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Re: Child Protection: Legislative Reform Legislative proposals. Strengthening parental capacity, accountability and outcomes for children and young people in State care

Dear Shenuka

I refer to the above and thank you for the opportunity for Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec) to provide comment on the proposals that underpin the government's reform agenda contained in Minister Goward's Discussion Paper of 22 November 2012.

About AbSec

AbSec is an incorporated not-for-profit community organisation, primarily funded by NSW Family and Community Services, Community Services (CS) and is recognised as the peak NSW Aboriginal body providing child protection and out-of-home care (OOHC) policy advice to the government and non-government sector on issues affecting Aboriginal families involved in child protection and OOHC system. AbSec also advises on funding decisions related to service provision by local Aboriginal community controlled organisations (ACCOs) that provide or seek to provide Aboriginal child protection and associated services.

AbSec also auspices the Aboriginal State-wide Foster Care Support Service (ASFCSS). This service provides a free telephone advice and advocacy service for the carers of Aboriginal children and also assists in local communities in establishing Aboriginal foster carer support groups.

Background to AbSec response to the Minister's proposed OOHC reforms

AbSec's response to the proposed reforms cannot be viewed without respect and understanding for the historical context in which our experiences are squarely based.

We acknowledge the effects of traumatic past policies and practices that involved the removal and separation of multiple generations of Aboriginal and Torres Strait Islander children from their families across the nation.

The fact that the lives of Aboriginal families are still intervened with by the State with an intensity and to an extent vastly disproportionate to that for other families remains a source of grave concern, and creates great confusion, mistrust, fear and anger in our communities, towards the 'welfare'.

The Stolen Generations are the most recognized, well documented example of such State intervention. Our children and young people lost contact with their families through the policies and practices of forcible removal imposed across the nation over multiple generations during and following this era.

What resulted was a severing of ties so profound and widespread, from the elements that provide our own sense of permanency and stability. That is, an undoing of connections to our very identity as Aboriginal people and our place in family, with community, country and

language, with deeply ingrained social systems, norms, knowledge, ways of learning and heritage.

This was the intent of these policies and practices. The overall justification for systematic removal was because it was deemed to be in the best interests of children; yet children's files commonly included such reasons for removal as for 'being Aboriginal'[1], implying that they needed to be saved or prevented from 'growing up to be Aboriginal', so that:

> "In the course of a few years there will be no need for the camps and stations; the old people will have passed away, and their progeny will be absorbed in the industrial classes of the country"[2].

Parents and extended family members left behind suffered deep and enduring grief and trauma from which any Australian would struggle to recover.

As a result of this history with 'the welfare', Aboriginal individuals and communities have been left a number of legacies from which we are still recovering. '*Bringing Them Home'*, the report based on findings from the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Families"[3] and multiple inquiries and government reports outlined a range of effects:

- Parents and family members' grief for the child or children removed
- Interruption to the structure of and connections within families and communities from which children were taken
- Denial of identity by family community members left behind, in attempts to prevent children who had not yet been taken by the welfare
- Loss of identity and feelings of the children; of being caught between black and white worlds and belonging to neither, belonging nowhere and all the resulting impediments to a strong sense social and emotional wellbeing
- Loss of rightful place in family, community and cultural connections of those children removed; the ordeal of (sometimes fruitless) searches for family and identity;
- Consequences for adults when they return to families, when reunions do not live up to hopes and expectations for all concerned or when communications break down
- Difficulties for those removed in parenting their own children
- Aboriginal community members' justifiable suspicion of and resistance to involvement of non-Aboriginal welfare authorities, whether merely offering support and programmes, or intervening and deciding the fate of their children

[1] Human Rights and Equal Opportunity Commission (HREOC). Bringing them home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. Canberra: AGPS, 1997

[2] Report by an Aboriginal Protection Board official to the Australasian Catholic Congress, 1909. In: Read P, Edwards C, editors. The Lost Children. Sydney: Doubleday, 1989

[3] HREOC (1997)

Well documented in *'Bringing Them Home'* and in various subsequent research and reports, these effects manifest in multiple ways, impacting on physical and mental health, use of alcohol and other drugs, affecting relationships, family structure, parenting skills and social, as well as criminal behaviour.

The effects were the intent of those policies: To cease us from growing up as Aboriginal children, in Aboriginal families, to be Aboriginal adults.

Our responsibility as community members and AbSec's task as a peak body, is to remain vigilant and ensure these circumstances are never repeated, and that no further generations of Aboriginal children and young people are subject to their effects; whether intended through legislation, policy and practices, or whether unintended.

Aboriginal children and young people continue to be vastly over-represented in the NSW OOHC system, being subject to substantiations of notifications at a rate of nine times that for other children[4]. During 2011- 2012, of all 17 192 children and young people in NSW in OOHC, 5 991 (nearly 35%) were Aboriginal. For every 1000 Aboriginal children and young people living in NSW, 83.4 were in OOHC, a rate 11.7 times that for other children (at 7.1 per 1000)[5].

The Wood Report outlines the history of child removal legislation and connected policies and practices in NSW. It addresses issues around *s13* of *the Children and Young Persons (Care and Protection) Act 1998,* the *Aboriginal and Torres Strait Islander Children and Young Person Placement Principles* and Permanency Planning, as well as the over-representation of Aboriginal families and children in the NSW child protection system. In relation to the continued disproportionately high numbers and the availability of services for families, the Wood Report asserted that:

> "Aboriginal communities remain over represented in the child protection system and culturally appropriate interventions for Aboriginal children, young people and their families are not widespread in any of the agencies that are expected to work with them" (Wood, 2008: iii).

It is true much work has been done towards addressing the problems highlighted by Wood. However, as evidenced by the failure to implement other critical reforms such as those recommended in the *Bringing Them Home* report, the breakdowns Wood, along with our own sector and community leaders over multiple generations have identified, are symbolic of a system fearful of facing and learning from past mistakes. These fears lie at the heart of subsequent, repeated policy failings in the child protection sector that ensure the status quo remains unchecked.

We caution that any attempts to address the deeply engrained problems our communities have with the system to this day, must genuinely have the safety, wellbeing and welfare of children and young people at heart, and not other considerations. They must be grounded in sincere motivations and based on the relevant evidence:

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[4] Australian Institute of Health and Welfare (AIHW). (2013). Child protection Australia 2011–12. In AIHW (Ed.), Child welfare series no. 55. Canberra: AIHW, p 17.

[5] AIHW (2013), p42

> Substantial changes to policy and practice in child protection systems have often been implemented without careful, evidence based consideration of the effectiveness of existing systems, of proof that the new initiative will have a significant, positive impact[6].

In her introduction to the Paper, Minister Goward states that the overall aim of the reforms is:

> …a strong, integrated and contemporary child protection system that protects and empowers the most vulnerable members of our society."

This objective is a starting point that we have in common. However it's in the detail of this Discussion Paper, how we go about achieving reform, on what evidence we base such significant proposed reforms with potentially profound and widespread effects on our communities, where we and many others across the sector and in our communities, both Aboriginal and mainstream, seem to diverge.

Over the course of the transition of OOHC from CS to the non-government agency sector, much goodwill and cooperation has been created, in spirit and in the most practical terms. We are only at the very beginnings of building trust between us, to start to turn the tide and work together towards breaking the cycle of removal of Aboriginal children from their families.

As Professor Faith Bandler (OAM, AC), social justice champion and Human Rights Medallist so powerfully declared at the Australian Reconciliation Convention in 1997:

> … our task now, is to use our voices, our energy, our will, and our talent to mobilise the forces of good will. We can demolish those forces of distraction under the banner of justice for all. But we must act now, before it is too late[7]."

We want to take the next, positive steps now from the transition and work together to prevent the entry of our children and young people into the care and protection system. We don't want to go backward from where we stand now, by working at cross purposes as we believe we will be, under the many of the proposed reforms.

Our response to the Discussion Paper follows.

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[6] Tomison, A. (2002). 'Evidence based practice in child protection: What do we know and how do we better inform practice?', paper presented at ACWA conference: What works? Evidenced based practice in chld and family services, Sydney. P6.

[7] Bandler F. '30th Anniversary of the 1967 Referendum' (in) Council for Aboriginal, R., & Australian Reconciliation, C. (1997). *The people's movement for reconciliation: proceedings of the Australian Reconciliation Convention, [26-28 May 1997]*. Kingston, ACT: Kingston, ACT: Council for Aboriginal Reconciliation.

AbSec response to the Discussion Paper Proposals

Section One: Promoting Good Parenting

Overall comments re Section One.

A great deal more detail, clarity and current, relevant evidence base is needed around the practicalities of implementing any of these proposals; particularly as to how exactly, they address the safety and wellbeing of children and young people.

Whilst the detail about practicalities is indeed light on in the Discussion Paper, from what we can determine the Section One proposals on the whole are punitive in nature. They could in fact potentially have a profound, disproportionate and irreversible (particularly around the focus on expediency and adoption) impact, and result in a perpetuation of the cycle of removal of Aboriginal children and young people from their families.

To this end, these proposals seem to actually clash with the stated intent of the reforms (to reduce the number of children and young people entering care, seek permanency for them, do better for vulnerable adolescents and localise service systems).

We foresee an across the board escalation in litigation and subsequent burden on the legal system as Aboriginal people, already over-represented in the criminal justice system, become increasingly vulnerable to criminalisation under the proposed reforms, and as they battle to prevent their children and young people entering care, in order to prevent their permanency removal or adoption.

Many safeguards would need to be put in place to prevent this scenario; these are outlined below.

Prop 1: Introduce stand-alone parenting capacity orders (PCO) to require parents to attend a parenting capacity-building or education course

AbSec understands that the rationale behind this proposal is that parents need to better engage with services to prevent removal of their children. We are concerned that punitive measures, particularly at the EI phase, will be limited in effectiveness and indeed counterproductive, in that they will instead prove to be a *disincentive* to parents to work with services at all (whether mainstream or community based).

The justification provided by CS in the Paper for introducing stand-alone PCOs requiring a parent to attend a parenting capacity program or other treatment in the Care Act is that they would:

> …improve parenting capacity and promote parental accountability… (with the aim to build) their parental capacity and address safety risks to their child or young person."[8]

[8] Minister for Family and Community Services (2012). *Child Protection: Legislative Reform Proposals – Strengthening Parental Capacity, accountability and outcomes for children and young people in State care*, Community Services, Sydney, NSW. p12

It is problematic for us in this context that the basis for this proposal is that:

> Current evidence suggests that mandating parents to attend parenting programs does not impact on their effectiveness... (in that) the referral route did not make a difference to the level of impact that parents reported"[9]

Firstly, the conclusions from the UK based research evaluation upon which this assertion is based in fact are that whilst there may be a role for PCOs in engaging some parents in parenting programmes etc, a genuinely voluntary system may be even more effective. The authors found that even where there is an option to implement PCOs in certain cases, that a voluntary arrangement:

> … might prove more acceptable to family support providers…and parents themselves. This would help to reduce the initial barriers to engagement with a service arising out of parents' distress at receiving a Court Order, and help minimise the number of parents being drawn into the criminal justice system."[10]

Secondly, it is difficult to further ascertain the relevance of the research to AbSec member agencies as these particular evaluation findings were based on a vast majority of white European participants in the UK.

Additionally, concerns have been expressed as to the robustness of this particular evaluation, due to the absence of any comparative sample[11].

We hope to find more current, robust and culturally sound research than that provided in the background to this proposal, in order to properly establish its potential implications for our member organisations and families. In the meantime, our response to each question in this proposal is detailed below.

