁶ AIHW (2014) *Child Protection Australia 2012-13*

people in the face of significant adversity⁷, a message that was clear in the testimonies of Aboriginal people to the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* and captured in *Bringing Them Home*. However, as with the application of the ACYPPP with respect to placement decisions, AbSec, our members and the broader Aboriginal community continue to hold significant concerns about the quality of cultural care and cultural support planning practice for Aboriginal children, a message echoed in relevant research⁸. For example, existing research from other jurisdictions suggest that implementation of cultural support plans can be as low as 10%⁹, or, even where they are common, are too often of poor quality¹⁰. A recent audit in Queensland showed that despite almost all Aboriginal and Torres Strait Islander children audited had a cultural support plan (98.5%), about 2 in 3 contained only generic information about cultural activities and observances (general references to family contact, NAIDOC etc), did not identify supports that carers might require to promote the child's connection to culture, with half failing to identify significant family members who could help a child develop their cultural identity. In addressing similar issues in Victoria, the Victorian Commissioner for Aboriginal Children and Young People, Andrew Jackomos, noted that

*"the system... is failing in practice to acknowledge that cultural identity and connectedness is vital to the best interests of Aboriginal children... a cultural support plan is not about just taking a child to a NAIDOC march, or sticking up an Aboriginal flag. Cultural meaning comes from connections, relationships and socialisation with other Koori children and role models who will inspire and support the child as their life unfolds."*¹¹

AbSec is unaware of the proportion of Aboriginal children in OOHC who have a quality cultural care plan and a robust cultural support plan that is currently being implemented. However, it is our position that all Aboriginal children entering OOHC must have these plans which outline how the child and their carer (even when the carer is a family member) will be supported to protect and promote the child's cultural rights. It is critical that these plans outline how Aboriginal children in OOHC will be supported to maintain meaningful connections to family, community, culture and Country, in the best interests of their safety, welfare and wellbeing as a means to redressing future generations becoming involved in OOHC, and losing all sense of their cultural connection and identity.

⁷ National Scientific Council on the Developing Child (2015) *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper 13*. <http://www.developingchild.harvard.edu>

⁸ Libesman, T. (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*, available at <http://www.snaicc.org.au/uploads/rsfil/02727.pdf>

⁹ Jackomos, A. (2014) *International Human Rights Day Oration: Linking our past with our future: How cultural rights can help shape identity and build resilience in Koori kids*. 4 December 2014

¹⁰ Commission for Children and Young People and Child Guardian (2013) *Indigenous Child Placement Principle: Audit Report 2012/13*, The State of Queensland

¹¹ Jackomos, A. (2014) above, n. 5

Recommendation:

- 3. That the NSW Government support AbSec to independently review compliance to inform better practice with the Aboriginal Child and Young Person Placement Principle within the sector and the implementation of cultural care and cultural support plans for all Aboriginal children and young people in OOHC.**
- 4. That the NSW Government support AbSec, through effective engagement with key stakeholders, to develop a robust decision making framework for the application of the Aboriginal Child and Young Person Placement Principle in NSW based on the findings of an independent review.**

Recent Legislative changes

The stated aims of the NSW Government's Safe Home for Life reforms are to develop a child protection system tailored to the needs of individual children and families¹², including supporting parents' to provide a safe home for their children and providing a permanent home for children who are unable to safely remain at home as part of a modern, responsive child protection system. A central feature of these reforms is the implementation of the Permanent Placement Principles, contained in s.10 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*, which outline the preferred order of permanent placements for Aboriginal children and young people, specifically:

1. Restoration to their family
2. Guardianship
3. Foster care (parental responsibility to the Minister)
4. Open adoption (note: for non-Aboriginal children, adoption is placed above foster care)

The prioritising of guardianship placements or other permanent legal orders for children and young people unable to safely return to their parents is of significant concern to Aboriginal families and communities in NSW, particularly where that order may place a child outside of the Aboriginal family and community. Guardianship orders invest all parental powers with a "relative, kin or other suitable person"¹³ who may not be connected to the child's Aboriginal family or community, and therefore is not supported by AbSec in general as a suitable placement option for Aboriginal children and young people for a number of reasons.

