

# Submission to the NSW Parliamentary Committee on Children and Young People's Inquiry into the effectiveness of the NSW child protection and social services system in responding to vulnerable children and their families

15 January 2021



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**Aboriginal Child, Family and Community Care State Secretariat (AbSec)**

## About AbSec

AbSec - NSW Child, Family and Community Peak Aboriginal Corporation is the peak Aboriginal child and family organisation in NSW. AbSec is committed to advocating on behalf of Aboriginal children, families, carers and communities, and to ensure they have access to the services and supports they need to keep Aboriginal children safe, with the best possible opportunities to fulfil their potential through Aboriginal community-controlled organisations.

Central to this vision is the need to develop a tailored approach to Aboriginal child and family supports, delivering universal, targeted and tertiary services within communities that cover the entire continuum of support and reflect the broader familial and community context of clients. Such services and supports would operate to mitigate risk factors or vulnerabilities, thereby reducing the need for more intensive or invasive interventions.

Our vision is that Aboriginal children and young people are looked after in safe, thriving Aboriginal families and communities, and are raised strong in spirit and identity, with every opportunity for lifelong wellbeing and connection to culture surrounded by holistic supports. In working towards this vision, we are guided by these principles:

- acknowledging and respecting the diversity and knowledge of Aboriginal communities;
- acting with professionalism and integrity in striving for quality, culturally responsive services and supports for Aboriginal families;
- underpinning the rights of Aboriginal people to develop our own processes and systems for our communities, particularly in meeting the needs of our children and families;
- being holistic, integrated and solutions-focused through Aboriginal control in delivering for Aboriginal children, families and communities; and
- committing to a future that empowers Aboriginal families and communities, representing our communities, and the agencies there to serve them, with transparency and drive

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## Recommendations list

### ToR 1

Recommendation 1. The NSW Government consider establishing a culturally safe, state-wide phone/internet service for Aboriginal children to seek assistance and referrals, modelled on the services provided by AbSec's Aboriginal Carer Support Service.

### ToR 2

Recommendation 2. The NSW Government implement AbSec's proposal for a holistic Aboriginal child and family service system to provide locally integrated services across the continuum of care, aligned to the needs and cultural values of local communities.

### ToR 3

Recommendation 3. The NSW Government establish a commissioning approach in partnership with Aboriginal communities to achieve sustainable Aboriginal child and family outcomes by:

- Changing the current investment processes to direct resources for Aboriginal children and families proportionate to need through an Aboriginal Commissioning Framework to deliver a holistic Aboriginal child and family system;
- Creating a statutory Aboriginal commissioning body within the Aboriginal child and family sector to undertake commissioning – leading to culturally appropriate sustainable outcomes, investment in local Aboriginal communities to design services in partnership with ACCOs, developing Aboriginal-led service standards, oversighting of services' performance against those standards and outcomes, and monitoring and reporting on the NSW Government's delivery of statutory child protection to Aboriginal communities, families and children; and
- Establishing a sound Aboriginal-led evidence based framework to enable Aboriginal organisations to test their service model and direct investment towards community needs and effective solutions.
- Establishing a Centre for Aboriginal Child and Family Excellence to promote Aboriginal community-control of Aboriginal child and family research and investing in Aboriginal community-led research aligned to local community priorities and aspirations.

Recommendation 4. The NSW Government support the growth of a strong Aboriginal child and family sector to improve outcomes for children, families and communities by:

- Establishing and resourcing a comprehensive 10 year strategy for a strong Aboriginal child and family sector that strengthens the capacity of Aboriginal community controlled organisations to deliver evidence-based responses through a commissioning approach and achieve state-wide service coverage;
- Establishing a state-wide network of recognised Aboriginal child and family organisations to deliver a holistic range of supports for Aboriginal children and families;
- Investing in the development of Aboriginal community-controlled data infrastructure as a foundation for a strong Aboriginal child and family sector; and
- Properly resourcing and implementing the Aboriginal Industry Development Strategy.

### ToR 4

Recommendation 5. The NSW Government implement the Family Is Culture review's recommendation to establish a new, independent Child Protection Commission with at least one Aboriginal Commissioner and an Aboriginal Advisory Body appointed in consultation with the Aboriginal community to strengthen system accountability and oversight.