Qu 1 (a): Do you think PCOs would be an effective mechanism to address escalating risk in both an early intervention (EI) and child protection context? Are there other mechanisms that might be equally or more effective?

Our recommendations are incorporated into our response below:

i. In an EI context:

- Clarity is needed re resources and supports in place, suitability of courses (especially culturally) and evidence re outcomes for Aboriginal parents (for e.g.: Positive Parenting Program {PPP} and CBT based courses inappropriate). Blanket approach unsuitable for Aboriginal families
- Legal services would advise parents not to sign PCOs as the onus falls completely on parents with no reciprocal obligations for other parties, including CS. This creates

[9] Ibid

[10] D Ghate and M Ramella, Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme, Policy Research Bureau for the Youth Justice Board, September 2002, ,p vi.

[11] Hollingsworth, K (2007). Responsibility and Rights: Children and Their Parents in the Youth Justice System *Int J Law Policy Family. 21(2): p217*

potential to bog down court process PCOs needs to remain separate from the EI context

- Aboriginal agencies providing early intervention services rely on developing rapport and a sense of real trust with clients, in order to work with them to strengthen families and ensure the safety of children and young people by preventing behaviours that may lead to escalating risk.
  Organisations would need to be registered providers; the statutory protection role would essentially be extended to a range of organisations that have never had such a function before. Where PCO breaches occur and will need to be justified, not only would service providers be obliged to bring the application but also to provide evidence. Support workers and managers may be subpoenaed and called as witnesses in court proceedings in such cases.
  This proposal creates an environment ripe for potential animosity and undermining of family/community trust of any Aboriginal agencies or services that may have any role in initiating a PCO
- Leads to a potential conflict of interest for previously trusted Aboriginal agencies and services; their workers would be pitted against parents in a court room setting
- These obligations take workers away from core business - time spent with families on casework, placing even greater stress on already thinly spread resources
- Programmes such as Intensive Family Based Services (IFBS), Protecting Aboriginal Children Together (PACT) and Family Group Conferencing (FGC) are a more appropriate means of improving parenting capacity and progress parental responsibility

ii. In a child protection context:

- Courses provided must be suitably funded & linked to a proper referral and support process. Potentially positive if used in a recognised early intervention strategy such as Family Group Conferencing (FGC)
- PCOs may be more appropriate for our families if children and young people are already in care - NGOs can work towards a restoration plan without animosity; parents potentially more engaged as they need to comply with PCO and work for child's restoration

iii. Other mechanisms with equal or more effectiveness:

Our recommendation is that any agreement should:

- Focus on the safety of the child or young person and contain agreement and place responsibility on all parties to act on the problem
- Address the actual risks of harm to the child or young person

- Operate within a hierarchy so that consequences of any breaches are proportionate, rather than result in an automatic escalation to court. For example, parental disengagement could result in CS conducting a safety assessment for the children, as opposed to establishing rebuttable presumption that escalates to a court situation
- Be linked to any court orders and to anticipated outcomes

Qu. 1 (b): What factors do you think the Court should consider before making a PCO?
Our recommendations are that courts should consider whether:

- The PCO actually relates to alleged risk of significant harm and the need to improve parenting
- There is adequacy evidence of previous alternative actions. For instance, whether CS/agency decision making processes are transparent *and* whether consistently high casework standards were applied (especially around engagement of family)
- In decision making concerning neglect in the assessment phase, cultural differences in parenting were adequately taken into account, as well as the role of underlying social determinants and historical issues impacting on families , eg: trans-generational effects of removal and effects on parents and family
- Parents are capable of understanding, participating and complying with a PCO and/or have adequate supports or advocacy in place to facilitate their understanding
- Evidence is verified by external sources (eg: schools etc)
- Availability/suitability of courses/training; for instant delivered by Aboriginal trainers
- Goalposts have changed at any stage in the process leading up to a PCO. For example, a mother may have asked to move away from her community in order to care for children, however despite complying, her children still remove

Qu. 1 (c): What should be the consequences for failing to comply with a parenting capacity order?

Punitive measures will be limited in their effectiveness in Aboriginal communities. Programmes such as FGC introduced as early as possible would be more effective, where there are concerns for the safety and wellbeing of children and young people.

If such orders are to be introduced at this stage then they must be relevant, able to be genuinely understood by parents, and provide opportunities for families to participate and make changes. They should not be punitive in nature, particularly where there are no reciprocal obligations on other parties.

Where such measures fail, then to ensure the safety of the child or young person it may be necessary to escalate intervention. Our recommendations are:

i. Consequences should include:
   - Risk assessment
   - Engagement of FGC or similar appropriate measure should be introduced into process as early as possible (if not already involved)

ii. Consequences should not be:
   - Immediate presumption that child or young person is in need of care
   - Disproportionate in nature; they should not result in enforceability to the same degree that measures by the court would, for example, as per point above, there should not be a rebuttable presumption attached to an EI agreement.

Recommendations regarding Proposal One are incorporated in response above.

Questions regarding Proposal One requiring clarification from CS:

- Exactly what measures will be enforced to ensure that this proposal, if enacted, will prevent rather than increase further entries to care at the EI phase (for example, a hierarchical, proportionate approach to breaches, independent review mechanisms around decision making etc)
- Terms and specifications that could be contained in a PCO, especially about:
  - Duration *and*
  - Evidence based justification for the proposal that the court to simply make a PCO based on the sole relevant factor of 'the need to improve parenting' and explanation of the application of this policy, particularly around assessment, *and*
  - Evidence base for the proposal that the 'existing requirement to establish the need for care and protection prior to making any care order would be removed'
- What onus there would be on CS to demonstrate that service provision/availability and other actions, as well as cultural differences, have been taken into account in assessment of escalating risk and instigation of a PCO;
- Criteria for assessing what constitutes escalating risk and which of those criteria would prompt a PCO in both an EI context and a child protection context
- What will be the assessment process intended under this proposal to ascertain whether a child or young person remain with their family
- How CS intends in practicality, to resource 'encourage(ment) and strengthen(ing of) supports within a family as an alternative to the child being removed…'
- Where 'the consequences of breaching a PCO would be dependent on the risk within the family', clarify how the risk would be determined and by whom
- What are the implications for agencies of these proposals?
- How will PCOs would be signed and overseen?

Prop 2: Strengthen the PRC Scheme by:
(a) introducing a new modified PRC for use in EI programs to support disengaged parents
(b) extending duration of a PRC from 6 to 12 months to enable a parents to attend intensive parenting courses or therapeutic treatments & demo abstinence from substance misuse so children can stay at home with them safely
(c) introducing PRCs for parents with an unborn child at risk to help improve their parenting
capacity in preparation for the birth of their child
(d) requiring FACS (CS) to attempt to use PRCs with parents prior to commencing care proceedings in appropriate matters

Qu. 2 (a): Do you think there is a place for PRCs in EI programs?

We are concerned that rather than reducing numbers of children and young people entering care, this proposal may place them at even higher risk of systematic removal

AbSec does not believe there is a place for PRCs in EI programmes, for the following reasons:

- Families in our communities may not necessarily understand the consequences of signing a PRC and what it really means to them and their families in practice, particularly where parental obligations under the contract are not clearly defined.
- PRC's may have good intentions, but they can lead to further scrutiny and pressures on a family and potentially higher court action if matters are progressed to Children's Court
- Any implied threat of consequences from any breaches is unlikely to improve engagement by Aboriginal families in EI programmes. Additionally, the outcomes of a breach could result in punitive measures that will not work in an EI context, including rebuttable presumption (i.e. reversal of onus of proof once a breach occurs that a child/young person is in need of care and protection).
- Should parents be without adequate legal representation, a major step in the court process is at risk of being circumvented, further eroding the overall purpose of the reforms, i.e. to reduce numbers of children in care
- PRCs may place agencies delivering both EI and OOHC programmes in a compromising position. If a parent incurred a breach whilst involved with an EI programme (which an agency would be required to register and report), Aboriginal agencies would be put in a position of "sheriff"; risking a loss of community trust and deterrent to families accessing service to keep their children safe and at home. Outcomes for Aboriginal children in OOHC are often poor
  6 - 12 months to demo changes is insufficient - Fcteam suggests 2 - 4 yrs to make changes - the care system has poor outcomes for our kids - fostering doesn't work very well. We need give parents as much chance as possible to bring kids home. Up to 4 years

bc often parents have more than one kid in that time (attachment th argument again). Ultimately expediency is not going to save them $ in the LT.

Qu. 2 (b): If so, what should the consequences of a breach of a PRC in an EI context be?

AbSec disagrees with use of PRCs in an EI context (i.e. where the child or young person is not at risk of harm).
However should they be introduced under these reforms in an EI context, then *to minimise the potential for any breaches and the inevitable increase of numbers of children and young people entering care*:

- Firstly, appropriate resources should be mandated (including independent legal advice) and accessible to parents
- PRCs should be tailored to each parent (similar to FGC) and not take a one size fits all approach (thereby hopefully minimising the chance for breaches)
- The Department should be accountable at all stages in the process including for ensuring:
    - Thresholds for risk of harm remain consistent
    - Parents at no stage *feel* bullied or threatened into signing a PRC (on pain of immediate removal of their child if they do not sign up)
    - Parents clearly understand the reasons the PRC has been issued - education about what it means to their family is the key
    - Parents clearly understand any undertakings they sign off on
    - Transparency and consistency with regard to decision making processes about undertakings,
    - Parents clearly understand the consequences of any breach; and
    - Goalposts also cannot be changed with regard to breaches at any stage, without prior review and agreement by all parties and advocates/legal representatives
    - Parents are not be set up to fail. Caseworker duty of care to allow reasonable access to services and appointments, with regard to locations and times. Parents have the right to adequately prepare and physically make it to an appointment
    - Parents who disengage or disappear are prioritised by CS, who ensure due diligence is employed to locate them and utilise high standards of casework practice/management to re-engage parents
- Breaches must be initiated only on reasonable grounds (for example, a breach should not be issued because a parent was asked to attend two appointments that were scheduled by a caseworker at the same time and date, with one appointment in Campbelltown and one in Katoomba)

- Consequences of any breach must be useful and a genuine tool to engage parents. Close consultation with local Aboriginal agencies or appropriate services are critical to implementing an appropriate agreement. FGC/ ADR would be more appropriate at this point, rather than progressing matters to court
- Consequences of any breaches should be graded according to the:
    - potential impact on the safety and wellbeing of the child or young person
    - stage at which any breach occurs in the child protection continuum/hierarchy
- Any PRC breaches issued must be subject to a level of scrutiny by an independent body to ensure transparency and the accountability of all parties involved

Qu. 2 (c): Do you agree that PRCs will be improved by extending timeframes, broadening their scope to incl. unborn children & mandating their use prior to commencing care proceedings in appropriate matters?

- With regard to extending timeframes, a one size fits all approach with regard to PRCs is inappropriate for our families. PRCs should be tailored to meet their individual needs across the community, as specific time frames during which change is required can only be determined according to each individual situation;.
- We agree that PRCs could be improved by extending timeframes where it is in the best interests of the child and their family, for example to allow parents adequate time to attend therapeutic treatments or abstain from substance misuse. We do not agree to extensions in cases where there are no reasonable grounds or where that extension does not have as its main consideration, the child or young person's safety as the main consideration.

  This is particularly so in cases where the goalposts appear to have changed, despite parents adhering to undertakings throughout a PRC and a child is at a higher risk of permanent removal due to timeframes for decision making around permanency. Either way, the onus should be on the Department to provide evidence that the extension is justified.
- Any PRC timeframe extensions in a child protection framework should be taken into account in any decision making process/timeframes around restoration and permanency.
- AbSec does not agree with the proposal that PRCs would be improved by broadening their scope to include unborn children
- Should any proposal relating to unborn children be rushed through, parents must be assured natural justice and that sound casework practices have occurred in determining whether a PRC should be pursued in a child protection context.

