

INQUIRY INTO CHILD PROTECTION

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Aboriginal Justice Support Group

Education and advocacy for Indigenous justice in Australia

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Dear Ms Higgins

Submission to NSW Legislative Council's General Purpose Standing Committee No 2 Inquiry into Child Protection

1. Introduction

The Aboriginal Justice Support Group, formerly part of Action for World Development, has been advocating for justice for Australia's Indigenous Peoples for forty years. Over that time, as a group and as individuals, we have worked with NSW Aboriginal people on a range of matters related to the care and protection of their children. It is from that experience that we address the Inquiry's Terms of Reference, particularly the following:

- g) specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people
- i) any other related matter.

2. Term of Reference g): Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

It is well known that Aboriginal and Torres Strait Islander children and young people are vastly over-represented in the child protection, out-of-home care, and juvenile detention systems, and that this is accompanied by vast over-representation of Aboriginal and Torres Strait Islander adults in the prisons.

The latest statistics available for NSW, as presented in the Australian Institute of Family Studies' *Child Family Community Australia (CFCA) Resource Sheet— September 2015* at <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>, show that, in relation to child protection:

- Indigenous children “were the subject of substantiated reports of harm or risk of harm” at the rate of 51.2 children per 1,000 children
- Non-Indigenous children “were the subject of substantiated reports of harm or risk of harm” at the rate of 6.5 children per 1,000 children
- The “rate ratio” is 7.9, ie Indigenous children are 7.9 times more likely to enter the child protection system than non-Indigenous children.

The NSW position in relation to out of home care is even more dismal:

- Indigenous children were “in out-of-home care” at the rate of 71.3 children per 1,000 children
- Non-Indigenous children were “in out-of-home care” at the rate of 7.3 children per 1,000 children
- The “rate ratio” is 9.7, ie Indigenous children are 9.7 times more likely to be in out-of-home care than non-Indigenous children.

Further, as indicated in the Productivity Commission’s report *Overcoming Indigenous Disadvantage: Key Indicators 2014* (p 4.77), for Australia as a whole, and over the period 2003-04 to 2012-13, the rate at which Indigenous children were placed on care and protection orders increased at a faster rate than that for non-Indigenous children “leading to a widening of the gap, from 8.7 to 43.6 care and protection orders per 1000 children”. As the future of a nation lies in its children, these rates of involvement of Indigenous children and young people represent huge threats to the future of Australia as a whole and to the future of Aboriginal and Torres Strait Islander nations across Australia. They also cause unspeakable loss, grief and trauma to the individuals and families affected, and to the communities from which the children and young people come. This is a very significant form of Indigenous disadvantage, a phenomenon which all Australian governments have made commitments to address.

In view of these commitments, we find it surprising that Australian Governments have ignored, for nearly 20 years, almost all of the recommendations of the *Bringing them Home* Report (BTH) that relate to Indigenous control of indigenous child protection, out-of-home care, and juvenile detention (Recommendations 43a-53b). Instead there has been Inquiry after Inquiry, of one kind or another, while the over-representation of Aboriginal and Torres Strait Islander children and young people in these systems is not only unchecked but continues to rise. This is now, in the words of the Australian Human Rights Commissions’ Social Justice Commissioner “one of the most pressing human rights challenges facing Australia today” (see *Social Justice and Native Title Report 2015*, p 138).

We understand that Aboriginal Child Placement Principles have been implemented nationally, at least as far as BTH Recommendations 51a and 51b are concerned, and arguably in relation to Recommendation 51c. However, we share the concerns, expressed in the submissions and evidence to the recent NSW Legislative Council Inquiry into Reparations for the Stolen Generations in NSW, and in its report, on the decision making processes associated with implementation of the Aboriginal Child Placement Principles and on the level of reporting on them. We are also concerned that crucial parts of the principles, as expressed in BTH Recommendations 51d and 51e do not appear to have been implemented, at least in NSW.

These Recommendations, which are critical components of BTH’s *Standard 6: Indigenous Child Placement Principle* are:

51d. Where placement is with a non-Indigenous carer the following principles must determine the choice of carer,

1. family reunion is a primary objective,
2. continuing contact with the child's Indigenous family, community and culture must be ensured, and
3. the carer must live in proximity to the child's Indigenous family and community.

