



Mr Mick Gooda
Aboriginal and Torres Strait Islander Social Justice Commissioner
Australian Human Rights Commission
E: kirsten.gray@humanrights.gov.au

Dear Mr Gooda

Re: Social Justice and Native Title Report 2015

AbSec is an incorporated not-for-profit community organisation and is recognised as the peak NSW Aboriginal body within the child protection sector. In addition to supporting member organisations to provide accredited out-of-home care (OOHC) services to children and young people within their communities, AbSec provides policy advice to the government and non-government sector on issues affecting Aboriginal families involved in child protection and OOHC systems.

AbSec partners with NSW Family and Community Services (FACS) and the Association of Child Welfare Agencies (ACWA) in facilitating the transfer of OOHC service provision to non-government organisations (NGOs). We play a key role in supporting established and new agencies, particularly Aboriginal community controlled organisations, to build their capacity to provide high quality OOHC services to Aboriginal children. We also auspice the Aboriginal State-wide Foster Care Support Service, an advice and advocacy telephone service for carers of Aboriginal children and which assists in the establishment of local Aboriginal foster carer support groups.

While providing critical services and support to the OOHC sector, AbSec is committed to reducing the number of Aboriginal children and young people in need of care through both universal and targeted early intervention initiatives that seek to support Aboriginal families and communities to keep their children safe. We are responsible for two important projects under NSW *Keep Them Safe* reforms; Protecting Aboriginal Children Together, and Intensive Family Based Services, and also facilitate Family Group Conferencing to support the participation of Aboriginal families and communities in decision making about their children, operating on the principle of self-determination. We also work to identify and design other models of support that directly focus on providing more holistic Aboriginal child and family centred approaches within Aboriginal communities.

1. Please outline your engagement with government agencies in relation to provision of child welfare services to Aboriginal and Torres Strait Islander families

AbSec, as the peak body, engages with FACS as the statutory child protection authority and other service providers to advocate for the needs of Aboriginal children, families and communities. This includes providing submissions or participating in working groups with respect to legislative or policy reform, as well as providing services directly such as Family Group Conferencing, Protecting Aboriginal Children Together and Intensive Family Based Services. We advocate for the rights of Aboriginal children and families in this sector, and support the self-determination and participation of families and communities and develop guidance for service providers in engaging with Aboriginal people and maintaining Aboriginal children's connection to family, community and culture.

AbSec also provides significant support to Aboriginal community-controlled organisations to provide child protection and OOHC services to Aboriginal children and young people, including assistance with governance, systems and practice so that Aboriginal children receive the best possible outcome. We work closely with FACS, the NSW Ombudsman and the Office of the Children's Guardian to build the capacity of Aboriginal organisations in this sector. We also advocate on behalf of Aboriginal organisations in the sector in their dealings with government, working together to resolve disputes. This allows us to coordinate across organisations to identify systemic issues and to work with government to resolve these issues appropriately.

2. Can you provide details regarding your funding, including:

- a. Where your funding is sourced from;**
- b. How much funding you have received for your services in the last year;**
- c. Whether there has been any change in funding levels over the past year (including increases and decreases); and**
- d. Whether there are any reasons provide for a change in funding levels**

AbSec is funded primarily through three main sources: The NSW Department of Family and Community Services, The Department of Prime Minister and Cabinet, and the Healing Foundation. In the last financial year we received \$3.3 million in grants from all sources, down 28% from the previous year (2013-2014) in which we received \$4.6 million from all sources. Largely this reduction reflects specific projects coming to an end.

AbSec does not have specific information regarding the funding of our member agencies, however acknowledges the diversity of Aboriginal organisations providing OOHC services. With respect to their funding to provide OOHC services specifically, this is funded through contracting arrangements with FACS. Under previous contracting arrangements Aboriginal agencies were generally funded at a lower unit cost than other agencies, essentially being funded less to provide the same high quality, culturally appropriate services expected of all accredited agencies. This systemic inequality has only recently been addressed, with unit costs becoming standardised across all agencies. Aboriginal community organisations accredited to provide OOHC may also provide other services in their communities, including child and family services, early intervention or family preservation services. The funding for these services may include support from State, Federal or independent sources (philanthropy, fundraising etc).