  Any PRC issued in relation to an unborn child should be a genuine opportunity to further engage with parents and set them up to prevent removal of an infant.

The birth of an infant in these circumstances should trigger further, appropriate assessment of the safety of the child and of parenting capacity, rather than simply facilitate automatic removal of an infant.

Parents must be set up not to fail, but provided every chance to succeed in caring for their child safely at home. For instance they should be referred to specific, appropriate and accessible programs through CS, Health, etc to ensure all concerns are addressed *prior* to the birth of the child, to ensure the child has every opportunity to grow up safe and well with their own family

- AbSec does not support the proposal to mandate the use of PRCs in appropriate matters prior to commencing care proceedings

Qu. 2 (d): Are there any other ways that PRCs may be improved to help parents keep their children out of OOHC?

Not in an EI context as they should not be applied.

In a care and protection context (and used only if adequately resourced and appropriate), AbSec believes (see also suggestions for improvement above (2.b), PRCs are only as sound as the resources accessible by parents throughout the process. Ways they may be improved include:

- Appropriate levels of resourcing– our families sometimes require very little support, but many require multiple levels of often intensive, effective and culturally sound support. Family preservation/IFBS/FGC may be used but must be adequately resourced.
  Our agencies are well aware of numerous problems with current resources, like previous measures such as Protective Plan Agreements.
- Addressing current long waiting lists for programmes
- Ensuring contracts provide parents with realistic goals and timeframes that are appropriate to the family's circumstances particularly regarding ensuring parents understand the consequences of signing PRCs:
- As many parents are uncomfortable attending mainstream groups, ensuring broader, more appropriate offerings are made available than courses such as Positive Parenting Program (Triple P) (our agencies report Triple P as unsuitable and its effectiveness questioned in recent international studies12)
- Building capacity and spotlighting to CS and agency caseworkers the option of referral to community initiated, community delivered parenting programmes such as Burrun Dalai's Butterfly Programme in Kempsey
- Ensuring parents have access (physically, socially and culturally) to services. During drawing up of the agreement, CSCs must take a role in identification of, and referral to programmes and services, as well as meeting attendance costs

[12] Wilson, P. et al. (2012). How evidence-based is an 'evidence-based parenting program'? A PRISMA systematic review and meta-analysis of Triple P. *BMC Medicine, 10*(1), 130.

- Integration and collaboration at this phase with appropriate local support services, including programmes such as PACT, health or other services
- PRCs must be culturally sound and take into account cultural differences in parenting and protective factors, including strengths of the family, cultural strengths etc
- Higher casework standards *and* departmental and service accountability throughout this phase, as it is about prevention of entry to care, and also given the focus of the reforms of guardianship and adoption and the increased risk of permanent removal
- Young people still in care or recently left care (>25 years of age) who become parents are particularly vulnerable to any unintended consequences of these proposals. They must be guaranteed of receiving a leaving/after care plan, accompanied high standards of casework support and referrals.

Prop 3: Consider the suitability of FGC for care matters to better engage families to resolve child protection concerns

Qu. 3 (a): Should there be an obligation upon CS to refer care matters to a FGC prior to commencing care proceedings and, if so, what should be the nature of this obligation?

- FGC should be legislated and implemented as an EI Programme or, at a minimum, guidelines implemented to commence FGC at the earliest opportunity, prior to any Care Application lodgement (especially if parents disengage in the EI phase). Previous evaluations of FGC, besides establishing the effectiveness of the programme in building capacity of parents to maintain, care and protect their children have also found:

  > "agreed plans are more likely to be implemented, children are more likely to be placed with family members and families report improved working relationships with the child protection agency"[13].
- Aboriginal FGC is currently only piloted in Shellharbour, Coffs and Lismore and AbSec believes that it should be implemented state-wide, as an EI programme. Where it's appropriate for a particular child and their family, FGC will help better engage families and help build parents' capacity to maintain, care and protect their children and resolve child protection concerns. It will also assist with which will assist in minimising costings against the State
- FGC is already positioned to receive matters prior to commencing care proceedings, participating with weekly allocation meetings (WAMs) etc. Unallocated families should be able to enter the programme in the 28 day Safety and Risk Assessment (SARA)

[13] Boxall, H, Morgan, A, Terer, K.(2012). Evaluation of the Family Group Conferencing pilot program. In: *AIC reports. Research and public policy series; 121. 1836-2060*. Australian Institute of Criminology (Eds.), pv.

period. AbSec proposes that FGC referral process could replicate that of the Protecting Aboriginal Children Together (PACT) process

- To help ensure the best interests of children and young people in care arrangements that need to be made, FGC parties should be required to use the opportunity to share information about the child's family, kin and cultural connections and background (including a genogram or family tree). Taking the opportunity to gather such critical information at this stage also helps ensure compliance with s12 of the Care and Protection Act 1998.
- To help ensure the ongoing integrity of FGC and procedural fairness, certain safeguards should be put in place. These include:
  i. That parents be entitled to obtain legal advice to ensure:
     - Agreements fit with identifiable risks in the family
     - The agreement does not impose any restrictive obligations on parents, that they understand the implications of agreement breaches and any resulting potential for legal action or alternative intervention
     - Parents are empowered through establishing a future source of advocacy and advice, including about alternative legal options
  ii. A range of extended family and community representatives with a significant role in the child's life should be able to have input into the FGC decision making process (as per s11 of the Care and Protection Act 1998).
  iii. More FGC mediators and facilitators are needed in each area, including a strategy to attract trained Aboriginal mediators and facilitators and to establish training for these positions.
  iv. The step to refer matters to FGC should be integrated into the KiDs system as a mandatory field; therefore it could not be skipped as an obligatory phase in casework procedures.

Qu. 3 (b): Should the Court be able to refer parties to FGC in addition to or in place of a dispute resolution conference?

- Mechanisms and supports should be in place to facilitate Court referral of parties to FGC at the earliest possible stage (with safeguards in place, including those delineated in 3.a.i, ii and iii above).
- Given limitations in dispute resolution highlighted in the first piece of research focusing on Family Dispute resolution services for Aboriginal people[14] (and as highlighted by

[14] Allen, D. (2009). Solid work you mob are doing: Case studies in Indigenous dispute resolution & conflict management in Australia]. Canberra, A.C.T.: National Alternative Dispute Resolution Advisory Council: See: www.nadrac.gov.au/publications/PublicationsByDate/Documents/Solidworkyoumobaredoing.pdf

Ralph[15]), parties should have the extra safeguard of being able to be referred by the Court to FGC *in addition to and before* the option to refer parties to a dispute resolution conference. Where PACT, FGC etc are ineffective and if all other EI efforts fail, then matters should be progressed to Dispute Resolution, in order to resolve before proceeding to court.

- Additionally, implementing this proposal may resolve issues inhibiting the effective implementation of FGC—most recently identified as "low referral rates and resistance from professionals used to the previous way of working"[16].

Qu. 3 (c): What kinds of matters do you think would be appropriate for FGC in the context of care proceedings?

- Any matters of a non-criminal nature are appropriate for referral to FGC in the context of care proceedings
- Any matters involving Aboriginal children and their families in general, particularly where internal CS discussions or processes or Aboriginal agency/placement panel mechanisms around appropriate placement have hit a brick wall, and family/community input is needed to locate a suitable Aboriginal kinship/relative placement for the child or young person

Prop 4: Incorporate sanctions for breaches of Prohibition Orders (P.Os) that include:
- **fines**
- **community services orders**
- **compulsory attendance at parenting capacity programs, counselling or drug and alcohol rehab**

Qu. 4: What measures should be introduced to enforce P.Os under the Care Act?

- AbSec believes financial penalties are inappropriate and the criminalisation of parents is unacceptable, except where parents have perpetrated an offence punishable under the Crimes Act
- In some situations consequences of a breach are necessary, for example where there is a violent partner involved. Compulsory attendance at an appropriate family violence or anger management course may be more appropriate than a fine
- Application of punitive measures such as fines could potentially:

[15] Ralph, S. (2010). Family dispute resolution services for Aboriginal and Torres Strait Islander families: Closing the gap? *Family Relationships Quarterly* (17), 14-16. See: http://www.aifs.gov.au/afrc/pubs/newsletter/frq017/frq017-4.html .

[16] Boxall et all, 2012.

- financially disadvantage already vulnerable groups including Aboriginal families, who are likely to already be vulnerable or impoverished
- result in perpetuation of the cycle of incarceration and the child or young person in care at greater risk of adoption, should Proposal 15 relating to dispensing of parental consent be implemented

- Given the potential consequences of any breaches AbSec is concerned that there be:
  - Mandatory prior alternative action attempted before breaches are incurred, and specific direct evidence provided by CS of these actions and with regards to decision making around obtaining an enforcement order
  - Detail regarding what any enforcement order would entail
  - Onus on the Department to educate the parent around breaches
  - Proportionate response to any breach, to ensure there is a correlation between what the breach is, and what the consequences are. PO's are essentially about not having contact with the child
  - Properly resourced, accessible and appropriate programmes available for parents who are subject to a breach

Prop 5. Introduce alternative sentencing options (other than fines) to child abuse and neglect offences such as community service orders and educative and therapeutic services or rehabilitation.

Qu. 5: Do you agree that there should be alternatives to fines for the child abuse and neglect offences under the Care Act and, if so, what type of orders would be appropriate

- Any serious matters relating to child abuse and neglect will be dealt with in the criminal jurisdiction. If any matters constitute a crime, the current mechanism is to refer to Joint Investigation Response Teams (JIRT).
  Our understanding is that serious child abuse and neglect offences very often arise as a result of a lack of any EI and despite multiple risk of serious harm (ROSH) reports, that were never acted on and the situation in these more extreme cases becomes almost irreversible. There is no need for any other type of order.
- For all other matters, these are based on neglect, grounded in poverty and driven by socio-historical factors such as differences in parenting and trans-generational impact of previous removals.
- Charging parents with neglect (except in cases when there is a possibility the abuse constitutes a criminal offence) amounts to a revisiting of the assimilationist days of the Aboriginal Welfare Act 1939 era

- Education and rehabilitation must be the primary mechanism for addressing neglect and abuse; alternative sentencing options such as educative and therapeutic services or rehabilitation as suggested above are critical
- CS must take a more proactive role in the allocation and assessment of reports, must identify and interview children and respond holistically, involving professional community based services and extended family members in such matters

Section 2. PROVIDING A SAFE AND STABLE HOME FOR CHILDREN AND YOUNG PEOPLE IN CARE

Preface to Section Two

Given the over-representation of Aboriginal families in the system, AbSec is gravely concerned that Aboriginal children and young persons will 'fall through the net' to become subject to adoption applications, regardless of the intent of the legislation and reforms and any acknowledgement that adoption is rejected by Aboriginal people.

Whether through the Department's recently expressed interest in Aboriginal parents' rights (to adopt out their child), through to the failure to identify Aboriginal children and young people at the time of entry into the care system or through the 'de-identification' of an Aboriginal child or young person at some stage throughout their time in care (we are aware this has happened in the past and that there are existing cases where this is happening now that we would be happy to discuss further); we have deep fears that Aboriginal children will be adopted in push for expediency and permanency.