Recommendation 6. NSW Department of Communities and Justice (DCJ) provide their child protection field staff and management with culturally-competent, trauma-informed training and materials for working with Aboriginal community and families, as recommended by the Family Is Culture review.

Recommendation 7. The NSW Government continue to actively fund and support the implementation of the Aboriginal Case Management Policy and the Aboriginal Case Management Rules and Practice Guidance and report publicly on its activity.

Recommendation 8. The NSW Government resource a state-wide Aboriginal community advocacy model, including an advocacy training program, establishment of a network of resourced community advocates to support families who come to the attention of DCJ, and improved access to legal advocacy in partnership with the Aboriginal Legal Service (NSW/ACT) as recommended by the Family Is Culture review.

Recommendation 9. DCJ partner with Aboriginal communities to improve the objectivity and cultural appropriateness of its structured decision-making tools and processes, consistent with recommendations of the Legislative Council General Purpose Standing Committee No2 Child Protection Inquiry 2017 and the Family Is Culture review.

Recommendation 10. The NSW Government implement the Family Is Culture review's recommendations 59 to 64 to improve DCJ's processes and practices in relation to removals, and to make legislative provisions requiring judicial officers to consider the harm of removal

Recommendation 11. The NSW Government urgently implement the FIC review recommendations 39 to 53 regarding prenatal reports, newborn removals and alternatives to removal, starting by immediately repealing s106A(1)(a) of the Care and Protection Act in order to reduce the entry of Aboriginal children to out of home care.

#### **ToR 5**

Recommendation 12. The NSW Government implement the Family Is Culture review recommendations 21 to 40 to strengthen DCJ's provision of early interventions services to Aboriginal families and children to aid in the reduction of Aboriginal children entering the out of home care system. This should include mandating the provision of these supports.

Recommendation 13. The NSW Government improve access to specialist service provision for Aboriginal children and their families, including domestic and family violence, housing, health and disability services, as a form of early intervention to aid in prevention of entry into care in line with the FIC review recommendations.

Recommendation 14. DCJ provide further targeted funding for all Aboriginal Targeted Early Intervention (TEI) providers to build their skills and capacity to effectively support Aboriginal children, families and communities through the new TEI program.

#### **ToR 6**

Recommendation 15. The NSW Government increases prevention and early intervention funding, including family support and restoration services, for Aboriginal children and families by:

- Increasing investment in early intervention and prevention as a proportion of total child protection system funding to reorientate the system from a crisis focused approach; and
- Investing in Aboriginal community-controlled family supports to a level commensurate with the numbers of Aboriginal children in out of home care (at least 30% of TEI, and 50% of family support and intensive family support investment) directed through an Aboriginal commissioning framework to achieve equitable state-wide coverage.

#### **ToR 7**

Recommendation 16. The NSW Government develop a genuine partnership approach with Aboriginal people, organisations and communities to progress the recommendations arising from the Family Is Culture Review.

Recommendation 17. The NSW Government undertake an urgent review of the powers and resources available to the Children's Guardian and recently appointed Aboriginal Deputy Children's Guardian against the scope and powers recommended by the Family Is Culture review and implement necessary changes to achieve alignment.

Recommendation 18. The NSW Government immediately resource ALS (NSW/ACT) to undertake a project, in partnership with other key stakeholders, to develop the draft legislative amendments recommended by the Family Is Culture review.

Recommendation 19. The NSW Government adequately resource the implementation of the Family Is Culture review's recommendations, with a particular focus on increased investment in prevention, family support, and advocacy.

#### **ToR 8**

Recommendation 20. The NSW Government end the use of adoption and non-Aboriginal carer guardianship of Aboriginal children and instead work with Aboriginal communities to develop culturally appropriate long-term solutions that keep children safe and connected to family, community, culture and Country.

Recommendation 21. DCJ further support Aboriginal children's transition from out of home care to permanency, including those subject to Guardianship orders, to address their needs through the provision of ongoing casework support, appropriate therapeutic care and support to maintain connection to family, community, culture and Country.

## Introduction

AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (AbSec) makes this submission on behalf of our members and stakeholders to the Committee on Children and Young People's inquiry into the effectiveness of the NSW child protection and social services system in responding to vulnerable children and their families.

