



Aboriginal Bubs Belong to Aboriginal Communities

AbSec Submission to Prenatal Policy Review Discussion Paper:
Supporting Expectant Parents to Keep their Newborn Babies Safe

20 September 2024

An aerial photograph of a rugged coastline. The land is composed of reddish-brown, layered rock formations that drop steeply into the sea. The water is a vibrant turquoise color, with white foam from waves crashing against the base of the cliffs. The sky is not visible, as the land and water fill the frame.

Acknowledgement of Country

AbSec acknowledge the Traditional Owners of the land on which we work and pay respect to Elders past, present and emerging. We also acknowledge the Stolen Generations who never came home and the ongoing impact of government policy and practice on Aboriginal children, young people and families.

Aboriginal and Torres Strait Islander readers are warned that the following project report may contain images of deceased persons.

Recommendations

Recommendation one

System-wide approach to prenatal reform, conceptualised, designed, and implemented recognising the self-determination of Aboriginal peoples and following the leadership of Aboriginal peak bodies, Aboriginal Community Controlled Organisations, Aboriginal Community Controlled Health Organisations and Aboriginal families.

Recommendation two

End the current discriminatory under-investment in Aboriginal children and families through the urgent transition of flexible funding to Aboriginal Community Controlled Organisations.

Recommendation three

NSW Government commitment to the immediate implementation of the remaining Family Is Culture recommendations.



AbSec is the peak organisation concerned with the welfare of Aboriginal children, young people and families. We advocate for their rights, while supporting carers and communities. Our main priority is to keep children and young people safe, with the key goal of also keeping them within their family and community.

Our vision is that all Aboriginal children and young people are looked after in safe, thriving Aboriginal families and communities, raised strong in spirit and identity, with every opportunity for lifelong wellbeing and connection to culture, and surrounded by holistic supports.

The bottom line is that we want to see Aboriginal children and young people cared for in safe, thriving Aboriginal families and communities, where they are raised strong in spirit and identity. We want them to have every opportunity for lifelong wellbeing and connection to culture, surrounded by holistic supports.

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Table of contents

Recommendations	01
Who we are	01
Introduction	03
Ritualism	04
Risk of Significant Harm	06
Self-Determination	08
Conclusion	11
References	12

Additional content

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Introduction

AbSec acknowledges the Department of Communities and Justice's (DCJ) recognition that the *Responding to Prenatal Reports Policy* (the Prenatal Policy) and the *Assessing and Case Planning with Expectant Parents Mandate* (the Mandate) are outdated and in urgent need of review. We, alongside our member ACCOs and the communities we serve, have long called for significant change to DCJ's prenatal approach.

The *Prenatal Policy Review Discussion Paper: Supporting Expectant Parents to Keep their Newborn Babies Safe* (the Discussion Paper) has been scaffolded around the prenatal recommendations of the *Family is Culture Review report* (FIC Review) and has utilised those recommendations as a foundation for its five proposed policy directions. Whilst we welcome DCJ's continued recognition of the seminal FIC Review findings, we are concerned that this DCJ-led approach to policy reform is a continuation of the 'ritualism' brought to light through the FIC Review¹.

The FIC Review is a comprehensive roadmap to reform, which produced an interconnected network of 126 recommendations for system transformation. These recommendations cannot be considered in siloes and are significantly eroded of meaning when viewed outside of the pillars of FIC reform. For this reason, in our response to the Discussion Paper we have chosen to challenge the ritualism of this DCJ-led policy review process and focus on the pillars of the FIC Review: self-determination and public accountability & oversight.

¹ Davis, M. (2019). Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC. p. XIV

Ritualism

As the Discussion Paper notes, “the Prenatal Policy has been under review multiple times, and due to the contentious nature of working with unborn children, this has not yet been finalised.”² Omitted from the Discussion Paper is that AbSec, alongside our member organisations and Aboriginal communities across NSW have devoted significant time and resources to assist the Department in both the 2019 and 2021 review processes for the Prenatal Policy, both of which were led by DCJ, and both of which failed. During these years of lapsed attempts, Aboriginal children and families have continued to be over-surveilled and disproportionately impacted by the child protection system. Aboriginal children are now being removed at higher rates than during the formally-recognised Stolen Generations era³, with babies less than one year-old being the age group in Australia which the most impacted by child protection⁴.