Safeguards must be implemented to ensure:

- The child's rights under the Convention on the Rights of the Child are upheld
- Natural justice and procedural fairness for parents in any application for adoption of their children
- Compliance with s13 of the Care and Protection Act is observed and that extended family have the opportunity to provide a safe, stable and permanent home for the child
- Historical issues are taken into account in a real way. For example, Aboriginal parents for well-known historical reasons would be more likely to respond to an Aboriginal service in search of them, than CS. Their right to consent to adoption should not be extinguished because of a reluctance or fear of engaging with CS).

Overall recommendations re Section Two:

Should an increased focus on expediency and permanency be introduced that results in an increasing likelihood of adoption for children and young people in OOHC, a number of safeguards *must* be implemented to help prevent Aboriginal children and young people becoming subject to adoption. These include.

(i) Legislating or at a minimum implementing guidelines that no Aboriginal child or young person may be adopted through these reforms by non-Aboriginal foster carer. In these situations, Sole PR must apply, to ensure a *s90* is possible at a later stage.

(ii) In the event that there is evidence of improvements from the point of the child's removal, then legislation and policy should preclude the child or young person from eligibility for OOHC adoption.

(iii) All OOHC adoption applications must be subject to extensive, in-depth investigation by an independent panel or body with relevant expertise including, child protection, child psychology, legal knowledge, Aboriginal family tracing and local community and cultural knowledge). The investigation must focus on ensuring that no Aboriginal child goes unidentified due to poor casework practices at the time or after their entry to care. It should include an assessment and make recommendations about the effectiveness of:

- Early intervention measures
- Departmental and agency restoration efforts
- Family tracing efforts
- Establishing and confirming the child or young person's cultural identity, regardless even if they were not identified as Aboriginal at the time of entry to care
- The role of all in the above in resulting in the proposed adoption.

(iii) Where there is any question or uncertainty about a child or young person's, or their parents' cultural identity (for instance through their removal from the child's grandparents, resulting in identity issues or a lack of any evidence of their Aboriginality), the burden of proof must lie with CS to prove the child or young person is *not* Aboriginal, before adoption orders can proceed.

(iv) The onus must be on CS to ensure parents and family of an Aboriginal child are always informed an adoption application. Parents must be informed in a timely fashion (before final orders are made) and regardless of the circumstances.

(iv) Parents should be required to undertake to inform CS of any change in address, however should they fail to do so, this must not be grounds for dispensing with consent.

(iv) Where CS seeks to dispense with consent, the onus must be on CS to make reasonable efforts to locate parents (and provide evidence that is subject to review by the Court of efforts).

(iv) Should CS be unable to locate parents to seek consent to an adoption application, measures must be in place to contact parents through an appropriate independent body.

Prop 6: Achieve greater permanency for children and young people in OOHC by:
(a) incorporating permanency into the objects of the Care Act including the preferred hierarchy of permanency being:
1. Family preservation/restoration
2. Long-term guardianship to relative or kin
3. Adoption
4. PR to the Minister
(b) requiring that the Court can only make an order for parental responsibility to the Minister if adoption or long-term guardianship is not possible
(c) requiring permanency plans not involving restoration to include the pursuit of guardianship/ adoption or reasons why they should not be pursued

Qu 6: Are there other measures for achieving greater permanency in the Care Act that should be considered?

AbSec has a number of serious concerns regarding the proposed hierarchy and we do not agree that this proposal will help achieve greater permanency or safety for Aboriginal children and young people.

Our perspective is supported through both past, first hand experiences in Australia and experiences reported in research from other countries including the United States. In summary, our fundamental concerns are that:

- Punitive measures such as the severing of parental rights are not necessarily the magic bullet hoped for in reducing the numbers of entry into care. They do not always result in the levels of permanency and stability for children that the reforms are aimed at. Parkinson reported that:

  > One of the most concerning aspects of the *Adoption and Safe Families Act 199*7 (ASFA) in the United States is the number of children for whom parental rights have been terminated without an alternative family being found to provide long-term care. Many children in the United States are kept in limbo without a placement being found. Some 'age out' without an alternative family being found for them. Without action being taken to terminate the parental rights they would at least have some sense of belonging.

- The concept of permanency planning, as outlined in the above hierarchy, is for a range of reasons inappropriate for Aboriginal children and young people and their families. These include the differences in our concept of wellbeing and stability for our children, which differs significantly from those assumed in mainstream permanency planning literature and resources

- The hierarchy appears unworkable from a legal and practice sense and represents a number of practical problems for our community members and agencies in how it will work

- To that end, we reject the inclusion of adoption in any hierarchy for Aboriginal children

AbSec considers there are a number of other measures, more appropriate to Aboriginal children, young people and families that can be taken to achieve greater permanency than the hierarchy described above.

This particular proposal is of critical importance due to the potential to have a profound and widespread impact in our communities. These matters cannot be adequately addressed within the bounds of this submission.

Therefore we are keen to discuss this important proposal with CS in a great deal more detail in either an addendum to our submission or in dialogue setting.

Proposal 6 – Recommendation
6. That AbSec and CS, as well as other key Aboriginal community and sector representatives meet to resolve concerns we have regarding the proposed hierarchy and establish a solid, culturally sound and effective alternative for Aboriginal children and young people in care.

Prop 7: Legislate restoration timeframes – within 6 months for children less than 2 years and within 12 months for children older than 2 years.

Qu 7: Do you agree with the restoration timeframes proposed?

AbSec does not agree with legislating any restoration timeframes and in particular we do not agree with the restoration timeframes proposed for a number of reasons.

The aim of the proposed reforms is to decrease the number of children and young people entering care. AbSec's concern is that if the focus on restoration attempts does not match the focus on expediency and permanency (read: adoption) and if there are inadequate levels of appropriately targeted support provided, then the more likely outcome will be more children and young people entering care.

Legislating timeframes in our view will exacerbate existing systemic problems through creating an inflexible framework upon which casework, and care and protection proceedings are based. A focus on legislating timeframes appears to conflict with a child centred approach to casework practice, as noted in a recent Victorian Dept. of Human Services Child Protection Practice Manual:

> Timely decision making that is responsive to children's developmental needs is very important. However, it is vital to child centred practice that timelines do not drive decision making and the child's best interests are always paramount[17].

Moreover, it is not only the decision making process around restoration that can delay matters before the Children's Court. Delays can occur based on a multitude of other factors whether systems related or incidental, for example casework practice or procedure related issues. Legislating timeframes will inevitably create an inflexible system; any failure to take such external factors into account amounts to a penalisation of parents for factors have little or no control over. The outcome of this failure could result in extinguishment of parental rights.

We believe legislating timeframes will result in a range of other unintended consequences, mostly attributable to the continued focus on expediency and consequent unrealistic 6 – 12 month timeframes, including:

- Conflict between the rights of the child and with legislated timeframes
- An increase in numbers of Aboriginal children and young people being taken into care

[17] *Case Planning For Children in Out of Home Care* (Child Protection Practice Manual Advice No: 1284) Asst Director, Child Protection Policy, Practice and Planning, Dept of Human Services, Vic, 5 Nov 2012

- Questionable evidence being submitted to the courts and worse still, impacting on decision making
- The estimated timeframes becoming counterproductive to other programs such as Brighter Futures (BF) and Intensive Family Based Services (IFBS), where families already have timeframes of two years (B)F and 6-12 months for IFBS (*)
- Application of blanket reforms rather than a flexible approach that can take into account particular circumstances
- Significant backlog of proceedings in the Children's Court, as parents from across the community seek to have their children returned to them in order to prevent their entry into guardianship, adoption or long term care arrangement
- Compromising of procedural fairness in matters
- Creation of deeper, more widespread inter-generational toxic relationships of Aboriginal families with child protection

Creating less opportunity for parents to develop appropriate relationships with their children achieves little. It generates further alienation of extended family groups from their identity, and long term costs to the state in terms of accessing services to help deal with stress and trauma of the ongoing separation from family.

The only timeframes we would agree to in this context is those that compel CS and agencies to respond to reports and provide assistance to families.

Proposal 7 - Recommendations

7.1. Restoration timeframes will not be legislated. Existing guidelines around making appropriately quick decisions are sufficient.

7.2. Should the timeframes be implemented despite sector objectives, the proposed time frame of within 6 months for children less than 2 years and within 12 months for children older than 2 years in deeply unrealistic in relation to Aboriginal families. A timeframe of two to four years is more realistic, given evidence around drug and alcohol rehabilitation.

Prop 8: Enhance supported care placements by introducing:
• self-regulation of supported care placements by some supported carers to limit the intrusion of FACS (CS) in stable relative and kinship placements
• a 2 year cap on the duration of supported care placements to achieve greater permanency and stability through permanent legal orders for these CYPs

Question 8 (a):

Is 'self-regulation' of supported OOHC a positive step forward? Can you see any problems with this approach?

This approach may be appropriate for some groups in the community of carers, such as grandparents who care for their non-Aboriginal grandchildren in allowing them increased independence.

For Aboriginal carers, there may be concerns such as feeling pursued or harassed by CS or agencies (many of our grandparents who are caring for their grannies were part of the Stolen Generations; they remain fearful of 'the welfare', and will not engage with them). These issues will need to be addressed and a compromise found.

However AbSec believes a 'self-regulation' model of supported OOHC is an inappropriate approach for carers of Aboriginal children and young people on the whole, who often have extremely complex and high needs and will need appropriate and culturally sound ongoing support until and even after they become adults.

Agencies' engagement with carers can be difficult enough; there is a risk with self-reporting that carers and therefore Aboriginal children will be further isolated from any support, training and checks and balance. Aboriginal kinship carers are often more disadvantaged than other carers[18], further compounding other problems with this proposed model.

The risk of poor outcomes for children in 'self-regulated' care will increase as a result, for example from failure being cut of from educational supports such as a homework club, to serious and potentially harmful events like abuse in care.

For these reasons, AbSec does not view this model as a positive step forward.

Qu 8 (b): What would be the key elements of the self- regulation model for supported OOHC?

AbSec does not support the 'self-regulation' model for carers of Aboriginal children and young people.

Proposal 8 – Recommendations

8.1. That Proposal 8 not be adopted.

8.2. That discussion commence across relevant representatives regarding finding a ways of dealing with the issues that alienate carers from dealing with CS, so they can retain, where appropriate, a level of independence without compromising any checks and balances for the child in their care and without compromising any supports in place. Representative should include parties from across the sector including Aboriginal carers from a range of demographics with varying views, Aboriginal carer representative bodies and support and training services, children's advocates, Aboriginal legal services and Aboriginal agencies etc.

[18] McHugh, M. (2002). *The costs of caring : a study of appropriate foster care payments for stable and adequate out of home care in Australia*. NSW Association of Childrens Welfare Agencies Inc.

Prop 9: Provide permanent care to CYP when adoption is not in their best interest by:
(a) introducing long-term guardianship orders
(b) repealing section 149 of the Care Act that provides for sole parental responsibility orders as this provision is underutilised.

Qu 9 (a): Do you agree with the circumstances to which guardianship orders would apply?
AbSec agrees with this Proposal 9 (a),however we make a number of recommendations with regard to guardianship.

Proposal 9 - Recommendations

9.1. That s90 of the *Care and Protection Act (1998)* **must** still apply in guardianship arrangements.

9.2. Further negotiation between appropriate Aboriginal community and sector representatives occurs with CS around the monitoring and ongoing support of Aboriginal children and their carers in these placement types, to ensure appropriates supports occur and that contact between the child and their parent continues to be facilitated.

9.3. Carers must remain adequately resourced to appropriately meet the child or young person's needs.

9.4. We would also suggest the exploring the feasibility and implications of registering guardianship orders registered with the Family Court to ensure there's an opportunity for extended family members can make applications.