AbSec is the peak Aboriginal child and family organisation in NSW. Our mandate is to advocate for the rights of Aboriginal children, families and communities across the state. We acknowledge the many Aboriginal community voices who continue to call for a more effective child protection system in responding to Aboriginal children and their families.

In this submission AbSec briefly discusses the current context for the disproportionate representation of Aboriginal children across the child protection system in NSW. We then address each of the eight terms of reference (ToR) set by the inquiry. In ToR 7 we discuss the 2019 Family is Culture (FIC) review, the inadequate response from the NSW government, and the need for urgent action to implement the review's recommendations in full. In ToR 8 we highlight issues in out of home care (OOHC), specifically in relation guardianship and permanency.

Despite multiple reviews and inquiries, attempted reforms and significant investment over the past decade there has been little meaningful change in the way that statutory authorities systemically approach Aboriginal children and families in NSW. Key issues of Aboriginal self-determination, implementation of the Aboriginal Child Placement Principles, accountability and the need for more holistic prevention, early intervention and support for families remain an ongoing concern for Aboriginal communities.

AbSec notes this inquiry follows many recent reviews and inquiries about the deficiencies in the NSW child protection system, highlighting the NSW Government's failure to adequately implement their findings. The issues and solutions to reform the child protection system have been well documented, most recently in the 2019 Family Is Culture (FIC) review.

It is clear that the NSW Government's ad hoc approach through partially implementing the recommendations of previous inquiries does not work. Fundamental structural change is needed to reform the NSW child protection system in line with the FIC review to improve outcomes for Aboriginal children and their families.

AbSec advocates for significant systemic reform to Aboriginal child and family services driven by appropriate Aboriginal community leadership across the child protection and OOHC spectrum. For Aboriginal families this needs to be based on principles of self-determination and empowerment of Aboriginal people as per sections 11, 12 and 13 of the *Children and Young Persons (Care and Protection) Act 1998*.<sup>1</sup>

AbSec proposes a state-wide safety-net of Aboriginal community-controlled organisations developing and implementing holistic services to children, their families and communities through an Aboriginal led commissioning approach of service provision. Overseeing this system would be an independent Aboriginal Child Protection Commission to ensure accountability and transparency as well as hold live data.

## General comments

The current social services and child protection system in NSW is failing Aboriginal children and young people, their families and communities. It is failing to intervene in transgenerational cycles of disadvantage and to address safety risk factors early enough to

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<sup>1</sup> <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1998-157#ch.2-pt.2>

prevent Aboriginal children entering into care. It is also failing to adequately engage and respond to the needs of families to achieve timely restoration of Aboriginal children.

The growing overrepresentation of Aboriginal children and young people across the child protection and care continuum in NSW<sup>2</sup> underscores this systemic failure. At the point of identification, Aboriginal children are nearly six times more likely to be subject to a risk of harm notification than non-Aboriginal children.<sup>3</sup> They are then eight times more likely to be the subject of a finalised investigation<sup>4</sup> or a substantiated report.<sup>5</sup> At the crisis end Aboriginal children are nearly 10 times more likely to be on a care and protection order than non-Aboriginal children.<sup>6</sup>

There are multiple reasons Aboriginal children and young people are over-represented in the child protection system. This includes the historic and ongoing marginalisation of Aboriginal people, the legacy of forced removals and ensuing intergenerational trauma, lower socio-economic status, drug and alcohol abuse and family violence.<sup>7</sup> It also reflects the failure of the social services system to adequately address the underlying factors contributing to risk of harm in the first place.

Although Aboriginal children and young people are over-represented in child protection and OOHC, the majority of Aboriginal children in NSW are not in contact with the statutory system. The vast majority of Aboriginal families function strongly and meet the needs of their children. Strong formal and informal networks of supports are present within Aboriginal communities. These strengths should be recognised, valued and promoted - investing in communities' capacity to support those families that may be identified as needing additional support.

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<sup>2</sup> Delfabbro, P. (2018). *Aboriginal children in out-of-home care in NSW: Developmental outcomes and cultural and family connections. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care*. Research Report Number 11, NSW Department of Family and Community Services, Sydney, 13.