Through the *National Agreement on Closing the Gap* (‘National Agreement’) and the *NSW Closing the Gap Partnership Agreement* (‘NSW Partnership Agreement’), both Commonwealth and NSW Governments have committed to working in partnership and sharing decision-making authority with Aboriginal and Torres Strait Islander peoples through their community-controlled organisations and peaks. We note and respect that every level of DCJ is committed to this partnership and appreciate the efforts of DCJ’s Strategy, Policy and Commissioning team to circulate a draft of the Discussion Paper for our review.

Our decision to decline to review and take a position on the draft Discussion Paper was intentional, with the aim of challenging a ‘business as usual’ approach to system reform work and the ‘ritualism’ highlighted by the FIC Review⁵.

“Ritualism takes the form of compliance manifest in endlessly changing policies espousing departmental commitment to [reform], meetings (where minutes are more important than substance), glossy brochures, tick-a-box forms etc. Despite this, the outward appearance of compliance—formal participation in a system of regulation—shields a culture of non-compliance, as this Review has found.”

We argue that these processes for policy reform continue to be conceptualised and led by DCJ, and that current processes frame working with Aboriginal communities as ‘consultation’ as opposed to meaningful partnership. Aboriginal peak bodies and ACCOs are currently under-resourced to substantively partner in system-wide reform, with the significant unpaid and under-resourced work of our ACCOs in policy reform and program design overlooked in the allocation of funding which is geared primarily towards

² Department of Communities and Justice. (2024). Prenatal Policy Review Discussion Paper: Supporting Expectant Parents to Keep Their Newborn Baby Safe, p.3.

³ Australian Institute of Health and Welfare. (2024). Tier 2 Determinants of Health: 2.12. Child Protection.

⁴ O’Donnell, M. et. Al. (2023). Infant and Pre-Birth Involvement with Child Protection Across Australia.

⁵ Davis, M. (2019). Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC. p. XIV

service delivery. We note that significant time and resources are required to participate in the review of the Discussion Paper and in the development of either a written or oral submission to the review. For Aboriginal communities, ACCOs and peak bodies, this includes an iterative process of community engagement in the collective formation of a new policy and practice approach, as well as the resourcing requirements to access current academic research. We are concerned that this approach to policy reform adds a disproportionate burden to Aboriginal communities and ACCOs and will result in a disparity of overall responses to the Review.

We express concern at the absence of self-determination as a substantive policy direction within the Discussion Paper, as well as the narrow approach to prenatal reform which centres solely on the Responding to Prenatal Reports Policy and the Assessing and Case Planning with Expectant Parents Mandate. We continue to advocate for a holistic approach to reform as outlined in the FIC Review and argue that prenatal reform work must consider funding for ACCOs to deliver early intervention services and supports for the social and emotional wellbeing of Aboriginal families.

We encourage DCJ to honour its commitment to Closing the Gap and engage with Aboriginal communities and peak bodies at the outset of project planning. This will result in fundamental differences to the conceptualisation of system reform processes, and a deeper insight into the strength of Aboriginal families and diversity of Aboriginal communities across New South Wales.

Risk of Significant Harm

The growing body of evidence shows that expectant mothers' experiences of racism, stress, anxiety and depression have been linked with adverse impacts on child development including in the biological, behavioural, cognitive and socio-emotional domains^{6,7,8}. Given DCJ's historic and continuing rates over over-surveillance and policing of expectant Aboriginal families,^{9,10} any involvement of DCJ during the prenatal period is likely to cause significant stress to the expectant mother. As DCJ-led approaches to system reform have continuously led to increasing rates of Aboriginal child removal, it is imperative to consider whether the proposed policy position to expand DCJ involvement in prenatal casework will create additional stressors for expectant parents and present a risk of significant harm to the unborn baby.

Australian Institute of Health and Wellbeing (AIHW) data shows that 32% Aboriginal people who did not access non-ACCHO health services when they needed to in 2018-19 did so because these services were not culturally safe¹¹. This evidence highlights the need for culturally appropriate maternal health services for Aboriginal families which Aboriginal Community Controlled Health Organisations (ACCHOs) are best placed to deliver. Programs such as *Birthing on Country* and *Building on Our Strengths* (BOOSt) are examples of the success of Aboriginal community-led system design and service delivery.

Given the unique strengths of ACCHOs in providing culturally safe, accessible, community-based healthcare it is imperative that any efforts by the NSW Government reduce the disproportionately high removal rates of Aboriginal infants¹² begin first and foremost with health and wellbeing supports delivered by ACCHOs and ACCOs. This recommendation aligns with NSW Government commitments under *Closing the Gap Priority Reform 2* to strengthen the Aboriginal Community Controlled Sector and grow the share of services delivered by and for Aboriginal communities.