Qu 9 (b): Are there other matters that should be included in the proposed features of a guardianship order for NSW?

AbSec agrees that s149 of the *Care Act* should be repealed.

Prop 10: Introduce concurrent planning to support timely permanent placements for children in OOHC by either:
a) streamlining the assessment of authorised carers and prospective adoptive parents OR
b) creating a new category of "concurrent carer" who is authorised as both a long term carer and prospective adoptive parent

Qu 10 (a): Would the dual authorisation of adoptive applicants as foster carers better facilitate concurrent planning in NSW?

AbSec does not believe the duel authorisation of adoptive applicants as foster carers would better facilitate concurrent planning in NSW.

The objective of concurrent planning is to work towards achieving:

> "…family reunification while, at the same time, developing an alternative permanent plan. Concurrent planning aims to avoid drift associated with sequential planning by assessing the likelihood of reunification and, when families have a poor prognosis for reunification, working simultaneously on a permanency plan. Concurrent planning is linked with expedited timeframes[19]."

'Fast tracking' implies hurrying, which in turn suggests that all care is not necessarily taken in decisions regarding restoration and placement. Unforeseen circumstances could occur, for example children and/or foster parents may be unprepared or poor placement matching could occur, increasing the risk of placement disruption for the child.

In our view, concurrent planning should be focused on planning for the child or young person in care and not concerned with affording a dual status on adoptive applicants. Efforts and resources must centre wholly on the child or young person and must be directed in the first instance towards restoration/family preservation.

In combination, the proposals to better facilitate concurrent planning in NSW, legislate timeframes and to impose the proposed hierarchy may present practice challenges, including:

- Concurrent planning efforts may conflict with the first option in the hierarchy of family preservation/restoration, if the balance of resources and efforts are aimed at streamlining carer authorisation and the path for adoption
- Safeguards will be needed to ensure any placement with an authorised carer that may result in adoption does not unduly influence casework processes and undermine family preservation/restoration efforts, and consequently any decisions made in the court regarding restoration to family
- Comparisons may occur, whether unconsciously or through casework practices around concurrent planning, between the child's family and that of their carer's which may result in an unfavourable assessment of the parents
- Legislating timeframes does not equate to legislating casework quality, reviews of decision making processes and casework practices will be essential
- Increased risk of adoption for an Aboriginal child or young person due to a failure to employ due diligence in casework practice. For example, there may be uncertainties or questions around a child or their parents' cultural identity (as is common amongst Aboriginal families who come to the attention of CS, often due to a history of removals in the family) and there may be difficulties accessing relatives to find out information. Each of the three measures (especially in combination) mandate the application of strict timeframes and casework processes, over and above other factors. In such cases the focus on streamlining and expediting present a marked risk that the child's Aboriginal identity may overlooked and an increased likelihood of adoption because of failings with the system.

[19] Dept of Human Services, Vic, p15.

Qu 10 (b): Are there other options that could be implemented to avoid the occurrence of multiple placements?

AbSec supports the implication of evidence based, culturally sound measures to prevent children enduring multiple placements or 'drift' in care.

As mentioned in 10 (a), legislated timeframes and the proposed hierarchy we believe will not avoid the occurrence of multiple placements.

Appropriate service delivery models that have as their objectives the safety of the child at the forefront but ensure their wellbeing and stability in the wider sense and their identity is nurtured are more appropriate. We know this represents a challenge, but a fundamental scan of the research around promising practices in Aboriginal OOHC provides a solid starting point.

We would welcome further dialogue about the best means to do work towards stability for Aboriginal children and young people in care.

Proposal 10 - Recommendations

10.1. There must be minimum endorsed casework standards as well as independent review of the standard of casework going into concurrent planning, as per the recommendations in the Section Two preface.

10.2. AbSec supports implementation of establishing cultural sound approaches to working towards stability in care for Aboriginal children and young people. For example, we endorse the five element approach put forward by the Secretariat of National Aboriginal and Islander Child Care Inc (SNAICC), to achieve 'stable and culturally strong' OOHC for Aboriginal and Torres Strait Islander Children. Strategies, some of which we are well on the way to achieving in NSW include:

1. Moving towards total Aboriginal and Torres Strait Islander control of child and family welfare services for Aboriginal and Torres Strait Islander people including child protection services and out of home care service delivery and case management.

2. Properly implementing the Aboriginal Child Placement Principle and more effectively recruiting, training and supporting Aboriginal and Torres Strait Islander foster carers and kinship carers.

3. Developing national out of home care standards for Aboriginal and Torres Strait Islander children that reflect cultural and spiritual needs.

4. Enabling Aboriginal and Torres Strait Islander children in out of home care to maintain and build family connections.

5. Developing healing and family support services for Aboriginal and Torres Strait Islander families to prevent child abuse, neglect and removal and to bring removed children home.[20]

[20] SNAICC (Secretariat of National Aboriginal and Islander Child Care). (2005).Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children. Melbourne: SNAICC.

10.3. Further dialogue occur with appropriate Aboriginal sector and community representatives and groups regarding establishing and implementing appropriate measures to prevent drift in care for Aboriginal children and young people, as per above recommendation.

Prop 11: That the Children's Court be conferred jurisdiction to make adoption orders where there are child protection concerns.

Qu 11: Do you agree that there are benefits in conferring adoption jurisdiction to the Children's Court?

Given the potentially irreversible outcomes of adoption, that result in an extinguishing of parental rights and murkying of the waters around Aboriginal children's rights to contact to their family under Article 9 of the *Convention on the Rights of the Child*, AbSec is not in support of this proposal. We support the retention of all adoption matters in the Supreme Court jurisdiction.

Proposal 11 - Recommendation
11. 1. That Proposal 11 to confer on the Children's Court 'jurisdiction to make adoption orders where there are child protection concerns' be rejected.
11.2. That children be afforded an Independent Legal Representative in the Supreme Court Jurisdiction
11.3. That for any matters involving an Aboriginal child, parents are provided with ongoing independent legal advice to represent them in the Supreme Court context. In this way all parties involved will be afforded natural justice and procedural fairness.
11.4. Regardless of jurisdiction all applications for adoption should involve an exhaustive exploration of relevant issues regarding the child or young person's Aboriginality.

Prop 12: Amend the Adoption Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant.

Qu 12 (a): What other elements should be fast-tracked for OOHC adoptive applicants? Are there particular requirements and restrictions on adoption that should be relaxed for OOHC adoptions?

Qu 12 (b): Are there other differences for OOHC adoptions that should be reflected in the Adoption Act?

AbSec believes the Adoption Act should not be amended to recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant. No elements should be 'fast tracked' for OOHC adoptive applicants and no other requirements or restrictions on adoption should be 'relaxed' for OOHC adoptions.

We appreciate that all prospective adoptive parents, including authorised carers seeking to adopt, should have available to them supports to help them through what can be a long and taxing process.

However the process to facilitate such supports should not at any stage over-ride the best interests of the child or young person who is subject to the application for adoption.

We note with great concern, the couching of the language in Proposal 12 (a), is in terms of the needs of authorised carers and not those of the child or young person; this only serves to demonstrate why the sector needs to be concerned around the true motivation behind any measures to expedite OOHC adoption. OOHC should never become a conveyor belt to adoption for *any* child or young person for the sake of carers, agencies, the State or any other parties.

Children in OOHC, as carers would be very much aware, more often than not have high level and complex needs, incorporating any issues connected to their physical, social and emotional health and well-being, trauma and grief arising from any circumstances that may have resulted in their entry into care, identity and also cultural issues, developmental and learning problems etc.

Based on research conducted by the Department for Education and Child Development (DECD) in 2010 and Roberson in 2006, the most recent 'Adoptions Australia' report states:

> …research shows the children most at risk of unsuccessful outcomes include: children adopted at an older age; children with a history of physical abuse, deprivation and neglect; children with a history of sexual abuse; and children with emotional and behavioural problems[21].

The factors outlined above clearly align with those experienced by children and young people in OOHC.

Existing assessments for authorised carers take these complex factors into account, on the basis that placements are time limited, and/or undertaken with appropriate, ongoing supports in place.

Even with such supports in place, placements – even short term ones - still break down under the weight of the issues children and young people commonly deal with; CS would be well aware of the statistics.

Any application to adopt a child or young person in OOHC should, if anything, involve even more rigorous assessment.

The key, long term aim here is to avoid children and young people becoming 'adoption orphans'. Placement breakdown inflicts further rejection, trauma and systems abuse on children and young people. 'Adoption disruption' will undoubtedly lead in the long term to significant emotional and material costs not only for the child, their family and the carers, but also for the State, in terms of strain on the resources of CS and agencies, and support services,

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[21] Australian Institute of Health and Welfare (AIHW), B. (2012). *Adoptions Australia 2011-12*. Canberra: Australian Institute of Health and Welfare. Child Welfare Series no. 54.

Short term fixes such as fast tracking assessment processes will inevitably add to State costs rather than alleviating them.

Proposal 12 Recommendations

12.1. The Adoption Act should not be amended to recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant.

12.2. No elements should be 'fast tracked' for OOHC adoptive applicants and no other requirements or restrictions on adoption should be 'relaxed' for OOHC adoptions.

12..3 A specialised, independent, more relevant and stringent assessment process for OOHC adoption is required that can establish authorised carers' capacity to care for children and young people on an ongoing basis in such situations, not only til they turn 18, but beyond, when carers will be unlikely to have the level of supports and referrals in place that may still be needed.

The assessment process should include independently conducted interviews of the children or young people who are subject to the application[22], as well include their educational and psychological reports and assessment, and all other medical and health assessments. For Aboriginal and Torres Strait Islander children, the assessment must also include provisions regarding their cultural and spiritual needs and the assessment must include recommendations regarding the prospective adoptive parent's ability to meet these. Parents and their families through the adoption planning process, for the sake of transparency and a genuinely open adoption process, have a say in determining the appropriateness of authorised carers to meet the role of adoptive parent.

12.4. As a further safeguard to preventing adoption disruption for children and young people, consideration be given to limiting OOHC adoption to carers who have:

- had children with high needs in their care over a long term period, or
- have cared on an ongoing basis for older children and young people
- are experienced carers, who have cared for more than one child or young person, not including the child they are seeking to adopt
- have preferably not experienced placement breakdown occurring during those periods.

Prop 13: Enhance the permanency planning capacity of non-government services by merging the NSW Standards for Statutory OOHC and the NSW Adoption Standards.

[22] Evidence available regarding the views of children and young people most commonly finds that children and young people want to participate in decisions about their care. As reported in: Higgins, J. R., Higgins, D. J., Bromfield, L. M., & Richardson, N. (2007). Voices of Aboriginal and Torres Strait Islander children and young people in care: Perspectives of Aboriginal and Torres Strait Islander young people. See: www.aifs.gov.au/nch/pubs/reports/promisingpractices/summarypapers/paper7.pdf

Qu 13: How can the NSW Standards for Statutory OOHC be enhanced to better promote permanency planning, from restoration to adoption, for children and young people in OOHC?