First, AbSec notes that children and young people placed on guardianship orders and their carers receive no ongoing practical supports in caring for children and young people, despite the likelihood of increased social, emotional and behavioural challenges as a result of early experiences of trauma. AbSec and our members are

¹² NSW Family and Community Services, Changing the way we work, Safe Home for Life website, available online [accessed 25/9/2015] at <http://www.facs.nsw.gov.au/reforms/safe-home-for-life/changing-the-way-we-work>

¹³ S.10A(3)(b) *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

not confident that this model is able to assure the community that those children and young people on guardianship orders, and those that care for them, will be supported by specialist therapeutic care models, promoting social, emotional, health and educational outcomes for this already vulnerable population. Research suggests that maintaining links with the sector can serve as a safety net to preserve placements and provide important emotional and educative supports to households providing alternate care for children and young people¹⁴. At a time when many in the sector are calling for increased supports for children and young people in out-of-home care¹⁵, guardianship instead withdraws these important practical supports, conferring this responsibility squarely on to the already significantly over-burdened shoulders of children and young people and those that care for them.

Second, in removing children from their families and placing them in alternate care, the Government assumes responsibility to ensure that appropriate systems are in place to minimise and prevent abuse in care in the first instance, and to intervene promptly where harm does occur. As demonstrated through the Royal Commission into Institutional Responses to Child Sexual Abuse, while the overwhelming majority of kinship and foster carers provide appropriate care to children and young people in out-of-home care, children and young people exposed to abuse and neglect are more vulnerable to future abuse and victimisation, including sexual abuse and exploitation, as well as being more likely to be socially isolated and disengaged in their communities, reducing the likelihood of disclosures or the harm being discovered. While screening processes common to foster care, guardianship and adoption seek to minimise this risk (such as Working With Children Checks and the Carers Register), these processes do not guarantee safety, with too many children and young people experiencing abuse in care. Children tend to be safest when supported by relationships and connections with stable, caring and trusted adults in their community, with caseworkers representing a significant safeguard for children and young people in out-of-home care. Ongoing casework that is a feature of foster care plays an important role in promoting the safety, welfare and wellbeing of children in out-of-home care, providing ongoing monitoring of the placement to prevent harm from occurring, as well as a relationship with a trusted adult, supporting children to make disclosures and to intervene promptly and appropriately to ensure children and young people are safe. By withdrawing this important safeguards that enables the out-of-home care system to identify and respond appropriately to abuse in care, permanent care orders such as guardianship and adoption fail to provide appropriate systems to keep children and young people in care safe from harm, and in doing so fail the Government's duty of care to children and young people in need of care and protection.

Third, ongoing casework also helps to ensure that children and young people in out-of-home care remain connected to their family, community, culture and Country, including supporting children and their carers with respect to birth family contact, or to

¹⁴ Cripps, K., and Laurens, J. (2015) 'Protecting Indigenous children's familial and cultural connections: reflections on recent amendments to the Care and Protection Act 2007 (NT)', *Indigenous Law Bulletin* Vol. 8(17)

¹⁵ Australian Senate Community Affairs References Committee (2015) Out of home care, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Out_of_home_care/Report

support the development, implementation and review of appropriate cultural support plans. As noted above, there are significant concerns with the current development and implementation of cultural care and cultural support plans for Aboriginal children entering or in out-of-home care. These concerns for the cultural dispossession and disconnection of Aboriginal children are compounded by permanent legal care orders such as guardianship and adoption, particularly in the absence of community oversights to promote the safety and cultural care of Aboriginal children¹⁶. Further, even where case plans are part of a guardianship order, including commitments to maintaining a child's connections to family, community, culture and Country, there are no legal mechanisms to monitor the child's safety and cultural care once the order is made, or to enforce the implementation of existing care plans. For all practical purposes, a child on a guardianship order is the equivalent to a natural child of their guardian for the period of the order, and in the absence of any known risk of significant harm, there appears to be no action that the child's Aboriginal family or community could take to ensure that the child's cultural rights are respected. In this way, permanent care orders such as guardianship or adoption cannot be said to value the cultural rights of Aboriginal children, and are therefore not in the best interests of Aboriginal children and young people in need of alternate care.