The impact of factors outside the health sector on health outcomes, known as the social determinants of health, are also of critical importance in any effort to improve the health and wellbeing of Aboriginal mothers and babies. We recognise the importance of holistic early intervention supports for families, with specific reference to financial and housing supports for expectant families¹³. NSW Health research found that income support for families experiencing poverty and housing assistance including social housing, rental

⁶ NSW Health (2021). *Brighter Beginnings: The First 2000 Days of Life*.

⁷ Dunkel Schetter, Christine; Tanner, Lynlee. (2012). *Anxiety, depression and stress in pregnancy implications for mothers, children, research, and practice*.

⁸ Berthelon, Matias; Kruger, Diana & Sanchez, Rafael. (2021). *Maternal stress during pregnancy and early childhood development*.

⁹ Davis, M. (2019). *Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC*. p. 199.

^{10,12} Falster, K. & Hanly, M. (2019). *Childhood child protection services involvement and developmental outcomes among Aboriginal and non-Aboriginal Kindergarten children in New South Wales: Findings from a population-based, cross-sectoral data linkage study (The Seeding Success Study)*. (Report for the Family is Culture Review. Sydney: UNSW Sydney Centre for Big Data Research in Health). As cited in Davis, M. (2019), p. 40.

¹¹ Australian Institute of Health and Welfare. (2023). *Cultural safety in health care for Indigenous Australians: monitoring framework*.

¹³ NSW Health (2021). *Brighter Beginnings: The First 2000 Days of Life*.

assistance and relieving homelessness have the same level of efficacy as domestic violence services for improving outcomes in the first 2,000 days of life¹⁴. We note that the FIC Review report laid out several recommendations for system reform in the delivery and funding of early intervention services and continue to iterate the importance approaching holistically the full implementation of the 126 recommendations of the FIC Review.

Considering this alongside the potential risks posed by expanded DCJ involvement in the prenatal space we strongly believe that Aboriginal communities and organisations are best placed to support Aboriginal children and families. As stated by Wright, et. al.

“Aboriginal bubs belong to Aboriginal communities, and the right to raise them and shape our own futures is a critical aspect of sovereignty and self-determination.”¹⁵

We advise that DCJ focus on the redirection of resources to social assistance, housing, and maternal health programs delivered by ACCOs and ACCHOs. Concurrently, we advise that DCJ works to reframe their understanding of government perinatal service providers and mandatory reporters so therapeutic support is prioritised over “risk management”. This will reduce the over-surveillance of Aboriginal families as essential for achieving *Target 12 of Closing the Gap*.

¹⁴ NSW Health (2021). Brighter Beginnings: The First 2000 Days of Life.

¹⁵ Wright, et. Al. (2024) Attachment and the (mis)apprehension of Aboriginal children: epistemic violence in child welfare interventions. p. 13.

Self-Determination

The *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child* are international human rights instruments which are foundational to all the work of AbSec. In signing both instruments, Australian governments have committed to uphold and protect rights to collective self-determination, to individual participation and agency, and the right of children to live with their families and communities, noting particularly the right to “autonomy or self-government”¹⁶ and the right to “freely pursue their economic, social and cultural development”¹⁷.

The Family is Culture Review chapter on self-determination extensively explores the gradual shift in government positioning from the support of ‘strong form’ self-determination to ‘weak form’ recognition which ritualistically continues the rhetoric of self-determination but does not require the state to act¹⁸.

We appreciate that DCJ has included Section 11 (1) of the *Children and Young Persons (Care and Protection) Act 1998* as one of the guiding principles for the review¹⁹.

Section 11, subsection 1 states that

“Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible”.

However, with reference to the use of the legislation as a guiding principle of the review, we reiterate the FIC Review’s critique that the absence of a definition of self-determination in the legislation renders the right “vague and indeterminate”²⁰. To date, FIC Review recommendation 8 to review and strengthen the right to self-determination in the *Children and Young Persons (Care and Protection) Act 1998* in partnership with Aboriginal communities has not been implemented. This lack of action continues to result in a spectrum of recognition from policymakers of this fundamental human right²¹ and a ritualistic approach from government on the realisation of these rights in policy and practice.

¹⁶ Article 3, United Nations General Assembly. (2007). United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly.

¹⁷ Article 4, United Nations General Assembly. (2007). United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly.