AbSec rejects the proposal to merge the NSW Standards for Statutory OOHC and the NSW Adoption Standards for a number of reasons, including:

- The potential impact there may be for Children's Guardian, including the increase on workload and impact on resources, but more specifically, the significant impact on agencies of the modification of the accreditation process
- The setting up of all OOHC agencies to be adoption agencies, in that to comply with amalgamated standards, they may need to employ adoptive practice officers whether they're being used or not. Agencies should retain the freedom to be generalised or specialist.
- The resulting impact of any amalgamation of the two Standards in terms of the OOHC accreditation process on Aboriginal agencies. Any reference to adoption in the Standards will have implications for Aboriginal agencies with regard to:
    - their engagement and trust in the community
    - matters relating to conflict of interest including the moral and cultural dilemma this will present to Aboriginal agency staff and Board members as well as agency' constitutions, rules, policies and practices
- The potential to prevent restrict Aboriginal agencies, for example by preventing them from working with children or placing their funding at risk for non-compliance with Standards connected to adoption

Proposal 13 - Recommendation:

13. That the NSW Standards for Statutory OOHC and the NSW Adoption Standards are not merged in any way.

Prop 14: Amend the Adoption Act to improve the involvement of birth parents in planning for the adoption of their child, including allowing non-consenting parents to be parties to an adoption plan and greater use of alternative dispute resolution in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements.

Qu 14 (a): What is the optimum mechanism for non-consenting parents to be parties to an adoption plan?

AbSec supports implementation of mechanisms to involve non-consenting parents to be part of adoption planning and to have access to all information of adoption proceedings.

We understand that there are some arguments in mainstream sources in the sector that some non-consenting parents which to exclude themselves from proceedings to ensure that there is evidence of their non-consent, should their child wish to view their files later on in life.

The solution to this potentially regretful step for both parents and children, rather than disengaging from adoption planning, parents' objections should be clearly and objectively recorded in the child's files by an independent body, as well as their reasons for taking part in adoption planning.

For Aboriginal families, the support of an appropriate independent Aboriginal service provider or agency would be critical as families are more likely to engage with them than with C S (which would not be deemed as impartial). For example FGC or similar existing mechanism they may already be familiar and more comfortable with. It may be more appropriate for an FGC to be conducted through an Aboriginal organization. Any mechanisms should either provide appropriate counselling or support, as well as referral, if necessary, to appropriate sources of advice and support.

Qu 14 (b): How could alternative dispute resolution best work to engage parents in adoption proceedings?

There are a number of evidenced based measures that result in better engagement of Aboriginal families with Indigenous dispute resolution, that may assist in employing ADR processes to engage parents in adoption proceedings. These are detailed in the *"Solid Work You Mob"*[23] report and were highlighted by Ralph[24] (as mentioned in our response to Qu. 3.b).

The *'Solid Work You Mob'* report outlines '*critical factors for effective practice'* in dispute management processes that are:

> …designed to assist practitioners and others involved in the design and delivery of a dispute management process. They highlight the importance of parties' ownership of processes, of careful preparation, and of working with the parties to design processes which can meet their procedural, substantive and emotional needs. Critical factors also relate to the implementation and sustainability of agreements, and the attributes and skills of effective practitioners in the Indigenous context"[25].

The wider '*Strategies for implementing effective practice*' are also outlined in the report.[26]

Recommendation 14a: Mechanism to involve non-consenting parents to be part of adoption planning and to have access to all information of adoption proceedings are developed (in collaboration with relevant representatives from across the sector, including parents and their advocates) and implemented.

[23] Allan, D. (2009).
[24] Ralph, S. (2010).
[25] Allan, D (2009), pxvi
[26] Allan, D (2009), p134.

To prevent parents from excluding themselves from planning in order to send a message to their child that they did not wish to consent to an adoption, measures should include the development of guidelines for an appropriate independent Aboriginal practitioner or service provider supporting parents to record their objections clearly in the child's files, as well as their reasons for taking part in adoption planning.

Recommendation 14b: Implement appropriate measures (under advice form appropriate sector partners) such as those detailed in the *'Solid Work You Mob'* report, which provides critical evidence for development of Indigenous dispute resolution services.

Prop 15: Amend Adoption Act to provide for additional grounds for dispensing with parental consent, including grounds where:
(a) the parent is unable to care for and protect the child e.g. the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and reasonable efforts have failed to correct these conditions.
(b) a parent cannot be located, despite having given an undertaking to keep Community Services informed of their whereabouts.
(c) there is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person's placement and it is in the best interest of child or young person to make the decision now.

Qu 15: What should be the additional grounds for dispensing with parental consent?

AbSec disagrees with the aspects of the above proposal, except for, 15 (a) where it relates to offences against the child involving violence and crimes of a sexual or physical nature by a parent. We assert that there should be no additional grounds for dispensing with parental consent besides those relating to violence as listed above..

Aboriginal parents will be disproportionately over-represented in all groups and are therefore more likely to have their consent dispensed with under these proposed amendments to the Adoption Act, even if adoption is not meant to be targeted at Aboriginal children and young people. Proposal 16 (c) could in all practicality, exclude all parents involved in care and protection proceedings from having to give their consent to adopt. The continued focus in this proposal on expediency over other considerations, as addressed earlier in our proposal, is disheartening. Extremely high standards of casework must occur to ensure 'parent blaming'[27] or other subjective factors, or any other factors that relate more to casework practice and attitude than to the safety and wellbeing of children and young people.

[27] Ainsworth, F., & Hansen, P. (2007). Parent blaming in child protection and health settings: a matter for concern. *Children Australia*, 32(2), 29-35

Parental consent to adoption may be dispensed with by the Supreme Court under already specified in the Adoption Act, for example where the parent cannot be identified or located, does not have the capacity to give their consent and adoption is deemed to be in the child's best interest their parents' consent is not required.

Guidelines regarding parental consent are a critical aspect of adoption legislation; existing provisions are in place to protect this right and represent an attempt to ensure that there is no return to the days of systematic forced removal and separations that took place during the Stolen Generations.

During this era, Aboriginal and Torres Strait Islander parents were subject to removals without their consent due to a range of methods, from forced entry into their homes, missions and communities, removal of children at school and in public places, to being coerced under pressure by hospital social workers. Regardless of the methods, the voluntary nature of consent was absent. There is extensive research in Australia regarding the traumatising aspects of previous practices, much of which concerns issues related to coercion and consent and the impact of ongoing, trans-generational trauma that resulted[28],[29], [30].

Eroding gains in procedural fairness and natural justice made since the days of the Stolen Generations and forced adoption will only lead to increased social exclusion for parents who have had their children removed.

Specificity is needed regarding the grounds under which consent can be dispensed with. The circumstances listed in Proposal 15 are too broad and need to be more specific. For example, the definition of "reasonable efforts" is not provided. Additionally, the onus on a parent to keep CS informed of their whereabouts is problematic for Aboriginal people, for the reasons listed in our preface to Section Two, including the deep and long held mistrust of CS by many Aboriginal families. This proposal is also completely unworkable for parents who may be at immediately higher risk of being excluded from proceedings under this proposal (whether they are Aboriginal or not) if they are in poverty, or with few means of remaining in contact with CS, perhaps with no phone or credit and occasionally they may be homeless.

Additionally, Aboriginal people are doubly penalised; on the whole our community members have high rates of mobility which may further prevent them from keeping CS aware of their location. They may travel extensively in order to stay in touch with extended family, or to return home to become a carer of other family members, to attend funerals or uphold family or cultural obligations. They may make efforts to contact a caseworker, however if the caseworker is absent or they don't get through, this may result in a finding that the parent did not update CS regarding their whereabouts.

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[28] Wilson, R. (1997)

[29] Higgins, D (2010). Impact of past adoption practices: Summary of key issues from Australian research. A report to the Dept of Families, Housing, Community Services & Indigenous Affairs

[30] Wickham, M. (2009). Who's left holding the woman?: Practice issues facing hospital social workers working with women who have infants removed at birth by NSW Department of Community Services. *Children Australia*, 34(4), 29-35.

Children's rights and those of young people to have regular contact to their parents, even in an open adoption situation (unless it is not in their best interests) under Article 9.3 of the *Convention on the Rights of the Child* [31], should not be extinguished on the basis of such questionable and subjective grounds.

Delays to adoption proceedings are not always solely caused by recalcitrant parents; in the push to streamline processes, expediency should not occur at the expense of procedural fairness and natural justice.

Proposal 15 - Recommendations

15.1 That the Adoption Act will not be amended to provide for additional grounds for dispensing with parental consent, including those outlined in Proposal 15 (a), (b) and (c). Parental consent should always be sought, and parents should be informed of all processes
15.2. That no further grounds for dispensing with parental consent additional to those listed above are deemed appropriate to be included in any amendments to the Adoption Act.

In the event this proposal is introduced despite objections:

15.3.That a number of issues arising from this proposal are addressed before it can progress. These include:

15.4. The implications for open adoption are clarified

15.5. The definition of "reasonable efforts" employed in (a) and (c) is defined.

15.6. That there must be strict guidelines around the abovementioned definitions, agreed minimum casework standards and around the evidence provided to the court to provide the grounds for dispensing with consent

15.7. As per the recommendations listed in the Section Two preface, CS must make every effort to locate and identify the wishes of parents regarding adoption and decisions regarding the case be subject to review

The State must also take all care to ensure both parents are given every opportunity to identify and record their views about the adoption.

15.8. The definition in 15.(a) regarding parents' repeated refusal or neglecting to 'comply with parental duties' is clarified, as is that regarding 'reasonable efforts have failed to correct these conditions'. The assessment process for determining both these grounds for dispensing with consent should also be reviewed.

[31] See: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

Prop 16: Limit the parent's right to be advised of an adoption in the following circumstances:
(a) where child is over 12 years of age and has given their sole consent, or
(b) the Children's Court has taken away PR from that parent in care proceedings and found that there is no realistic possibility of restoration.

Qu 16: Do you support limiting the role of parents in adoption proceedings in this way?

As previously stated, this kind of scenario should in theory not apply to Aboriginal families, given our stated strong rejection of adoption in concept and practice. AbSec has grave concerns that Aboriginal children will 'slip through the net' and come to be adopted due to the focus on expediency and permanency under these reforms however, so we are compelled to respond.

AbSec rejects both (a) and (b) in this proposal in all cases involving adoption. Guidelines regarding parental consent are a critical aspect of adoption legislation and signpost some critical issues which have been addressed previously. Besides these issues, we are concerned that these proposals around limiting a parent's right to even be *informed* of an adoption circumvent both natural justice and procedural fairness. These proposals signify what we perceive to be a return to the days of forced adoption in that they:

- Potentially conflict with the Aboriginal Child Placement Principles should any Aboriginal children come to be adopted (whether identified at the time of adoption or not, resulting in their adoption)
- Devalue cultural differences in parenting practices by excluding the involvement of extended family in such matters, including for example with regard to (a), the importance of maintaining contact with grandparents and siblings in 'open' adoptions
- Represent a somewhat baffling reversal in logic in light of the above two concerns and an absence of any natural justice for a large majority of parents involved in the system. That a finding made of no realistic possibility of restoration somehow results in an automatic extinguishing of any rights of parents, not only in terms of their actual parental rights, but also to *know what is happening with their child*, with no grounds, reasoning or evidence base supplied in the Discussion Paper, is a proposal we disagree with in the strongest possible terms

As previously mentioned, given the over-representation of Aboriginal families in the system, AbSec is particularly concerned that Aboriginal children will be caught up in such measures in disproportionately high numbers, regardless of the intent of the legislation and reforms that acknowledge adoption rejected by Aboriginal people. Our recommendations, which we hope will help prevent this scenario, are below.

Proposal 16 - Recommendation:

16.1. That this proposal be rejected.

16.2. That should these measures be introduced despite Recommendation 16.1., that a number of safeguards that must be implemented, including those relevant recommendations outlined in the Section Two preface, with an emphasis on the following:

(a) Children over 12 years of age should receive extensive and age appropriate advice and information from both an independent psychologist and an independent children's legal representative to assist them understand the meaning of adoption, its implications and effects on them and on their relationships and connections with extended family and with their prospective adoptive family.