Aboriginal communities remain distrustful of government in the child welfare space. Too often, significant decisions with wide-reaching impacts on the lives of Aboriginal children, families and communities (including the identification of Aboriginal children and families, decisions about safety, welfare and wellbeing, and placement decisions) continue to be made for, rather than by, Aboriginal families and communities, despite recent efforts to promote "consultation". As such, AbSec, and our member agencies remain opposed to permanent care orders being made through non-Aboriginal controlled processes and imposed on Aboriginal families and communities, and see such processes as failing to provide Aboriginal people with the opportunity to act "with as much self-determination as is possible" in child welfare matters¹⁷. Additionally, AbSec argues that such orders do not represent the best interests of children and young people in need of alternate care, given the lack of ongoing practical support that is provided to children and young people and those that care for them, the lack of monitoring for safety, and the absence of effective mechanisms to ensure their rights to family, community, culture and Country are respected. In these ways, permanent care orders such as guardianship represent the closest contemporary analogue of past government policies associated with the Stolen Generations in their failure to ensure the safety and wellbeing of children in alternate care and their capacity to contribute to the disconnection of Aboriginal children from their family, community, culture and Country. Critically, having first determined that a child is in need of care and protection, through permanent care orders, FACS effectively "'washes their hands' on the matter"¹⁸ deferring their responsibility to assure the best interests of the child.

¹⁶ Cripps, K., and Laurens, J. (2015) 'Protecting Indigenous children's familial and cultural connections: reflections on recent amendments to the Care and Protection Act 2007 (NT)', *Indigenous Law Bulletin* Vol. 8(17)

¹⁷ s.11 *Child and Young Persons (Care and Protection) Act 1998 (NSW)*

¹⁸ Page 13, Cripps, K., and Laurens, J. (2015) 'Protecting Indigenous children's familial and cultural connections: reflections on recent amendments to the Care and Protection Act 2007 (NT)', *Indigenous Law Bulletin* Vol. 8(17)

AbSec acknowledges the importance of providing safe, stable and consistent care for children and young people who are unable to safely remain with their families, and the risks of leaving children to “drift” in the out-of-home care system. However we feel that permanent care orders such as guardianship orders are not the most appropriate way to achieve stability for vulnerable Aboriginal children and young people and in some cases may in fact confer other significant risks, including future risk of harm and disconnection from family, community, culture and Country, as argued above. Rather, AbSec agrees with evidence provided to the Senate Inquiry from witnesses including the National Children’s Commission and the CREATE Foundation which argues that stability for children should not be conflated with legal permanence, and can be achieved under other types of orders. In fact, AbSec suggests that stability for Aboriginal children and young people in care is promoted where ongoing practical, specialist supports are made available to children in care and those that care for them, and where services work proactively and in collaboration with families and communities to ensure continuity of care for vulnerable children and young people. This cultural safety-net works to support the development and implementation of care plans that support Aboriginal children and their care networks, identify social, emotional and behavioural challenges early and provide specialised therapeutic supports, and embed children and their carers within a community dedicated to the safety and development of Aboriginal children, including their cultural and familial rights. That is, we believe that the current instability experienced by too many children and young people in OOHC is not the result of a lack of legal permanence or a lack of commitment by kinship and foster carers in the absence of legal permanence, but rather a failure of the child protection system to provide the necessary supports that empower families and communities to meet the changing needs of children and young people in out-of-home care for their development, supported by Aboriginal community-controlled agencies. AbSec feels that where the State chooses to intervene in families for the safety, welfare and wellbeing of children, they have a responsibility to ensure that the alternate care they provide meets the best interests of the child, which cannot be assured under current permanent care orders in NSW.

Recommendation:

- 5. That the NSW Government commit to a general hold on permanent care orders including guardianship orders for Aboriginal children and young people, and continue to work with AbSec to develop appropriate mechanisms (including legislative frameworks) to promote the safety, welfare and wellbeing of Aboriginal children and young people in need of care, including addressing current issues of placement stability. This includes consideration towards repealing or placing a more robust legislative framework around guardianship and adoption orders for Aboriginal children to protect the rights of Aboriginal children, families and communities and ensure that the legislative framework reflects the best interests of Aboriginal children and young people.**

Moving forward: the need for holistic, tailored Aboriginal community-controlled child and family services