3. If there have been funding changes, how have these impacted on your advocacy and or service delivery?

a. Please also detail any impacts on your member agencies and early child and family centres

As noted above, funding changes were largely related to specific programs that are no longer running. AbSec did make a submission for Indigenous Advancement Strategy (IAS) funding, however the funding offered was not related to the submission made, and we were not in a position at that time to accept this funding as a result. As the peak body for the Aboriginal child welfare sector in NSW, AbSec is concerned that almost half of all funding went to non-Aboriginal organisations that made up the majority of all organisations that received funding. Further, AbSec is concerned that the IAS submission processes were overly complex, disadvantaging small, community-based organisations seeking to make an impact in their community in favour of larger often non-Aboriginal organisations, including state government departments and for-profit corporations. AbSec believes that Aboriginal communities are best placed to identify priorities and deliver programs designed to improve outcomes for Aboriginal people, and that those programs that are most effective tend to have the principles of empowerment and self-determination at their core. AbSec calls for future funding in Aboriginal Affairs to reflect these principles.

Nationally, AbSec is a member of SNAICC as the national peak in this sector. While child protection remains a State issue, a national peak is nevertheless essential for a number of reasons, including:

- Sharing of knowledge across jurisdictions, particularly with respect to effective programs or innovative approaches that may provide benefit for local communities and service providers. These networks broaden the knowledge base of frontline Aboriginal community-controlled organisations through providing a national network of sector partners.
- Co-ordinating national priorities that reflect the broader issues that underpin the systemic disadvantage that places Aboriginal children at greater risk of coming into contact with the child protection system. Addressing this over-representation requires a holistic approach to address entrenched Aboriginal disadvantage

AbSec feels that advocacy within states and at the national level is essential to addressing both the needs of Aboriginal children and young people in OOHC and to address the ongoing over-representation of Aboriginal children and young people in child protection systems. Advocacy is recognised as a key pillar in the work of high-impact organisations to achieve significant social change¹, and this is particularly relevant within the Aboriginal child welfare sector where Aboriginal designed and managed solutions are essential.

4. Can you provide examples of what is working well to address the increase contact that Aboriginal and Torres Strait Islander families have with the child protection system?

a. If possible, can you provide details of any studies that have been evaluated?

AbSec continues to work with our member agencies, FACS and other service providers in NSW to meet the needs of Aboriginal families and improve outcomes for Aboriginal children and young people. In general, AbSec asserts that empowered Aboriginal communities with equitable access to culturally appropriate supports that promote social and emotional wellbeing are critical to keeping Aboriginal children safe, and therefore in addressing their over-representation within the child protection system. Some of the models that we have found beneficial in NSW are outlined below, however they each adhere to the general principles of self-determination and equitable access to culturally appropriate integrated child and family services in order to provide effective interventions for children and their families.

Aboriginal Family Group Conferencing

Aboriginal Family Group Conferencing (AFGC) is a program that provides parents (and/or primary caregivers), family members, carers, extended family with the opportunity to

¹ Crutchfield, L. and Grant, H. M. (2007) 'Forces for Good: The Six Practices of High-Impact Nonprofits', John Wiley and Sons,

participate in departmental decision making processes and develop realistic solutions to address child protection concerns in relation to Aboriginal children and young people. It operates on the principle of self-determination in allowing genuine whole of family decision-making via less formal and non-arbitrary processes.

The purpose of the program is to encourage all family members, Elders and significant people where appropriate, to meet and make decisions about the safety of children and young people involved in child protection and out-of-home care systems. The goal of the program is for the parents (primary caregivers) and immediate family to develop a 'Family Plan' which aims to address child protection concerns and ensure the safety, welfare and wellbeing of their children in a culturally safe and supported environment.

The program operates in a small number of select locations across NSW. The program is a pilot and will be internally reviewed by AbSec and results available around November/December 2015.