<sup>3</sup> 190.3 per 1000 Aboriginal children aged 0-17 years compared to 32.4 per 1000 non-Indigenous children aged 0-17 years. Source: Productivity Commission (2020) Report on Government Services, Canberra, PAGE 3 of TABLE 16A.1. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>4</sup> 72.3 per 1000 Aboriginal children aged 0-17 years compared to 9.4 per 1000 non-Indigenous children aged 0-17 years. Source: Productivity Commission (2020) Report on Government Services, Canberra, PAGE 3 of TABLE 16A.1. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>5</sup> 36.2 per 1000 Aboriginal children aged 0-17 years compared to 4.6 per 1000 non-Indigenous children aged 0-17 years. Source: Productivity Commission (2020) Report on Government Services, Canberra, PAGE 2 of TABLE 16A.1. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>6</sup> 71.7 per 1000 Aboriginal children aged 0-17 years compared to 7.6 per 1000 non-Indigenous children aged 0-17 years. Source: Productivity Commission (2020) Report on Government Services, Canberra, PAGE 2 of TABLE 16A.1. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>7</sup> Walsh, P., McHugh, M., Blunden, H. and Katz, I. (2018). *Literature Review: Factors Influencing the Outcomes of Children and Young People in Out-of-Home Care. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care*. Research Report Number 6, NSW Department of Family and Community Services, Sydney, 6.

## ToR 1. How vulnerable children and families are identified and how the current system interacts with them including any potential improvements, particularly at important transition points in their lives

### Culturally appropriate identification of at-risk Aboriginal children

Culturally appropriate models and services are needed to identify Aboriginal children and young people at risk of harm and their families, and to provide effective supports. These needs to adequately reflect cultural differences in caring for children, family structure and take into account the historical disadvantage imposed on Aboriginal communities.<sup>8</sup> Aboriginal communities are best placed to design and deliver these services and supports to meet their needs.

Mainstream services and agencies' generally lack understanding about the cultural differences in Aboriginal child-rearing practices and family structure. This contributes to higher rates of Aboriginal children and young people being identified at risk and entering the child protection system.<sup>9</sup> Recognising the importance of culture and what this means for the way people are in their lives is not at the forefront of most mainstream services' understanding.

### Culturally safe transition support

The social services and child protection system fails to provide Aboriginal children and their families with culturally safe services at key transition points in their lives. These transitions include entering early childhood education, changing schools, exiting OOH, exiting family violence, and exiting the criminal justice system. Key challenges are non-universal services, strict referral criteria, and long waiting lists for support services. Aboriginal children and their families in rural and remote parts of NSW experience even greater challenges accessing transition support.

There is no dedicated Aboriginal state wide service to assist children and young people at this "crossroad" times in their lives. In areas where there are Aboriginal community controlled organisations providing OOH, family support and other holistic intervention services there is scope for this cohort to be supported.

AbSec recommends that consideration be given to the establishment of a state wide phone/internet service where Aboriginal children would feel culturally safe to contact to seek assistance and referrals. This could be along the lines of the services provided by AbSec's Aboriginal Carer Support Service which has been operating successfully for the past 20 years – offering support, referrals and advice to carers of Aboriginal children.

#### Recommendation:

**The NSW Government consider establishing a culturally safe, state-wide phone/internet service for Aboriginal children to seek assistance and referrals, modelled on the services provided by AbSec's Aboriginal Carer Support Service.**

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<sup>8</sup> Child Family Community Australia (2020) *Child protection and Aboriginal and Torres Strait Islander children Resource Sheet*, Australian Institute of Family Studies, <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>

<sup>9</sup> Child Family Community Australia (2020) *Child protection and Aboriginal and Torres Strait Islander children Resource Sheet*, Australian Institute of Family Studies, <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>

## **ToR 2. The respective roles, responsibilities, including points of intersection, of health, education, police, justice and social services in the current system and the optimum evidence based prevention and early intervention responses that the current system should provide to improve life outcomes**

Responding early to the needs of Aboriginal families and their children through the provision of holistic, integrated Aboriginal community-led support provides families with the best chance of breaking intergenerational cycles of disadvantage and harm and maximising their developmental and life outcomes.

