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The Hon. Pru Goward MP
Minister for Family and Community Services
Minister for Social Housing
Minister for the Prevention of Domestic Violence and Sexual Assault
GPO Box 5341
SYDNEY NSW 2001

1 November 2018

Dear Minister

At the recent Ministerial Advisory Group Meeting on Vulnerable Children, Young People and Families on 30 October 2018, you invited MAG members to provide feedback on the *Children and Young Persons (Care and Protection) Amendment Bill 2018*, recently introduced to the Legislative Council.

At that meeting, both Dana Clarke, Chairperson of AbSec and I raised concerns about the proposed amendments and their potential adverse impact on Aboriginal children and young people, their families and communities, and noted the need for greater consultation and engagement with Aboriginal communities about amendments to the statutory child protection system. Following further review of the proposed changes, AbSec's concerns include:

- Proposed amendments to extend the grounds for dispensing with consent in adoption orders for children on guardianship orders
- imposing a two year limit on orders and consideration for restoration, unnecessarily limiting judicial discretion and oversight
- enabling guardianship orders by consent, without adequate judicial review, and the need to ensure safeguards including advocacy and legal representation
- narrowing the scope and stipulating the grounds for applications to vary or rescind orders (s.90)
- the need to ensure appropriate supports, advocacy and independent facilitation of alternate dispute resolution processes, including facilitation through relevant Aboriginal community processes

I also noted that the proposed amendments represented a missed opportunity to strengthen safeguards for Aboriginal children and young people, their families and communities, and to meaningfully address the systemic factors that contribute to and perpetuate the disproportionate impact of the current system on Aboriginal children and families. AbSec raised some of these possible opportunities in our submission last year, anticipating a partnership approach to the development of any proposed amendments. In the absence of that opportunity, we present the attached broad areas for your consideration. These areas are intended to strengthen existing provisions and provide additional safeguards to uphold the rights of Aboriginal children and young people, including provisions to meaningfully empower Aboriginal communities to take on greater authority in decision making about their children and young people, and to develop the systems and processes needed to keep Aboriginal children and young people safe.

Proposed areas for amendment include:

1. Amend the principal provision enabling adoption (s.10A) to explicitly exclude Aboriginal children and young people as a permanency goal through the statutory child protection system, as raised in the MAG meeting and at various different occasions.
2. Strengthen the Aboriginal and Torres Strait Islander Principles (specifically ss.11-13), including
 - a. Establish provisions within s. 11 that:
 - i. Place a requirement that the Minister establish relevant community controlled decision making processes, in partnership with Aboriginal communities, and devolve decision making regarding Aboriginal children and young people to Aboriginal community controlled mechanisms (including with respect to case plans, permanency goals and placements)
 - ii. The Minister will make provisions for supports and services for the benefit of Aboriginal children and families to be designed and delivered by Aboriginal communities, through their own community controlled processes
 - iii. The Minister establish, in partnership with Aboriginal communities, appropriately empowered Aboriginal monitoring and review mechanisms to oversee the operation of the system with respect to Aboriginal children and young people, their families and community, including their placement and treatment while on any order that transfers parental responsibility.
 - iv. A provision to enable the delegation of any function under the Act with respect to Aboriginal children and young people to an appropriate Aboriginal community controlled body, as per the recent changes made in Queensland.
 - v. Include as a general principle in the administration of the Act values of prevention, and enduring connection for Aboriginal children and young people, to complement other existing provisions (self-determination, participation, placement), achieving full application of the Aboriginal and Torres Strait Islander Placement Principles
 - b. Establish provisions within s.12 that provide:
 - i. Specific grounds requiring the Secretary to work in partnership with Aboriginal communities to enable the participation of Aboriginal families, representative organisations and communities as currently required by the Care Act.
 - ii. Establish a role for Aboriginal advocates to assist Aboriginal families and communities to participate fully in child protection decision making, with direct accountability to community through Aboriginal community controlled processes
 - c. With respect to s.13, establish provisions that:
 - i. Require the Secretary to present evidence at each level of the placement hierarchy of efforts to place Aboriginal children prior to the consideration of other placements
 - ii. Require specific ongoing action from the Secretary to engage with families and place Aboriginal children higher according to the placement hierarchy after an initial placement, to prevent the systemic neglect of Aboriginal children
3. Specific amendments to prioritise family preservation and restoration, including legislating a proactive efforts standard, and a presumption of restoration requiring evidence of efforts to preserve Aboriginal children and young people in their family, and to restore Aboriginal children to their families, before seeking other orders. This will require more than an assessment of the likelihood of restoration, but demonstrated evidence.
4. Changes to 106A, requiring the Secretary to demonstrate that risks and conditions persist that justify statutory intervention in this case, as well as evidence of proactive efforts to address these risks prior to statutory intervention.

AbSec supports the need for legislative amendments to improve outcomes for children and young people through the statutory child protection system, and acknowledge your ongoing desire to make a significant difference in the lives of vulnerable children and young people. Your leadership in this area is welcomed, and our continued work together to ensure the best interests of Aboriginal children and young people are upheld is critical.

I look forward to discussing these important amendments to safeguard Aboriginal children and young people, given the significant overrepresentation within the current system. My office would be happy to facilitate a meeting, and can be contacted on Dakota.Torrens@absec.org.au, or on 02 9559 5299.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Ireland', written in a cursive style.

Tim Ireland
Chief Executive Officer

Cc:- The Hon. Sarah Mitchell, MLC, Minister for Aboriginal Affairs