(b) The Court ensure that ALL reasonable attempts have been made to locate and notify all parent, with an onus on CS to provide direct evidence of attempts.

(c) We acknowledge there may be circumstances, for instance where there is abuse or a high level of entrenched family violence, deemed by the courts where adoption will safeguard the safety or welfare of the child or young person to such an extent that the court is justified in dispensing with the right for parents to be advised about adoption.

Even in such cases**:**

(i) Parents of an Aboriginal child must still be informed of the adoption application

(ii) No Aboriginal child or young person in OOHC may be adopted, in particular, by non-Aboriginal carers.

Section Three: CREATING A CHILD FOCUSED SYSTEM

Contact Arrangements for Children in Care and Ways to Improve Contact Arrangements

Besides ensuring the safety and stability of children and young people in OOHC, contact arrangements are the most critical component of a child focused system.

Contact and interaction with the child's extended family is critical to the social, emotional and cultural wellbeing and health of children and young people in the care system[32].

Improving contact arrangements and providing supports has a flow on effect for other aspects of a child or young person's time in care. Greater care and critical thinking employed in the development of contact arrangements can result in improved outcomes for the child or young person including:

- Better relationships between parents and CS and the authorised carers
- Better relationships between the child or young person in care and all parties
- Improved behaviour management strategies and long term outcomes for the child or young person

Knowing that a positive connection can be maintained with their families, children and young people could feel confident that the relationship with their authorised carer is not at risk because of their family links. This could in turn impact positively on other aspects of the child's life such as education, health, social life etc.

A specific contact visit policy must be developed involving participation, and not just "consultation", must occur with community groups, young people in care and those young people and adults formerly in care, and those parents who have had their own children placed in care, along with relevant participants with an interest from across each area in the sector (legal and justice, health and community fraternities for example).

Ways to Create a Child-Focused System

Whilst there are common threads across safety, wellbeing and health for all children, what constitutes a child focused system for Aboriginal children is not necessarily the same as for other children. However for both groups, creating a child focused system needs to be the first priority of any reforms; there are other aspects critical to creating a child focused system than have been included in this section.

It is a cultural norm amongst Aboriginal families and communities that the child's wellbeing is very much tied up in knowing their belonging place, in family and community, cultural and spiritual life. This is reflected in the central tenet of the *Aboriginal and Torres Strait Islander Placement Principles*, where there is recognition in the legislation of the importance to their identity of Aboriginal children being cared for in their own families and communities, a belief also thought to be of benefit for the ongoing survival of communities.

[32] SNAICC (Secretariat of National Aboriginal and Islander Child Care). (2005). Stable and Culturally Strong Out of Home Care for Aboriginal and Torres Strait Islander Children. Melbourne: SNAICC.

In this sense the child's rights, their wellbeing and social and emotional stability are very much tied in with that of their families and not divisible from that of their family, in that these factors are critical to their being able to have a strong foundation to "grow up strong".

In this sense a child focused system is one that recognises our children's needs to maintain their identity and connections. There are critically important, systemic issues that need to be addressed in order for this to happen, some of which are included in this section, many of which are not. We have addressed these where possible below, but we also welcome further discussions and genuine engagement with the community to name them and come up with solutions to confront them.

Prop 17: Where there is no possibility of restoration, contact arrangements are to be made through case planning.

And

Prop 18: Develop a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making contact decisions.

Qu 17: Do you support contact arrangements being made through case work where there is no possibility of restoration?

Qu 18: What should be the key elements of a common framework for designated agencies in determining contact?

AbSec would support this Proposal, but only on the proviso that should it be implemented, there must be the appropriate safeguards such as the following:

- Development of an endorsed set of minimum practice standards and guidelines around provisions for contact arrangements for Aboriginal children and young people in case planning (and for *all* children.
- The standards must be developed in genuine partnership with relevant Aboriginal representation, with meaningful community consultation processes and include the relevant peaks, agencies and community groups
- Standards must be built into agency service specifications to ensure they are met and their implementation monitored and agencies have accountability and built into CS casework procedures for any CS placements
- The conditions outlined below are applied

AbSec does ***not*** support this proposal if sector wide, endorsed minimum practice standards carefully created as described above, are not developed *and* if the below conditions are not possible.

In this case AbSec believes that the Children's Court should maintain jurisdiction to make contact orders for children, their parents and extended family, as the court already has the high level of accountability and transparency in decision making required.

Any contact arrangements made through case planning must (amongst other safeguards to be determined through the development of endorsed minimum):

- Have the child or young person's needs, safety and wellbeing as the first consideration
- Be responsive to the child's needs on an ongoing basis, flexible and involve all parties with an interest in the child's wellbeing.
- Ensure reviews increase as a child or young person's needs grow or intensify
- Ensure reviews take into account parents progress and capacity, including any changes and progress in their lives (whether positive or negative) that impact on their parental capacity post removal of their child, address relevant child protection concerns and impact their ability to have meaningful contact with the child or young person
- Be genuinely aimed at maintaining the child's connection to their family, identity and culture etc,
- Be devised in good faith and properly and genuinely resourced and prioritised.
- Contact arrangements are not to be decided based on departmental or agency budget restrictions
- Ensure the type of order should not preclude a child from developing and maintaining a connection to their parents, extended family, community and culture; children and young people should not be discriminated against in this way.
  Arrangements must not be based on blanket agency or CS policies or perceived financial constraints. Any application of a standard, blanket policy will result in automatic escalation of contact arrangements to an independent authority for review, such as ADR or the Children's Court. (For example, wholesale application of four contact visits per year where restoration is deemed not possible. This is a 'one size fits all' approach that must be banished from culture across government and non-government sectors)
- Ensure flexibility and contingencies be in place to ensure the child or young person can attend events that arise, that are important to maintenance of their connection with family, community and culture, without deducting from the number of agreed contact visits (again, that blanket policies exclude children and young people from the opportunity to deepen family and community ties and take their rightful place in family). Safeguards to ensure the child or young person's needs and safety are the first considerations
- Where administrative, budgetary or other issues have impeded on successful and ongoing contacts from taking place, these must be taken into consideration in any applications for OOHC adoption, based on a

- To ensure procedural fairness, transparency and empowerment in determinations regarding contact arrangements in the case planning process:
    - children and young people should retain independent legal representation
    - Parents and extended family should be entitled to legal representation or advocacy
- Where possible the child or young person should be able to participate and make decisions regarding their ongoing contact arrangements – their wishes should be taken into account; in these cases they should receive impartial support, to ensure any decisions are made truly of the child's own volition. The balance must be between protecting all parties' rights (with the child's first and foremost) and flexibility
- Ensure appropriate and relevant *external* community consultation
- Consider and incorporate into case planning around contact arrangements the whole extended family, especially siblings if they're not together in the same placement.
- Include undertakings and contingencies to return children to country, where children are in care out of country
- Contain mechanisms to address any risks of arrangement breakdown or withdrawal of contact rights. These must be made known to families during case planning development and should include:
    a) adequate representation and support for family and
    b) a clear procedure for appeal and review

  Casework decisions need to be well thought out, not influenced by any individual relationships and remain focussed on the best interests of the child or young person. Measures such as these will help safeguard arrangements against any subjective factors in decision making that may affect agreements such as partiality or personal bias, for example if a caseworker or agency were to develop a negative view of family or are reluctant to work with a family to facilitate contact, and consequently withdraw contact rights. The family must not be disadvantaged with the agency and must have rights in this scenario and be entitled to representation.
- Be subject to regular review as critical element of case plan review, including in "self-monitored' placements; it is our belief that a 'self-regulation' model would not be conducive to consistently fair decisions regarding contact
- Be prepared by an Aboriginal person connected with that community and with knowledge and understanding of that community and of what issues will be of importance in relation to contact, otherwise designated agencies should not have any scope with taking on the role of preparing case planning for an Aboriginal child or young person.
- Ensure that where any disputes arise regarding arrangements arise, they be dealt with through an independent authority, and where they are unable to be resolved

independently as described, they should be subject to judicial oversight and discretion in the Children's Court.

In terms of content of a common contact arrangements framework, considerations should include that:

- Contact arrangements must focus on primarily the Children's Court Order. Other considerations must be itemised in any contact arrangement;
- Ensure child or young person has access to ongoing, regularly accessible counselling to help deal with any issues arising from separation and its related issues such as, loss and trauma, dealing with structured access (including pre and post contact visits) with their family, understand why they have authorised carers and caseworkers, how they fit into dealing with their social life, school, sport & other hobbies as a child in OOHC
- Interview paternal and maternal parents concerning availability for contact
- Ensure parents are referred to Link-Up (NSW) , Bringing Them Home counsellors or other appropriate service to address loss and trauma or psychological harm suffered due to their own separation, and/or other issues they may experience
- Refer parent/s as required to appropriate service or programme to address child protection issues to provide appropriate improvements in contact and interactions with their child in care
- Authorised carers have access to regular training and support as described in the introduction to Proposal 19 below.

Prop 19: Improve the resolution of contact disputes by:
(a) requiring ADR be used to settle contact disputes
(b) where ADR is unsuccessful, contact disputes will be resolved in the Children's Court or the ADT or the Family Court.

Overall, there are a number of measures that AbSec would suggest could help prevent the development of contact disputes.

Children, parents and families

Contact visits regularly cause stress for all concerned; attempts to disrupt contacts by various parties involved are common, such as allegations being made regarding harm to children. It is important that regular supports made available to all parties are put in place to help such disputes. They should provide opportunities for parties to discuss their concerns with a professional who can provide them with strategies and coping techniques, including for parents to learn to cope with being an occasional parent to their own children.

Caseworkers

One of the most critical factors for caseworkers in developing contact plans is to themselves undergo training (if not already in place) such as that offered in the *Muramali Circle of Healing* Programme[33] to understanding the grief and loss suffered by children and young people, the issues that their parents were likely dealing with that may have impacted on their parenting and led to the child coming into care.

CS also have a responsibility to provide parents with an understanding of what it literally means to have an order against the care of the children. To understand where they fit into that order, what that literally means. To be told prior to contact is arranged, what their obligations are, what they may or may not do, to understand what previous behaviours have caused them to lose the care of the children and how this must be changed, what courses must be targeted and how this will improve their parenting ability and how this will positively affect their relationship with their C/YP.

Carers

Similar training to that suggested for caseworkers and children, parents and families should be made available to authorised carers to help nurture understanding about why children and young people and parents' behaviours

Qu 19 (a): How should disputes about contact be resolved if they are not able to be resolved through ADR?

The difficulty experienced by Aboriginal families in any situations involving contact disputes is that they are generally unfamiliar with the legislation, their rights, with what the processes should be and with how to resolve disputes. Therefore there is a lack of awareness of where to turn if there are any issues, let along that there are mechanisms that exist to assist in resolving such disputes.

Any measures to improve contact dispute resolution should begin with education of parents and families regarding the options available to them and how to access these.

AbSec would support matters that are unable to be settled in an ADR process, progressing to the Children's Court for resolution.

Qu 19 (b): If Model 1 is the preferred option and the Children's Court retains the power to make final orders about contact where there is no realistic possibility of restoration, should such orders be of a limited duration? For what time period?

Such orders should not be of a limited duration. Where there is no realistic possibility of restoration, a one size fits all concept is inappropriate for Aboriginal children as there are so many different circumstances that arise in the lives of children and families.

[33] For more information, see Winangali website: http://www.marumali.com.au/

Children and young people should always retain the right to continue contact [34] so the time period for final orders about contact should always be at the discretion of the Court.