### **Responses must be culturally safe and trauma integrated**

Creating a culturally safe social services system that provides healing for Aboriginal people is essential to achieve sustainable improvements in the life outcomes of Aboriginal children and their families. A history of forced removals, policies such as racial assimilation, socially sanctioned racism and violence and grief over the loss of land and culture have all contributed to intergenerational trauma for Aboriginal people and communities.<sup>10</sup>

A lack of culturally safe services continues to be a major barrier to Aboriginal children and families receiving timely, effective support to improve their life outcomes. In consultation with AbSec members for this submission, we heard some agencies continue to perpetrate discriminatory practices and approaches and fail to effectively support Aboriginal families and their children to prevent their entry into the statutory system.

The NSW Ombudsman recently noted more work needs to be done to ensure service systems are culturally competent, trauma-informed and well-targeted to the needs of Aboriginal people. It recommended incorporating healing in practical ways through place-based approaches to service delivery, in which Aboriginal people are genuinely involved in designing and delivering what is needed for their own communities.<sup>11</sup>

### **Services and supports must be Aboriginal-led**

Aboriginal community-controlled services are an essential component of the social service system. Aboriginal community-led services address families' immediate needs as well as the underlying causal factors of disadvantage using holistic, strengths-based approaches. Evidence indicates that Aboriginal-led solutions to local issues in Aboriginal communities delivered by Aboriginal services result in better outcomes for Aboriginal children and families.<sup>12</sup>

Aboriginal-led services are more culturally appropriate and support families' connections to community, culture and Country. Studies show that Aboriginal peoples' connection to community and culture positively influences their health, wellbeing and identity.<sup>13,14</sup>

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<sup>10</sup> Australian Indigenous HealthInfoNet (2020) *Trauma*, accessed 23/11/2020 at:

<https://healthinonet.ecu.edu.au/learn/health-topics/healing/community-healing/>

<sup>11</sup> NSW Ombudsman (2019) *OCHRE Review Report*, Sydney, 44. Accessed 23/11/2020 at

[https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0005/74183/OCHRE-Report\\_October-2019.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/74183/OCHRE-Report_October-2019.pdf)

<sup>12</sup> Bulloch H., Fogarty W., and Bellchambers K. (2019) *Aboriginal Health and Wellbeing Services Putting community-driven, strengths-based approaches into practice*, Lowitija Institute and Australian National University; Child Family Community Australia (2015) *What works in effective Indigenous community-managed programs and organisations*, CFCA Paper No. 32, Australian Institute of Family Studies.

<sup>13</sup> Dockery, A. (2010) *Culture and wellbeing: The case of indigenous Australians*. Social Indicators Research, 99, 315–332

<sup>14</sup> Bourke, Sarah & Wright, Alyson & Guthrie, Jill & Russell, Lachlan & Dunbar, Terry & Lovett, Raymond (2018) *Evidence Review of Indigenous Culture for Health and Wellbeing*. The International Journal of Health, Wellness, and Society. 8. 11-27.

Connection to culture can act as a protective factor,<sup>15</sup> strengthen positive self-identity,<sup>16</sup> reduce the likelihood of substance abuse and contact with the criminal justice system,<sup>17</sup> and positively contribute to physical safety,<sup>18</sup> educational attainment and employment.<sup>19</sup>

“In speaking to people working in service provision, it became clear to me that the vital role of Indigenous-led services is two-fold. As well as providing the services, they act as a conduit, advocating on behalf of clients who are not equipped to navigate complicated and changeable mainstream service systems, which often lack an appreciation of Indigenous needs and perspectives.” (Wiyi Yani U Thangani (Women’s Voices))<sup>20</sup>

## AbSec’s framework for a holistic Aboriginal child and family service system

AbSec, along with our Aboriginal communities, have been calling for an Aboriginal-led, holistic and culturally embedded universal support system that strengthens networks of care and optimises community supports so that children can thrive without the need for more intrusive child protection approaches. Aboriginal-led child and family supports across the continuum of care are critical to healing trauma and breaking the cycle of disadvantage that places Aboriginal children at greater risk of entering the child protection system.