Intensive Family Based Services

IFBS delivers an intensive, time-limited service to Aboriginal families in which children and young people are likely to be placed in out-of-home care or remain in out-of-home care if their parents do not significantly change their behaviours to ensure the safety of the environment for the children and young people involved. The model includes a step-down service, which provides less intensive case management support for up to six months following the crisis intervention. IFBS is delivered in NSW by six government operated sites, and four Aboriginal community-controlled organisations, with the non-government approach supported by AbSec as the peak body.

The number of families accessing the program is small in terms of a robust evaluation however the most recent review in September 2013 (unpublished) indicated that IFBS can, and in some cases is, *providing an effective response for Aboriginal families with high and complex needs*. The current evaluation population is not yet large enough to measure effects in placement prevention. The final evaluation population will be larger and it is envisaged that this analysis will provide more reliable evidence about program benefits. The final evaluation is due around the first half of 2015/16.

b. Can you provide further information on the Protecting Aboriginal Children Together (PACT) project, including any details regarding evaluation?

Protecting Aboriginal Children Together (PACT)

PACT was jointly developed by the NSW Department of Family and Community Services and AbSec. It is based on Victoria's Lakidjeka program which has been running for over 20 years using cultural advisers employed by Aboriginal community-controlled organisations.

The aim of PACT is to ensure there is an Aboriginal perspective when it comes to making key decisions about the care and protection of Aboriginal children and young people. PACT does this by having Aboriginal cultural advisers work alongside Department caseworkers. This gives caseworkers a deeper understanding of the Aboriginal culture specifically child rearing practices. It also helps open the way for Aboriginal families to take a role in decisions which affect them and their children.

The model was piloted in two locations – Moree and Shellharbour – from 2011. Other models of internal and external consultation are used by the remaining Departmental offices across the rest of the state in order to meet their requirements for Aboriginal self-determination within the *Children and Young Persons (Care and Protection) Act 1998* (Part 2 Aboriginal and Torres Strait Islander principles).

While outcomes data is limited at this early stage, there are positive indications about what PACT can achieve. PACT can help build bridges between the Department and the Aboriginal community, improve caseworker knowledge and practice when working with Aboriginal families, and support families' understanding of risk and safety issues and child protection processes. It has been seen to achieve these outcomes by:

- Providing a culturally safe space for families;
- Engaging hard to reach families, including helping to diffuse tensions arising in initial joint home visits;
- Translating jargon-laden language to plainer, more direct language and having follow up discussions with families to reiterate and help explain concerns;
- Making case plans more culturally appropriate by involving local Aboriginal services and extended family or community members and providing caseworkers with an understanding of family and/or community perspectives about risk and safety issues
- Showing families how they can work with the Department to achieve safety goals by supporting the implementation of case plans.

The final evaluation population will be larger and it is envisaged that this analysis will provide more reliable evidence about overall program benefits. The final evaluation is due around the first half of 2015/16.

5. How does your agency promote the cultural identity of Aboriginal and Torres Strait Islander children in child welfare matters?

As outlined above, AbSec facilitates a number of programs to promote Aboriginal voices and participation in decision making for Aboriginal children and young people coming into contact with the child protection system, or entering OOHC. This includes Family Group Conferencing and the PACT program that ensures that Aboriginal families and communities have a voice in making decisions about Aboriginal children and young people, including meeting their cultural needs.

In addition to these participatory programs, AbSec has worked with key stakeholders to develop the Aboriginal Consultation Guide, which provides a practical framework to assist OOHC providers to work more consistently, effectively and sensitively with Aboriginal children, families and communities, including guidance on cultural care and support planning for children and young people in care. Through our Cultural Support Practice Officer, AbSec continues to support best practice with respect to cultural care and support planning to ensure that Aboriginal children develop a strong identity and sense of belonging in their community.

