

## Identity

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### Introduction

*‘Children’s cultural identity is the key fact of their development. Any definition of the rights of children, and any criteria which seeks to determine what is in the best interest of the child, must recognise the right of culture as formative for identity and therefore, that maintenance of cultural identity is in the best interest of the child’<sup>1</sup> – Muriel Bamblett*

Aboriginality and a strong sense of identity as an Aboriginal person is of critical importance to Aboriginal children, families and communities. Identifying a child’s cultural background in an accurate and timely manner is necessary to ensure that appropriate cultural processes can be implemented. However, there remain significant concerns within Aboriginal communities regarding the accurate and timely identification of Aboriginal children and young people. Further, processes of “de-identifying” children previously identified as Aboriginal have raised particular concerns. This paper seeks to provide clear guidance on the definition of an Aboriginal child within the child protection system and how such decisions might best be made.

### Aboriginality in the NSW Child Protection System

Put simply, the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) defines an Aboriginal child as any child that is of Aboriginal descent, empowering the Children’s Court to make such a determination for the purposes of the Care Act<sup>2</sup>. Further, that Child and Young Persons (Care and Protection) Act 1998 places a positive obligation on Family and Community Services to determine, “where there is reason to believe that a child or young person... may be Aboriginal or Torres Strait Islander” whether the child or young person is in fact of Aboriginal descent (and therefore an Aboriginal child for the purposes of this Act) through inquiries that are “reasonable in the circumstances”<sup>3</sup>.

### AbSec’s Position on Identity and Aboriginality

One’s cultural identity is a fundamental human right, and is related to our connections with our communities and concepts of collective empowerment and self-determination. Our identity as Aboriginal people defines our relationships with other Aboriginal people, best demonstrated through introductory protocols that share Nation and family connections, allowing Aboriginal people to “place” each other and clarify cultural ties, engendering a sense of belonging. A strong cultural identity is therefore critical to the full enjoyment of the rights of Aboriginal children and young people, providing a foundation for their social connectedness, sense of belonging and resilience. Culture has been identified as a protective factor for children and young people facing adversity, with a positive connection to culture likely to contribute to a positive sense of self and community relationships that promote lifelong wellbeing.

Consistent with the *Children and Young Persons (Care and Protection) Act 1998*, AbSec defines an Aboriginal child as **any child of Aboriginal descent**. Further, it is our view that there is a positive obligation on practitioners engaging with families to comprehensively map families and to take active steps to ascertain their cultural background **in all cases**, acknowledging that this may require multiple conversations to overcome distrust of the child protection system. Critically,

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<sup>1</sup> Muriel Bamblett CEO Victorian Aboriginal Child Care Agency. *Being Culture*

<sup>2</sup> s. 5 *Children and Young Peoples (Care and Protection) Act 1998*

<sup>3</sup> s. 32 *Children and Young Peoples (Care and Protection) Act 1998*

'a person's physical appearance or the way they live are not requirements'<sup>4</sup> in defining Aboriginality, or any cultural background, but must be ascertained for every child through family and community engagement. Given ongoing processes of colonisation and cultural dispossession affecting Aboriginal people, this is particularly critical to Aboriginal families and communities.

Identifying Aboriginal children at the earliest point within the child protection system is necessary to delivering culturally appropriate supports, services and safeguards for Aboriginal children and families, including full implementation of the Aboriginal Child Placement Principles.

### In Practice

- It is critical that Aboriginal children and their families are identified as early as possible when engaging with families in order to provide cultural sensitive services. This must include an active process for all families, mapping their genograms and identifying the cultural background of members of their extended families.
- Any child of Aboriginal descent is to be identified as an Aboriginal child, and must have their cultural rights respected. This includes engagement with family, kin and community in all decision making and the development of comprehensive cultural planning.
- Aboriginal community controlled organisations can help practitioners to identify Aboriginal children and families and support the full enjoyment of their cultural rights.
- Cultural planning is essential in supporting the cultural identity of Aboriginal children and young people, which is important to their lifelong wellbeing. Cultural plans, to be effective, must clearly articulate how Aboriginal children will be immersed in their culture and form meaningful relationships with members of their family and cultural community. They must be developed in partnership with the child's Aboriginal family and community.
- The "de-identification" of a child identified as an Aboriginal child is a serious matter and should carry the highest possible delegation. The process to de-identify a child must include being authorised in writing by a relevant Aboriginal Community Controlled Organisation and District Director, noting clearly the evidence on which this determination is made, with a final check completed by AbSec and FaCS management, allowing for the recording and oversight of this important issue.

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<sup>4</sup>[http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\\_community/adb1\\_aboriginal/adb1\\_aboriginalitycert.aspx](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_community/adb1_aboriginal/adb1_aboriginalitycert.aspx) date accessed 16 June 2016