AbSec is committed to empowering Aboriginal families and communities to meet the needs of Aboriginal children and young people, in the belief that children should be with their parents and families where it is safe. AbSec acknowledges the responsibilities of parents and communities for the upbringing and development of their children, and the role of the State in supporting parents to meet these responsibilities¹⁹, and to intervene where children are at risk of harm through abuse or neglect²⁰. Further, AbSec recognises “the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and wellbeing of their children, consistent with the rights of the child”²¹, including the right to self-determination²² and participation in decision-making through representatives chosen by our own processes²³, the right to develop distinct social and cultural institutions²⁴, to live collectively as distinct peoples, including protections against the forced removals of our children to other cultural groups²⁵. AbSec also notes the ongoing impact of intergenerational trauma arising from dispossession and forced separations which deprived many Aboriginal people the necessary experiences to become “successful” parents, and contributes to many of the issues that cause Aboriginal children to be assessed as “at risk of significant harm” including family violence, drug and alcohol misuse and inadequate parenting^{26,27}. Ultimately, our vision reflects an inherent desire to avoid the repetition of those practices that led to the creation of the Stolen Generations by ensuring that Aboriginal people lead decision making in the sector through an effective, sustainable network of Aboriginal community-controlled agencies tasked with supporting Aboriginal families and communities to heal and raise their children safe and strong in culture.

From this foundation, AbSec is committed to the development of a comprehensive safety-net of Aboriginal community-controlled organisations that effectively meet the needs of Aboriginal children, families and communities in NSW through holistic and individually tailored Aboriginal child and family services. This vision emphasises the empowerment of Aboriginal communities to identify the challenges that they face and the appropriate means of addressing them, and supports communities to develop, implement and evaluate these solutions to promote child-safe communities and reduce the over-representation of Aboriginal children and families coming into contact with the child protection and OOHHC systems through a sustainable network of

¹⁹ Article 18, UN Convention on the Rights of the Child

²⁰ Article 19, UN Convention on the Rights of the Child

²¹ UN Declaration on the Rights of Indigenous Peoples

²² Article 3, UN Declaration on the Rights of Indigenous Peoples

²³ Article 18 UN Declaration on the Rights of Indigenous Peoples

²⁴ Article 5 UN Declaration on the Rights of Indigenous Peoples

²⁵ Articles 7 UN Declaration on the Rights of Indigenous Peoples

²⁶ J De Maio, S Zubrick, S Silburn, D Lawrence, F Mitrou, R Dalby, E Blair, J Griffin, H Milroy and A Cox (2005) *The Western Australian Aboriginal Child Health Survey: Measuring the Social and Emotional Wellbeing of Aboriginal Children and Intergenerational Effects of Forced Separation*. Curtin University of Technology and Telethon Institute for Child Health Research, Perth.

²⁷ Human Rights and Equal Opportunity Commission 1997, *Bringing them Home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, HREOC, Sydney.

Aboriginal agencies tied to local Aboriginal community governance. This vision is supported by international evidence which found that indigenous peoples, through processes of self-determination and governance, are best placed to develop and implement effective solutions to the challenges they face, including social and economic challenges²⁸. For example, an examination of changes in the rate of OOHC admissions for Aboriginal children across two 3-year periods (2000-03 compared to 2009-12) in Victoria found that, while admissions state-wide grew 7%, four regions showed a reduction in admissions in the same period. These regions were characterised by “well-established ACCOs actively engaged in their communities”²⁹, suggesting that communities that are empowered to deliver their own services are effective in supporting vulnerable children and families, reducing the need for children to enter out-of-home care.

In addition to providing effective services to their communities that may enhance community safety and reduce the need for Aboriginal children to enter out-of-home care, approaches grounded in the participation and self-determination of Aboriginal families and communities effectively safe-guard against future repeats of interventions such as those of the Stolen Generations, in which welfare and wellbeing policy and legislation was imposed on Aboriginal people without their consent. We acknowledge that there is a considerable amount of work and investment required to build the capacity of Aboriginal communities to deliver these important services, however Aboriginal community-controlled services are critical to reducing the over-representation of Aboriginal children and families in the child protection and out-of-home care systems and maximising the safety, welfare and wellbeing of Aboriginal children. As such, AbSec continues to work closely with FACS and Aboriginal community-controlled organisations to foster this development and move forward towards this vision.