While providing a framework and guidance to cultural care and support planning is important to support Aboriginal children in OOHC, it is unclear to what extent agencies apply and adhere to such plans, including the possibility that a portion of Aboriginal children in OOHC may not have meaningful Cultural Care Planning and Cultural Support Plans, or that such obligations are not being adequately met by carers or agencies. AbSec is currently considering additional practical steps we can take to further support the cultural care and support planning for Aboriginal children and young people in OOHC, and would like to see monitoring provisions included that empower Aboriginal organisations to provide ongoing support to Aboriginal children in OOHC to maintain their connections to family, community and culture.

Our member organisations work within their communities to provide accredited OOHC services to Aboriginal children and young people. These agencies therefore take a lead role in working with carers (who may or may not be Aboriginal) in meeting the holistic needs of Aboriginal children and young people, including their cultural needs.

6. How does your agency promote the application of the Aboriginal and Torres Strait Islander child placement principle?

a. Please also outline any concerns that you might have about the application of the principle in the out-of-home care space

AbSec, along with our member agencies, are deeply committed to the Aboriginal and Torres Strait Islander child placement principle, with culture and cultural connection considered a strong protective factor for the wellbeing of Aboriginal children and young people. Our members continue to be concerned about the rigor with which FACS applies the Aboriginal child placement principle, and the extent to which a child's broader family system participate in decision making, including regarding placements. While AbSec supports rigorous assessment of prospective carers for all children in OOHC, it is important that such assessments are culturally informed in order to be a valid assessment of the carer's capacity to meet the child's needs. AbSec acknowledges the development of tools aimed at improved assessment of kinship and relative carers, such as those developed by Winangay Resources. Similarly, accredited Aboriginal community-controlled organisations are well placed to provide assessment of Aboriginal carers, as well as the capacity of non-Aboriginal carers to meet the cultural needs of Aboriginal children and young people.

Further, our members emphasise to us the need for comprehensive family assessments to occur early in any casework. Building relationships with families and getting a clear and thorough picture of the wider family and community network is essential to both safety planning (for example in working towards family preservation) or in identifying potential Aboriginal relative or kinship placements. Too often Aboriginal children are placed in short-term placements with non-Aboriginal carers (who are unknown to the child) with assessments of family members (who may be known to the child) occurring later down the track. This increases the disruption for Aboriginal children and their families. Relationship based practice that engages the wider family network (such as those encouraged by Family Group Conferencing) and proactive assessments to approve family members for short term or emergency placements (pending more comprehensive placement assessments) appear warranted in applying the Aboriginal child placement principle and minimising disruption for the child.

Finally, it is essential that where it is not possible to place Aboriginal children with Aboriginal relatives or the broader Aboriginal community, it is essential that significant effort be invested in maintaining the child's connection to their Aboriginal family, community and culture. In NSW, this is reflected in s. 13(6) of the *Children and Young Persons (Care and Protection) Act 1998*, which states that the fundamental objective is the reunion of the child with their

Aboriginal family and/or community. As such, AbSec continues to advocate strongly for improved development and monitoring of Cultural Care Planning and Cultural Support Plans for Aboriginal children. We feel that ongoing monitoring of Cultural Care Planning undertaken by the Department, and Cultural Support Plans developed by relevant Aboriginal and non-Aboriginal organisations are critical for maintaining a child's connection to culture, in addition to supporting the placement of Aboriginal children in OOHC more generally and promoting this goal of reunion with their Aboriginal family and community. For this reason, AbSec stands opposed to recent reforms that prioritise guardianship and adoption for children in OOHC, which are characterised by inadequate ongoing support for Aboriginal children and young people and those that care for them.

7. Do you have any concerns in relation to the application of permanent care orders on Aboriginal and Torres Strait Islander families?

NSW is currently experiencing significant reform in the child welfare sector, arising from the *Special Commission of Inquiry into Child Protection Services in NSW* completed in 2008 that called for better coordination between government and other service providers, a larger role for non-government organisations, and improved intake streams that link "low risk" families to early intervention services. More recently, permanent care orders (adoption and guardianship) have been prioritised in new legislative reforms aimed at providing children in OOHC with long term stability.