To this end, it is appropriate that the Children's Court should retain the power to make final orders around contact, as they have the experience and expertise in dealing with children's issues and they may have pre-existing knowledge of the case.

Qu 19 (c): If Model 2 is the preferred option and the Children's Court does not retain the power to make final orders about contact where there is no realistic possibility of restoration do you agree that:

- **where the minister or a designated agency has PR, the ADT be empowered to review the contact decision and make contact orders and**
- **the Family Court is the best forum for making contact orders if a third party has PR?**

Where a third party retains PR, it may be appropriate for the ADT to review contact decisions and make contact orders.

We would also agree that the possibility of utilising the Family Court to address contact disputes should be further explored by appropriate Aboriginal community and sector representatives, do the level of knowledge and experience they have in the area.

Mechanisms would need to be put in place to ensure the level of detailed understanding required to uphold children's rights and best interests and needs are met. Safeguards should also be in place to ensure parents can access the system and obtain representation

Prop 20: That the Children's Court has the power to enforce contact orders and arrangements.

Qu 20: Should there be mechanisms for enforcement of contact agreements or orders and what should these be?

Yes, there should be mechanisms for the enforcement of contact agreements or orders to ensure the rights of children and young people to contact are upheld and applied consistently across the government and non-government sectors.

Through this process, any breaches of contact orders by parents or by the Department or agencies could be brought to the attention of the Court for review

[34] Article 9.3 of the *Convention on the Rights of the Child* states: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests." See: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

Prop 21: Establish a comprehensive legislative framework for the use of ADR in the child protection sector dealing with a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed during ADR in any subsequent court proceedings.

Qu 21: What key provisions do you think should be included in the legislative framework for ADR?

AbSec agrees with the establishment of a comprehensive framework for the use of ADR in the child protection sector to deal with a range of matters, including those described in the proposal.

Proposal 21 - Recommendation

21. Any measures to strengthen and encourage use of the ADR must be accessible and culturally sound (for example, growing capacity of existing solid programmes such as FGC and Care Circles), structured to maximise self-determination, extended family participation and utilise Aboriginal mediators.

Prop 22: Clarify and consolidate in the legislation the provisions relating to the regulation of special medical treatment for CYP.

Qu 22 (a): What additional safeguards, if any, should be in place for the provision of special medical treatment to a child in OOHC? Should these be required through legislation or through administrative arrangements such as guidelines?

An additional safeguard for the provision of treatment, is to ensure that there is always a requirement for a treatment plan and a behaviour management plan (although not necessarily for every illness (for e.g. tonsillitis). Practitioners such as social workers and psychologists could work with medical practitioners in preparing plans. In this way, the person prescribing co-operates with other colleagues with expertise to look at actual behaviour management so children have a plan and it can be consistently applied by carers that provides them with guidance.

Such safeguards would provide a means of measuring and monitoring efficacy of treatments, in order to help work towards a child or young person's safety and wellbeing.

An additional safeguard is to ensure that carers are provided with proper training when children and young people in their care are prescribed these medications.

Additionally, AbSec supports the notion of development of clinical guidelines in order to provide an additional safeguard for children in OOHC who requires special medical treatment, as well as development of an ethical decision making framework for issues of a complex nature.

Qu22 (b): In relation to the administering of psychotropic medication to children in OOHC:

- **Who should give consent and in what circumstances?**
- **Should there be a requirement for a treatment plan or behaviour management plan when the medication is being prescribed? If so, should such plans be required for all medical conditions or only for controlling behaviour?**
- **What kinds of alternative safeguards might be implemented in lieu of a legislative requirement for plans?**

A child or young person in care should be entitled to be informed and to provide consent to the administration of psychotropic medication, where-ever possible.

As previously mentioned, appropriate safeguards in these cases are essential, particularly for children who have been prescribed such medication for severe behavioural problems. The aim of safeguards should be to minimise the risk of over-prescription or over-treatment through sound monitoring processes.

In some cases carers would need to give consent when there are young children or in situations when young people can't give consent on their own behalf. It's critical that they fully understand the condition the child is facing and that there is a plan in place devised by specialists to guide the treatment. Any such arrangements should be monitored externally to ensure the child's needs are being met. To this end, a management plan should be prepared that ensures the effects of treatments including medication are regularly monitored.

Alternative methods could include obtaining a second medical opinion, or independent review of plans, as per the Mental Health Act, where there has to be a review of because of risks

Prop 23: Minimise the improper use of social media in a child protection context by strengthening provisions in the Care Act to prevent the unlawful publication of names and images of CYP on social media sites and to prevent the publication of offensive or derogatory material about FACS (CS) workers which are intended to harass.

Qu 23 (a): In what other ways can children and young people be protected from unlawful publication of information and images on social media sites?

To our understanding, children and young people who are in care already have protection from unlawful publication of information and images under Section 105 of the Care and Protection Act. AbSec is in support of the existing measures.

Qu 23 (b): Should it be an offence to publish offensive comments designed to harass child protection workers on social media sites?

No. CS workers are already adequately protected under the Crimes Act, as are other professionals in the sector (who may also be equally as vulnerable to being subjected to offensive comments on social media designed to harass).

Prop 24: Simplify the current scheme of parental responsibility orders by:
(a) streamlining PR orders that may be made by the Court to make it easier to identify who holds which aspect of parental responsibility for a CYP.
(b) introducing a 'self-executing' order whereby PR is with one person for a period of time and then passes to another at the end of the period.

Qu 24: In what other ways do you think that PR orders can be improved?

Any measures implemented to simplify the current scheme of PR orders should have children's needs as the first consideration.

As we understand it, orders can be confusing to parents in their intent, language, content, structure and implementation.PR orders could be improved by addressing these issues through making orders clearer and more readily understood by parties.

Another measure could be that where there are multiple parties involved in decisions regarding the children, for example medical conditions, could benefit from an approach such as that employed in FGC. This would provide a mechanism for the family deal with decisions on the child together, as identified in the "family plan" devised during the FGC process.

Prop 25: Allow Supervision Orders (SOs) to be extended for a further 12 months where the original order has expired and no report has been filed for the Court's consideration.

Qu 25: Should the maximum timeframe for SOs be 24 months? Why or why not?
Again, consideration of the children's best interests should be at the heart of any decision regarding extension of timeframes for SOs. Orders should only be able to be extended through the court and in cases where reasonable concerns arise regarding the child.

On the whole, AbSec believes twelve months is generally a sufficient timeframe for carrying out good casework and filing reports and for establishing whether a family is coping or making progress.

Additionally, children's circumstances can be subject to frequent change; they are entitled to have circumstances reviewed every 12 months.

The court should have discretion to make longer (2 year) orders where families that are progressing need additional time. These cases should be based on evidence about family circumstances. For instance, if there are any further child protection reports, matters could be reviewed on a case by case basis. Utilising IFBS, Step down workers, PACT workers could assist in such situations.

Working with Advocacy Bodies.

Prop 26: That AbSec and CREATE should have access to personal information to permit fulfilment of their objectives.

AbSec understands that the principles regarding *Chapter 16 A* of the *Care and Protection Act (1998*) relate to the exchange of information and co-ordination of services by agencies that have responsibilities for the safety, welfare or well-being of children and young people.

Section 248 regarding the provision and exchange of information is of concern. AbSec submits that the restrictions on the supply of information results in ongoing difficulties for agencies (like AbSec) in enabling us to fully comply with their service agreements with CS.

AbSec has campaigned for some time to be included as a prescribed body[35]. AbSec as a peak body (and our member agencies) has as one of our most critical roles, the building of capacity and partnerships in the Aboriginal child and family sector in NSW. To date we have relied on the goodwill of CS to provide information (as outlined below) to support this role.

However, outcomes vary across CS regions. Some regions are willing to work in partnership more closely than others with AbSec and our members, to ensure proper delivery of services. This can be due to variation in bureaucratic processes across regions, or a lack of understanding of process, for example departmental staff being uncertain whether the information requested can be shared. We are concerned that lack of access to such information could lead to:

- a large proportion of target groups not being offered services by the agencies
- some funded NGO's and/or AbSec being unable to fully comply with service agreements
- barriers to AbSec as a peak body being able to properly examine systemic issues

Therefore, we agree with the proposal that CS be permitted to make available to AbSec as a prescribed body, relevant information (held on its databases). Acceptance of this proposal would result in AbSec being properly enabled to provide more appropriate service supports and delivery outcomes for our core client groups:

> **State-wide support service for carers of Aboriginal children and young people**
> AbSec's Aboriginal Statewide Foster Care Support Service (ASFCSS) aims to improve the information, support and training opportunities available for Aboriginal and non-Aboriginal foster and kinship carers in NSW who care for Aboriginal children and young people. For further details see: absec.org.au/services-we-provide/foster-care.html
>
> ASFCSS currently relies on CS Caseworkers to pass on details regarding local support groups, resources, relevant meetings and events, new funding, changes to legislation and networking opportunities and training for carers of Aboriginal children and young

[35] In 2008 we submitted a joint proposal with CREATE to CS to be included as 'prescribed bodies' under the Regulations pertaining to section 248 of the *Act*.

people. We also provide a bi-monthly newsletter to Aboriginal and non-Aboriginal foster and kinship carers of Aboriginal children and young people.

Forwarding such information regarding supports may not be prioritised: information may be delayed or not reach the intended recipient, i.e. carers of Aboriginal children and young people, due to staff workload or where there are staff changes. Should AbSec become a prescribed agency, subject to restrictions, obligations and responsibilities about use of any carer information, we could provide information directly to those carers not already registered with us. In relation to this aspect of the proposal, AbSec requests updated mail out lists only of carers of Aboriginal children, and not details about children or young people in care.

AbSec also fully supports the proposal for CREATE to be prescribed to permit the release of information to allow them to provide direct support and information to children and young people in care.

Please note: AbSec agrees with the notion of:

…inclusion of AbSec and CREATE as prescribed bodies promotes the general principles of the current legislation, in particular:

a) Section 9 (d) …
b) Section 11… and
c) Section 12

However this proposal is intended to complement local measures aimed at self-determination, whether long established or recent innovations. AbSec urges CS to ensure local initiatives and processes are not circumvented in the course of implementing this proposal.

Prop 27: Private health professionals be able to share with other relevant agencies personal and health info about CYP and families without client consent where this relates to the safety, welfare and wellbeing of a CYP.

The purpose of sharing personal health information about children and young people under the Care Act is to assist families in the EI stage by ensuring critical details flow among across health, police and education professional bodies in order to assist families.

Given the implications of this proposal, further inquiry should be undertaken to review issues with current application, before any changes are made to the relevant chapter (*16a)* in the Act.

Prop 28: That there be a legislative obligation to report on the deaths of children and young people in OOHC.

AbSec believes FACS should be required by legislation to table an annual report to Parliament on their involvement with the families of children known to FACS (CS) who have died. The annual report would be constructive and instructive on a number of levels, by:

- Promoting principles and a culture of transparency
- Complementing reports already tabled by the NSW Ombudsman, Child protection Review Team and others, to help allow comparison of data and findings
- Assist with planning and resource allocation

Final recommendation:

AbSec acknowledges that efforts appear to have been made in engaging participation from sector representatives. Nevertheless we submit that before further work is invested in progressing the reforms, Aboriginal communities have a proper opportunity to engage in discussions and provide meaningful input into the legislative aspects of the discussion.

Should you wish to discuss this submission, or receive further details, please do not hesitate to contact me by telephone on 9559 5299 or by email: at ExecAsst@absec.org.au

Yours sincerely

Angela Webb
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Friday 22 March 2013