As such, AbSec has developed a holistic framework for the development of a state-wide network of Aboriginal community-led organisations delivering integrated services across the continuum of care for Aboriginal families and their children that are aligned to the needs and cultural values of local communities. This framework is outlined in our paper, [Achieving a holistic Aboriginal Child and Family Service System for NSW](#).<sup>21</sup>

AbSec’s paper outlines a framework for achieving an Aboriginal child and family service system based on a public health approach. It proposes a system of integrated services at the community (primary), family (secondary) and individual (tertiary) levels that address issues early and promotes wellbeing and developmental outcomes.<sup>22</sup> Evidence suggests population approaches that combine primary prevention with targeted early interventions for families can help reduce the risk of child abuse and neglect.<sup>23</sup>

AbSec’s Aboriginal child and family service framework, along with the associated papers articulating the [Aboriginal Community Response](#) (universal), [Aboriginal Family Strengthening](#) (secondary) service levels, and [Aboriginal Family Preservation and Restoration Model Guidelines](#) (tertiary), are attached to this submission.

An Aboriginal child and family service system orientated towards more prevention and early intervention services will address the underlying issues that drive Aboriginal children and

<sup>15</sup> Libesman, T. (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*.

<sup>16</sup> Healing Foundation (2013) *Our Healing Our Solutions – Sharing Our Evidence*.

<sup>17</sup> Dockery, A. (2012) *Do traditional culture and identity promote the wellbeing of Indigenous Australians? Evidence from the 2008 NATSISS*. Survey analysis for Indigenous policy in Australia: Social science perspectives, 281-306.

<sup>18</sup> Arney, F. et al. (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: policy and practice considerations* (2015) CFCA paper no. 34, Australian Institute of Family Studies.

<sup>19</sup> Dockery, A. (2012) *Do traditional culture and identity promote the wellbeing of Indigenous Australians? Evidence from the 2008 NATSISS*. Survey analysis for Indigenous policy in Australia: Social science perspectives, 281-306.

<sup>20</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women’s Voices) Securing Our Rights, Securing Our Future Report, 264. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>21</sup> AbSec (2016) [Achieving a holistic Aboriginal Child and Family Service System for NSW](#), Sydney.

<sup>22</sup> AbSec (2016) *Achieving a holistic Aboriginal child and family system for NSW*

<sup>23</sup> Child Family Community Australia (2020) *Ensuring all children get the best start in life: A population approach to early intervention and prevention*, Australia Institute of Family Studies. Online at: <https://aifs.gov.au/cfca/2020/10/20/ensuring-all-children-get-best-start-life-population-approach-early-intervention-and>

families into the child protection and OOHC system. Addressing these factors will play a significant role in ensuring Aboriginal families are strengthened, and opportunities to keep Aboriginal children at home, in community or connected to community and Country are enhanced.

The NSW Government has previously recognised the need for a new approach to promote the safety and wellbeing of Aboriginal children and young people.<sup>24</sup> In 2014-15, AbSec in partnership with DCJ (then FACS) and other NSW Government agencies undertook a co-design process to develop a comprehensive sector plan for Aboriginal children and young people.

The subsequent [Plan on a Page for Aboriginal Children and Young People](#) recognised the need to build a safety net of Aboriginal organisations across NSW to provide packages of tailored, child and family-centred, holistic supports across the continuum.<sup>25</sup>

AbSec acknowledges that the NSW Government have in the main been supportive of the plan and significant progress has been made over the past five years, although deficiencies as outlined in the FIC report remain unaddressed. It is intended that a review of the plan will be undertaken in early 2021, with synergies being collated to align with the FIC report recommendations, SNAICC's The Family Matter report, Closing the Gap and the Premier's Priorities.

#### **Recommendation:**

**The NSW Government implement AbSec's proposal for a holistic Aboriginal child and family service system to provide locally integrated services across the continuum of care, aligned to the needs and cultural values of local communities.**

In the absence of a holistic service system, constructive local relationships between NSW Government agencies, non-government organisations and Aboriginal Community Controlled Organisations (ACCOs) are essential to establish successful multidisciplinary responses.

In feedback provided for this submission, an AbSec member reported regular meetings between an ACCO and local Police commander, along with an engaged and responsive magistrate, have had positive outcomes for Aboriginal families and children in that area. Conversely, some agencies such as Education NSW fail to work collaboratively with ACCOs to support families and make notifications too readily.