AbSec acknowledges the need for children to have stable and predictable early environments, including access to protective adults to help guide their development. This is particularly critical for children and young people that have been exposed to early childhood adversity such as abuse and neglect, and who cannot safely remain with their parents. AbSec does not oppose investing in children in OOHC to promote stability and lasting relationships with protective adults.

AbSec is however concerned about the prioritisation of adoption and guardianship orders, and opposes both placement options in general for Aboriginal children in OOHC. First, there is considerable community opposition for any long-term orders regarding Aboriginal children that is administered by non-Aboriginal people. Long-term removals from family and community by government authorities, as was common throughout the history of NSW, are a significant concern for Aboriginal people, particularly where Aboriginal participation in decision making remains haphazard.

Second, AbSec is concerned about these orders, even where Aboriginal children are placed with extended family or community members (that is, culturally appropriate placements),

given the lack of support provided. AbSec feels that Aboriginal children and young people exposed to the adverse early experiences that lead to their entry into OOHC require ongoing support to provide the therapeutic care they require. The support provided to caring families through guardianship and adoption orders is wholly inadequate to meet the needs of Aboriginal children and young people and their families. AbSec is concerned that this shift reflects political and economic motivations rather than protecting the rights of Aboriginal children and young people and promoting long-term outcomes. That is, these orders provide governments with the opportunity to reduce the numbers of children regarded as being in OOHC, as well as reduce the financial expenditure associated with supporting children and young people who would otherwise be in long-term OOHC.

Third, it is currently unclear as to how these orders will ensure that Aboriginal children and young people's right to know their parents, family and cultural heritage will be protected given the lack of independent oversight. While adoptions are open and carers must demonstrate a willingness to maintain family contact and cultural connection on both order types, there is no system in place to monitor the extent to which this occurs in reality. Further, many Aboriginal families that come into contact with child protection systems are from the lowest socioeconomic categories², and may not therefore have the ability to access or successfully navigate the legal systems to ensure that the child's rights are recognised.

Finally, through member agencies and the broader community AbSec is often reminded that the gathering of cultural information for all children and young people (not just Aboriginal and/or Torres Strait Islander children) is often inadequate. AbSec acknowledges the difficulty of engaging with families in the context of reports of risk of significant harm, and that within the important work of assessing the child's immediate safety broader considerations of cultural identity may be missed. However, these concerns persist in the long term, with children entering OOHC with minimal information or even, on occasion, inaccurate or inconsistent information about their family, and their cultural background. For example, AbSec has been approached about recent cases in which children previously recorded as "Aboriginal" have been "de-identified" on record-keeping systems. Our concern in these cases is with respect to the process and rigor applied to such decisions, and the participation of the local or other relevant Aboriginal communities in making these decisions. In this context of inconsistent gathering and recording of cultural information, decisions to place children entering care on long-term orders without active casework or other support presents a potential risk of cultural dispossession.

² Australian Institute of Health and Welfare (2015) Child protection Australia: 2013-14. Child Welfare series no. 61. Cat. No CWS 52. Canberra: AIHW

It is essential that workers within the child protection system are supported to build relationships with the families with whom they work, as well as effective relationships with the local Aboriginal community to support the effective gathering of family and cultural information from the earliest point. We feel this is critical both to effective interventions targeted first and foremost at family preservation (in the context of ensuring child safety, which is of paramount importance), as well as subsequent planning in OOHC for those Aboriginal children that cannot safely remain with their family.

AbSec agrees with the general concerns apparent in the government's shift towards greater stability, arising from concerns about the apparently poor outcomes for those in the OOHC system. However we feel that greater investment, not less, is required to meet the State's responsibility to Aboriginal children and young people that are unable to safely remain in their parent's care. Shifting the culture of OOHC services to one that is Aboriginal child and family centred that allows for earlier responses to an Aboriginal child's safety and a families capacity, as well as prioritises placement stability when in care, providing active monitoring of placements and ongoing supports for children and the social networks that support them (particularly carers and caseworkers) would help support children to receive the therapeutic care that they require, improving outcomes for Aboriginal children and families, and preventing family and placement breakdowns. This includes changing the approach to services for Aboriginal children at risk that enshrines their lives within their families and communities, within culturally safe and protective environments.

