

Self-Determination

Put briefly, AbSec's position regarding self-determination echoes that of *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, specifically

“that self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems... and to eliminating unjustified removals of Indigenous children from their families and communities.”¹

Self-determination is a fundamental right of peoples², referring to the collective right of peoples to “freely determine their political status and freely pursue their economic, social and cultural development.” Indigenous peoples also enjoy this right, as articulated in the Declaration of the Rights of Indigenous Peoples.

Self-determination in child welfare requires that Aboriginal communities are empowered to design, develop and deliver the policies, programs and practices that impact on the care and protection of Aboriginal children and young people. That is, Aboriginal communities must have the opportunity to freely develop the structures and supports through which Aboriginal children and families and communities are strengthened to keep Aboriginal children safe and provide them with the best possible opportunities to fulfil their potential within a culturally enriched framework.

In order to promote self-determination in practice, AbSec suggests that government should adopt a stewardship role, providing the resources necessary for the implementation of Aboriginal-led programs and policies, including adequate funding to ensure that child removal is the option of last resort³. This requires negotiation between the Minister and Aboriginal peoples and their organisations at the local and state level to establish the high level frameworks and structures to achieve greater self-determination for Aboriginal communities, building on existing foundations provided by the *Guiding Principles for Strengthening the Participation of local Aboriginal Community in Child Protection Decision Making* and AbSec's *Achieving a Holistic Aboriginal Child and Family Service System for NSW*.

Self-Determination in the NSW Child Protection Sector

The importance of self-determination for Aboriginal and Torres Strait Islander peoples is clearly recognised within the *Children and Young Persons (Care and Protection) Act 1998* as one of the Aboriginal and Torres Strait Islander principles, requiring the participation of Aboriginal people “with as much self-determination as possible” in the care and protection of Aboriginal children⁴. Further, the Act enables the Minister to negotiate with Aboriginal peoples in the implementation of programs and strategies that promote self-determination.

While these elements of the Act clearly reflect the recommendations of *Bringing Them Home*⁵, they have not yet been sufficiently implemented. This remains a critical issue, with genuine self-determination the missing ingredient needed to transform the Aboriginal child and family system from one that perpetuates colonisation, the dispossession of Aboriginal people and destruction of Aboriginal families, communities and culture, to one that safeguards the best interests of Aboriginal children and young people.

¹ *Bringing Them Home (1997)*, pg 15

² International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights

³ *Bringing Them Home (1997)*, pg. 276-277

⁴ s.11, *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

⁵ Recommendation 43, *Bringing Them Home (1997)*

In Practice

- Self-determination requires the development of local decision making structures to enable Aboriginal communities to collectively engage directly in the design, development and delivery of Aboriginal-led approaches to family and community strengthening and child welfare. This is distinct from the participation of Aboriginal families in decision making of specific cases, which must also be promoted through Aboriginal-led frameworks and processes
- Aboriginal community-control in the design, development and delivery of services across the continuum of care must include input into priorities, outcomes and funding decisions, with local services accountable to the Aboriginal community they serve. Further, Aboriginal communities must have the flexibility to determine when services aren't working effectively, and what action should be taken to improve the local service system within broad funding frameworks. Such decisions should never be made unilaterally by government.
- In line with the recommendations *Bringing Them Home*, local community-led approaches may develop to include negotiation on a range of matters including legal jurisdiction in child welfare, transfer of departmental function to community, the nature of the relationship between Aboriginal community processes and government and the adequate resourcing of programs.
- That Family and Community Services (FACS) partner with AbSec on the development of a framework for their joint stewardship of the Aboriginal child and family sector, including equitable investment on the basis of need and aligned to agreed outcome indicators, thereby promoting Aboriginal community-controlled leadership of the sector, as well as the establishment of clear mechanisms to promote accountability of service providers to local Aboriginal communities.
- Establish local Aboriginal Community Child Safety Governance Groups as outlined in AbSec's Aboriginal Child and Family System, in line with Aboriginal community boundaries and cultural protocols, to provide local governance in Aboriginal child welfare, supported by state-wide implementation of the *Guiding Principles for Strengthening the Participation of local Aboriginal Community in Child Protection Decision Making*, guiding direct engagement at the local level
- Such structures must include clear mechanisms to participate in decision making with respect to all Aboriginal children and young people through the administration of the *Children and Young Persons (Care and Protection) Act 1998* and other relevant legislation impacting on the safety, welfare and wellbeing of Aboriginal children and young people, across the continuum of care

"To respect the right of self-determination, governments should confine their roles largely to providing financial and other resource support for the implementation of Indigenous programs and policies"
Bringing Them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, pp. 276-277