¹⁸ Davis, M. (2019). Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC. p. 80-83.

¹⁹ Section 11 (1) of the Children and Young Persons (Care and Protection) Act 1998.

^{20, 21} Davis, M. (2019). Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC. p. 81.

In addition to this lack of specificity in the guiding principles, AbSec is concerned by the omission within the paper of Section 11, subsection 2 of Act, which states that:

“...to assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.”²²”

AbSec believes that this is a significant oversight in the Discussion Paper, as self-determination in the child protection system requires that Aboriginal communities are empowered to freely design, implement and evaluate the policies and programs which impact on their children and families²³. As *Bringing Them Home* noted:

“...self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems... and to eliminating unjustified removals of Indigenous children from their families and communities.”²⁴”

Under Priority Reform 3 of the *National Agreement on Closing the Gap*, the government has committed to a systemic and structural transformation. This transformation can be realised through the eight Actions of the *Safe and Supported National Framework for Protecting Australia’s Children 2021–2031* including, but not limited to, the commitment under the *Aboriginal and Torres Strait Islander First Action Plan 2023–2026* “to progressive systems transformation that has Aboriginal and Torres Strait Islander self-determination at its centre”²⁵ and that “Aboriginal and Torres Strait Islander Peoples exercise self-determination by leading service design and workforce development”²⁶.

We encourage DCJ to review AbSec’s *Policy Brief on Self-Determination* which outlines several examples of how self-determination can be realised in practice. Respectfully, AbSec also wishes to highlight the work of Grandmothers Against Removals (GMARS) in the development of the *Guiding Principles for Strengthening the Participation of local Aboriginal Community in Child Protection Decision Making* and encourages DCJ to revisit these practical examples for guidance on embedding ‘strong form’ self-determination in child protection.

DCJ has previously recognised and supported Aboriginal community-led system design through the commissioning of the *Aboriginal Case Management Policy* and *Aboriginal Case Management Policy Rules and Practice Guidance*. This policy has been widely acclaimed by AbSec’s members and Aboriginal communities as a preferred example of process for the development of policies which affect Aboriginal children and families.

²² Children and Young Persons (Care and Protection) Act 1998 (NSW) s 11.

²³ AbSec. (2017). Policy Brief on Self-Determination.

²⁴ *Bringing Them Home* (1997), p. 15.

²⁵ Commonwealth of Australia, *Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, p. 22.

²⁶ Commonwealth of Australia, *Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, p. 19.

This approach actualises the recommendation from *Bringing them Home* that:

“to respect the right of self-determination, governments should confine their roles largely to providing financial and other resource support for the implementation of Indigenous programs and policies.”²⁷

The commissioning of such an approach in prenatal practice would additionally align with FIC recommendation 42 for a specific Aboriginal prenatal reporting and removal policy. Conspicuously, this recommendation is not included as a proposed policy direction within the Discussion Paper.

²⁷ *Bringing Them Home*, (1997), p. 276–277.

Conclusion

This submission has sought to emphasise the critical recognition of Aboriginal self-determination in system transformation and the leadership of ACCOs and peak bodies in reforming prenatal policies and practice. A system-wide approach rooted in the FIC pillars of self-determination and public accountability is essential to ending discriminatory practices and ensuring the wellbeing of expectant Aboriginal families. We call on the government to break the cycle of harm and reform by urgently implementing the outstanding Family Is Culture recommendations and redirect resources to Aboriginal community-controlled maternal health and social support services. Only through meaningful engagement and the empowerment of Aboriginal voices can we achieve transformative change and uphold the rights of Aboriginal children and families.

Recommendation one

System-wide approach to prenatal reform, conceptualised, designed, and implemented recognising the self-determination of Aboriginal peoples and following the leadership of Aboriginal peak bodies, Aboriginal Community Controlled Organisations, Aboriginal Community Controlled Health Organisations and Aboriginal families.

Recommendation two

End the current discriminatory under-investment in Aboriginal children and families through the urgent transition of flexible funding to Aboriginal Community Controlled Organisations.

Recommendation three

NSW Government commitment to the immediate implementation of the remaining Family Is Culture recommendations.

References

1. Davis, M. (2019). Family is Culture Review Report – Independent Review of Aboriginal Children and Young People in OOHC. p. XIV.
2. Department of Communities and Justice. (2024). Prenatal Policy Review Discussion Paper: Supporting Expectant Parents to Keep Their Newborn Baby Safe, p.3.
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