



Permanent Care Orders for Aboriginal Children and Young People

Permanent care orders (namely adoption and guardianship orders in NSW) within the statutory child protection system remain a pressing concern within the Aboriginal community. Despite these concerns, Permanent Care Orders for children and young people removed from their families by the State remain a high priority in legislation and practice. AbSec remains opposed to permanent care orders imposed on Aboriginal children, families and communities through non-Aboriginal processes. This paper seeks to clearly state AbSec's position on permanent care orders for Aboriginal children and young people, and outlines the need for an Aboriginal-led and administered process to achieve stability for Aboriginal children and young people in statutory care.

Permanent Care Orders in the NSW Child Protection Sector

The NSW Government has a stated commitment to achieving legal permanence for all children and young people in out-of-home care¹. This commitment is reflected in recent legislative amendments, in particular Section 10A of the *Children and Young Persons (Care and Protection) Act 1998*. This section provides an order of permanence to be applied when considering the type of order the Children's Court might make in a given case. For Aboriginal children, this order is restoration, guardianship, parental responsibility to the Minister, and then adoption.² Similarly, Section 78A emphasises the need to promote stability and placement security in out-of-home care through "permanency planning", stipulating in particular regard for the need to provide a safe, stable and secure environment in a timely manner, particularly for young children, following the permanent placement principles outlined in Section 10A.

AbSec's Position on Permanent Care Orders

AbSec do not support permanent care orders, as they currently exist in NSW, for Aboriginal children and young people in out-of-home care. AbSec have outlined a number of concerns with permanent care orders³, including the absence of appropriate safeguards for the safety and wellbeing of children and young people, the absence of ongoing supports for children and young people and those that care for them, and the absence of safeguards to ensure that the cultural needs of Aboriginal children and young people are being met, including ongoing connection to their family, community and culture. Despite the insistence that the openness of permanent care orders protects children from this disconnection, it should be noted that permanent care orders are characterised by the absence of any meaningful legal mechanism to monitor the safety and cultural care of children and young people once orders are finalised⁴.

It is AbSec's view that the lack of adequate monitoring and oversight and the absence of any meaningful safeguards or mechanisms to ensure the cultural care and safety of children and young people on guardianship and adoption orders in NSW is contrary to the States obligations under the UN Convention on the Rights of Child, specifically the need to periodically review a child's placement in such circumstances⁵, as well as a failure to understand the concept of best interests as it relates to Aboriginal children, understood through a culturally

¹ <http://www.facs.nsw.gov.au/reforms/children,-young-people-and-families/safe-home-for-life>, accessed 18 August 2016

² *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

³ AbSec 2015 Guardianship Orders for Aboriginal Children and Young People

⁴ Cripps, K, and Laurens, J. (2015) Protecting Indigenous Children's Familial and Cultural Connections: Reflections on recent amendments to the *Care and Protection Act 2007 (NT)*, *Indigenous Law Bulletin* 8(17)

⁵ Article 25, UN Convention on the Rights of the Child

lens.⁶ Reflecting that theme, *Bringing Them Home* noted that the best interests of Aboriginal children are “typically best served by their remaining in the Indigenous community, preferably their own families and communities”.⁷ It should be noted however that it is not AbSec’s role to limit the self-determination of Aboriginal families and communities, however more robust, Aboriginal-led mechanisms are required to appropriately safeguard Aboriginal children and families from the imposition of permanent care orders, forcibly removing Aboriginal children from their families, communities and culture.

In Practice

- Where the State deprives a child of their family environment for their own care and protection, the State has a responsibility to continuously monitor their safety and wellbeing. As there are currently no meaningful mechanisms to monitor the care of children on guardianship and adoption orders, AbSec feels that these approaches are in breach of the States obligations under the UN Convention on the Rights of the Child.
- AbSec remains opposed to the imposition of permanent care orders for Aboriginal children through non-Aboriginal processes, which is viewed as the forced separation of Aboriginal children and young people from their families, communities and culture.
- An overarching aim of placement decision making is to ensure the best interests of the child are upheld, including their right to family, community and culture. The best interests of the child can only be understood through a culturally informed framework, developed by Aboriginal people, and determined on a case-by-case basis through Aboriginal-led processes. There is a need to develop such a process in NSW.
- In the immediate term, additional safeguards that require the participation of relevant Aboriginal community controlled organisations prior to any orders being made, with active oversight by the Aboriginal sector peak must be implemented. This must include full implementation of the Aboriginal Child Placement Principles, including Aboriginal Family-Led Decision Making processes, and active casework to find and engage Aboriginal families and communities in decision making about Aboriginal children and young people.
- In the longer term, there is a need to establish an Aboriginal-led framework to guide placement decision making with respect to the care and protection of Aboriginal children and young people. Such a framework will outline the types of options appropriate to safeguard the development of Aboriginal children and young people on a foundation of human rights, and the processes by which such decisions will be made.
- Need for improved ongoing support for Aboriginal children and young people in out-of-home care and those that care for them, including casework support, therapeutic care and cultural planning to promote positive outcomes.

⁶ Committee on the Rights of the Children (2013) ‘General Comment No. 14 (2013) on the right of the child to have his or her best interest taken as a primary consideration (art. 3, para 1)’

⁷ *Bringing them Home* Report, Chapter 22