51e. No placement of an Indigenous child is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the

parents or the child disagree with the recommendation of the appropriate accredited Indigenous organisation, the court must determine the best interests of the child.

We are aware of a number of relatively recent developments in NSW that are relevant to the efforts to address the issues of over-representation, such as:

- the NSW Government's Aboriginal Affairs plan, *OCHRE*, which supports local decision making
- the AbSec/FaCS co-design *Plan on a Page* for Aboriginal Children and Young People 2015-2021
- the work of Grandmothers against Removals which has resulted in FaCS' adoption of the *Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making*.

These are all very welcome developments but, we believe, will not be sufficient to halt and reverse the trend in removals of Aboriginal children and young people in NSW. In short, they do not embed the level of self-determination required for Aboriginal people in NSW to be able to achieve the priority, as stated in one of AbSec's website banners, of "Keeping our kids safe and connected to their mob ...".

We therefore make the following recommendation in relation to this Term of Reference:

Recommendation 1

That the Inquiry recommend that the NSW Government:

- investigate the options for full implementation, within NSW, of Recommendations 43a-53b of the *Bringing them Home* Report, which would essentially establish an Aboriginal community controlled child wellbeing system for Aboriginal children in this State
- seek to list the matter of *Bringing them Home* Report Recommendations 43a-53b on the COAG agenda, with a view to national implementation of the Indigenous community controlled child wellbeing system proposed by the Report.

3. Term of Reference i): Any other related matter

Non-Indigenous people cannot speak for Indigenous peoples on matters related to Indigenous life. The rights of Indigenous Peoples to speak and act for themselves in these areas are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Australia is now a signatory. Many of UNDRIP's articles are directly relevant to the wellbeing of children and young people. In the abbreviated version of UNDRIP published by Amnesty International Australia, some of the relevant articles are stated as follows:

Article 4: Autonomy

As a form of self-determination, Indigenous peoples have the right to autonomy or self-government in relation to their own affairs.

Article 7: Existence

Indigenous peoples have the right to live in freedom, peace and security. They must be free from genocide and other acts of violence, including the removal of their children by force.

Article 9: Communities and nations

Indigenous peoples have the right to belong to Indigenous communities and nations, in accordance with their traditions and customs.

For the NSW Government to act in accordance with these articles, it would need to implement our Recommendation 1 above under the direction of Aboriginal people. However, the difficulty for non-Aboriginal people and governments is in knowing who the appropriate Aboriginal people are on a given issue. A further difficulty is in ensuring that all those affected by particular issues are included in determining effective responses to them. In this case those involved include the children, young people and families directly affected; all Aboriginal communities – either directly or because of the ever-present fear of removals; community leaders; and the organisations who work with all these individuals and groups. All of these need to be included in any engagement by government, and the process of engagement needs to be under Aboriginal control.

We suggest that, in implementing Recommendation 1 above, it would be useful for the NSW Government to engage, initially, with at least the following groups:

- Grandmothers Against Removals NSW, which was initiated by families who have direct experience of Aboriginal child removal, and is now part of a Grandmothers Against Removals national network
- the Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec), a non-government body which is recognised as the peak NSW Aboriginal organisation for providing child protection and out-of-home care policy advice and for supporting the Aboriginal Community Controlled sector to deliver for Aboriginal children, families and communities
- the Secretariat of National Aboriginal and Islander Child Care (SNAICC), which is a national non-government peak body representing the interests of Aboriginal and Torres Strait Islander children and families
- The Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission, the organisation which (as the then Human Rights and Equal Opportunity Commission) auspiced BTH, and which was intended by the report's authors to provide an annual report to COAG on progress in implementing the BTH recommendations.

Our recommendation in relation to this Term of Reference is based on these suggestions, together with a proviso that the right of this initial group to make its own decisions about expansion of the engagement process be recognised.

Recommendation 2

That the Inquiry recommend that the NSW Government:

- engage, initially, and at a minimum, with Grandmothers Against Removals NSW, AbSec, SNAICC and the Social Justice Commissioner of the Australian Human Rights Commission, on the most appropriate ways of implementing Recommendation 1 above
- acknowledge the right of the above people and bodies to bring other people or bodies they regard as appropriate into the engagement process.

Yours truly,

Joseph Castley

For the **AWD Aboriginal Justice Support Group**