Through a co-design process between AbSec and the NSW Government agencies a number of broad domains or levers for change were identified to reform the Aboriginal child and family sector in NSW. These levers were built on a commitment to Aboriginal self-determination, to better support Aboriginal children and young people in OOHC and working to reduce the overrepresentation of Aboriginal children and young people in OOHC over time. Based on this collaboration with FACS, AbSec has developed a comprehensive sector plan to chart our course forward, including:

- driving cultural best practice through the full implementation of the Aboriginal Child and Young Person Placement Principle
 - report on the implementation of the ACYPPP and Cultural Support Plans on behalf of Aboriginal families and communities to improve transparency, accountability and trust in the child protection system

²⁸ The Harvard Project on American Indian Economic Development, led by Professors Stephen Cornell and Joseph P. Kalt. Information available at: <http://hpaied.org/about>

²⁹ *Koorie Kids: Growing Strong in their Culture: Five Year Plan for Aboriginal Children in Out of Home Care*: A joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations, November 2013. Accessible at: <http://www.cyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-nov13.pdf>

- develop and implement Cultural Practice Standards to guide the work of all organisations providing services to Aboriginal children and families
 - develop a data system and Cultural Practice Standards reporting framework for continuous monitoring and improvement
- supporting the existing Aboriginal sector to continue to grow and transition to a holistic service delivery model
 - develop and evaluate innovative programs across the child and welfare sector (universal programs, early intervention and family preservation, OOHHC)
 - identify and celebrate good practice
- developing a comprehensive state-wide safety-net of Aboriginal agencies delivering Aboriginal child and family services, supported by local governance processes
 - support the development of local governance to facilitate self-determination and the participation of Aboriginal families and communities in decision-making about Aboriginal children and young people
 - achieve state-wide coverage of holistic Aboriginal child and family services delivered by a network of Aboriginal community controlled organisations
 - map service supply and demand to continue to meet the changing needs of Aboriginal families and communities
- developing differentiated policy informed by a comprehensive Aboriginal-led research program,
 - including baselines and benchmarks for ongoing practice improvement
 - outcome frameworks focused on Aboriginal children and young people, including those transitioning from care
 - develop a whole of government Aboriginal child and family strategic policy framework, with associated funding
- addressing the needs of Aboriginal children and young people currently in care and facilitating the ongoing transition of Aboriginal children from FACS to Aboriginal community-controlled services.

Recommendation:

- 6. That AbSec is supported to implement this sector plan for the development of the Aboriginal child and family sector that seeks to empower Aboriginal communities to develop and deliver culturally relevant services to effectively meet the needs of Aboriginal children, families and communities. This includes the development of a comprehensive safety-net of Aboriginal community controlled agencies and local community governance structures to design, develop and implement effective holistic and tailored child and family services relevant to their community.**

Conclusion

AbSec welcomes this Inquiry regarding reparations for the Stolen Generations in NSW. Acknowledging the broad elements of reparations, this submission focuses on two specific aspects: guarantees against repetition and measures of rehabilitation. Urgent action is required to meet these two elements of reparations in NSW, with growing numbers of Aboriginal children removed from their families and communities, and insufficient support for Aboriginal community-controlled organisations to address the intergenerational effects of trauma and removal. Aboriginal children and young people continue to be over-represented in the child protection and out-of-home care systems, with limited meaningful community participation and self-determination within the child protection system. Ongoing concerns regarding the implementation of the Aboriginal Child and Young Person Child Placement Principle, the implementation of quality cultural care and cultural support plans, and recently introduced permanent care orders that may see Aboriginal children and young people permanently placed outside of family, community, culture and Country with no ongoing monitoring or practical support raise significant concerns for Aboriginal communities about the safety, welfare and wellbeing of Aboriginal children that have been removed from their families and the future of our communities. Arguably the current crisis in Aboriginal child protection in NSW represents a continuation of the Stolen Generations or emerging second Stolen Generation³⁰, both in the scale of Aboriginal children being forcibly removed with the prospect of permanent legal orders placing children out of reach of their Aboriginal family and community, and the lack of genuine community participation and self-determination across the child protection system. AbSec submits that there is critical need for investment in holistic Aboriginal community-controlled child and family services to promote healing and address the intergenerational impacts of trauma and dispossession, and empower communities to engage with the child protection system in meaningful ways that support families and communities to keep Aboriginal children safe and connected to family, community, culture and Country.

Yours sincerely,

Tim Ireland
A/Chief Executive Officer

³⁰ *Koorie Kids: Growing Strong in their Culture: A plan for Aboriginal children in Out of Home Care: An update on a joint submission from Victorian Aboriginal Community Controlled Organisations and Community Service Organisations developed in November 2013.* Accessible from: <http://www.ccyp.vic.gov.au/downloads/submissions/submission-koorie-kids-growing-strong-in-their-culture-oct2014.pdf>