8. Do you have any other comments in relation to the contact of Aboriginal and Torres Strait Islander children with the child protection system and what other matters might need to be considered to address this issue?

As noted above, AbSec shares the concern of others in the sector regarding the poor outcomes for Aboriginal children and young people within the OOHC system, and agrees that system reform is needed earlier to better meet the needs of these children and young people and their families that come into contact with the child protection system, inclusive of Aboriginal communities. Critical to addressing the over-representation of Aboriginal children in the child protection system, and system responses to Aboriginal children and families, is to seek out and listen to the voices of Aboriginal people, including those at the centre of the system; the vulnerable children and young people themselves.

The voices of Aboriginal children and young people have not typically been prominent in discussions about the operation of the system. AbSec is currently embarking on a broad project to engage Aboriginal young people in this discussion and hear from young people themselves, both those in care and recent care leavers, about their needs and experiences.

While this project is still in its earliest stages, it is our intention to embed the perspectives of Aboriginal children and young people in all of our policy and advocacy work going forward, and support a system that routinely listens and responds to the voices of service users. Central to this will be our Ambassadors program, in which we support young people to develop their skills in advocacy and program development. AbSec and our member organisations see this as a critical step in ensuring our systems reflect the needs of those we serve.

AbSec also seeks to represent the voices of local Aboriginal communities through local Aboriginal community-controlled organisations in order to support vulnerable children and families. AbSec advocates for an approach in which Aboriginal-led, designed and managed solutions are supported to address the over-representation of Aboriginal children coming into contact with the child protection system. In NSW, this includes advocating for Aboriginal community-controlled organisations to be supported to provide holistic Aboriginal child and family services within their community. Such services would seek to provide universal support for Aboriginal families, as well as targeted and individual interventions for “at risk” families, and supports for children that require alternate care (and those that care for them).

Integrated child and family services require the development of genuine two-generation programs that seek to build capacity for parents and/or carers as well as providing an enriched environment for children and young people that supports their developmental needs are critical to promoting positive outcomes for vulnerable children and young people³. In many ways, AbSec views the over-representation of Aboriginal families within the child welfare system as a symptom of intergenerational trauma and dispossession arising from colonisation and marginalisation, as with similar gaps in health, life expectancy, socioeconomic status and justice. In line with this, AbSec continues to advocate for the development of holistic Aboriginal community-controlled child and family services that are able to meet the needs of children and families in their communities, including those in OOHC, without a need for coordinated cross-agency effort and lengthy processes for multiple standalone perspectives. As outlined by Shonkoff and Fisher (2013):

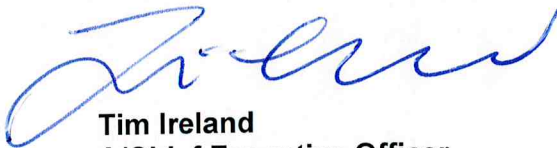
“science suggests that significantly greater impacts on the healthy development and life prospects of vulnerable young children could be achieved by focusing greater attention on strengthening the capabilities of their caregivers, improving the economic stability of their families, and building stress-buffering resources in

³ Shonkoff, J. and Fisher, P. (2013) ‘Rethinking evidence-based practice and two-generational programs to create the future of early childhood policy’, *Development and Psychopathology*, Vol. 25, pp. 1635-1653

their communities rather than by continuing to focus primarily on the provision of child-focused enrichment, parenting education and informal support.”

We believe that this is the way forward for the Aboriginal child welfare sector, and for our communities more broadly. Aboriginal organisations and communities are best placed to develop the innovative intergenerational responses required, that are aligned with their communities and targeted to improving outcomes for our communities, including a reduced need for alternate care and better outcomes for those in OOHC.

Regards



Tim Ireland
A/Chief Executive Officer