### **ToR 3. The adequacy of current interventions and responses for vulnerable children and families and their effectiveness in supporting families and avoiding children entering out of home care**

#### **Aboriginal children and families are not well supported by the current system**

Current early intervention and prevention responses are inadequate to meet the needs of Aboriginal families and their children in need of support. This is evidenced by the increasingly disproportionate rates of Aboriginal children and young people entering the statutory system and escalating to removal into OOHC.

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<sup>24</sup> AbSec (2015) *Plan on a Page for Aboriginal Children and Young People 2015-2021*, Sydney. Available at <https://www.absec.org.au/images/downloads/Plan-for-Aboriginal-Children-and-Young-People.pdf>

<sup>25</sup> AbSec (2015) *Plan on a Page for Aboriginal Children and Young People 2015-2021*, Sydney. Available at <https://www.absec.org.au/images/downloads/Plan-for-Aboriginal-Children-and-Young-People.pdf>

The Productivity Commission report shows in the decade from 2009-10 to 2018-19, the disproportionality ratios of Aboriginal children in the child protection system has increased.<sup>26</sup> There are increasingly disproportionate numbers of Aboriginal children and young people subject to notifications, investigations, intensive family support services, care and protection orders, and out-of-home care.<sup>27</sup>

AbSec's recent report on hearing the voices of Aboriginal people in child welfare highlighted the cyclical nature of many Aboriginal people's experiences with the child protection system and the lack of support to give parents the skills they needed to break that cycle:

"It just feels like it's a cycle that ... gets passed down and passed down... If someone could run programs on life skills...on how to help the family stay together as a unit. [It would] make it easier for us, instead of taking our kids away." (AbSec Case Study Report)<sup>28</sup>

"As far as I know there wasn't [enough support] and then it's gone through a cycle. So now the children that my mum looked after, they've had children and they're going through the same cycle, if that makes sense. I feel like if something had been put into place when my parents had them [the children], and they were assessed and had counselling and they had every support that they needed to just rebuild their lives they would have been able to know how to build their own family stronger and healthier and [then] when things came up, they would know how to deal with it. But it's just a cycle. It goes around and around again..." (AbSec Case Study Report)<sup>29</sup>

### Aboriginal-led and culturally safe responses are lacking

There is a lack of Aboriginal-led supports and culturally safe services for Aboriginal families and children before they become involved with the statutory child protection system. Mainstream services are often culturally inappropriate, and consequently lack community trust and support.<sup>30</sup> They also generally lack established relationships with communities and understanding of local cultural protocols, which limits their ability to effectively engage and serve those communities.

AbSec's consultation with Aboriginal families and communities in 2019 highlighted that many Aboriginal people feel more comfortable engaging with Aboriginal workers and organisations.<sup>31</sup> As such they are more likely to share their story and seek support for the challenges they are facing. Yet most social services are not community-controlled or culturally safe for Aboriginal families, which limits their access to these services.

One person told us during the 2019 consultations that:

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<sup>26</sup> 'Disproportionality' is defined as the extent to which a group's representation in the child protection services system is proportionate to their representation in the child protection services target population (0–17 years). Disproportionality for Aboriginal and Torres Strait Islander children is calculated by dividing the proportion of children in the child protection system who are Aboriginal and Torres Strait Islander children by the proportion of children in the target population who are Aboriginal and Torres Strait Islander children. See: Productivity Commission (2020) Report on Government Services, Canberra, Box 16.3, 6.8. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>27</sup> Productivity Commission (2020) Report on Government Services, Canberra, PAGE 1 of TABLE 16A.9. Accessed 20/11/2020 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>28</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 6.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>29</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 17.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>30</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 268. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>31</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 9.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

“When ... I have issues, the mainstream isn't helping me and I'm looking for strategies, and that's from our own mob or the extended community where I live and Aboriginal people and organisations to find ways to make things better.” (AbSec Case Study Report)<sup>32</sup>

Another said:

“I believe that our issues are our business, it should be harnessed by Aboriginal organisations, with Aboriginal caseworkers. Aboriginal people that understand. They know what's going on, and therefore, people would feel more comfortable rather than being put under the microscope and having a white dominated system that says they know how to fix the problems, 'cause they're creating the problem.” (AbSec Case Study Report)<sup>33</sup>

Aboriginal community-controlled organisations (ACCOs) are essential to effectively support Aboriginal families and children in local communities. ACCOs provide culturally-informed, holistic solutions that reflect local community needs and values. They also provide family and community advocacy, as well as providing culturally-informed spaces and guidance to mainstream organisations on cultural matters.<sup>34</sup>

### **More drug and alcohol, family violence and housing supports are needed**

While a comprehensive suite of supports is needed across the social services system, there is a pressing need for more community-led and culturally safe drug and alcohol services, family violence support and housing to prevent Aboriginal children and their families coming into contact with the child protection system.

Many Aboriginal families come into contact with the child protection system related to issues arising from family violence, drug and alcohol dependence, abuse and childhood trauma. These issues have their origins in the multiple forms of discrimination and inequalities, poverty, systemic racism and intergenerational trauma experienced by Aboriginal people.<sup>35</sup>

Domestic and family violence is a key reason that children are removed from the care of their mothers and families. The Wiyi Yani U Thangani (Women's Voices) report notes that this policy and practice effectively holds women responsible for the violence of their male partners. Women are placed in the untenable position of living with the violence or risk having their children removed if they seek help.<sup>36</sup>

The Wiyi Yani U Thangani report recommends governments invest in mechanisms that increase the capacity and confidence of victims to disclose violence and abuse, as well as to Family Violence and Prevention Legal Services (FVPLS) and to Aboriginal Legal Services (ALS) as culturally safe, trauma informed specialist supports and legal representation.<sup>37</sup>

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<sup>32</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 9.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>33</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 27.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>34</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 263. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>35</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 236. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>36</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 219. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>37</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 237. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

Related to the issue of family violence is the need for culturally appropriate safe houses and transitional housing, along with the greater availability of affordable long-term housing. A lack of housing or inadequate accommodation often contributes to Aboriginal families' contact with the child protection system.<sup>38</sup> It can also be a reason why DCJ will not restore a child to their family, yet Housing NSW will not prioritise families for housing if their child is not living with them.

Another area in need of greater investment is access to holistic drug and alcohol recovery support. There is a lack of mainstream and Aboriginal specific detox and rehabilitation facilities, including ones that accept children. The lack of services and long wait list to access services that do exist is a key barrier to families engaging in recovery.<sup>39</sup>

AbSec welcomes the NSW Government's establishment of The Glen, a dedicated Aboriginal women's drug and alcohol rehabilitation centre, and urges further investment in holistic, community-led recovery supports for Aboriginal families to address their substance use.<sup>40</sup>

### **Mandatory reporter status impact**

A challenge for some service providers in working effectively with Aboriginal families is their obligation as mandatory reporters. Trusted relationships are critical to successfully engage Aboriginal families. An AbSec member reported that being a mandatory reporter hampers their work as some Aboriginal families fear disclosing their circumstances and being reported to DCJ due to the legacy of past practises. This constrains service providers' capacity to identify the challenges facing families and the risks present for children, and to develop strategies to effectively meet their needs.

SNAICC's The Family Matters Report 2020 found that despite mandatory reporting obligations, many services successfully engage Aboriginal families respectfully and transparently to work through identified risks and develop healthy support networks. These services work from a relationship-based practice model and therefore can often continue working with the family and with child protection support as needed.<sup>41</sup>

AbSec suggests that an independent Aboriginal Child Protection Commissioner as recommended by the FIC review could incorporate an oversight role to ensure that reports from Aboriginal organisations actually meet the mandatory reporting threshold.

### **Limited referral pathways**

Another issue raised in our consultation with members was restrictive referral pathways. An AbSec member noted that access to family support programs, such as Brighter Futures, are traditionally through the child protection system, in particular DCJ CSCs. The inability to self-refer coupled with a lack of genuine early intervention programs severely limits the number of families that can get the support they need early on before issues escalate to a crisis situation.

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<sup>38</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 221. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>39</sup> Dan Howard (2019) Special Commission of Inquiry into the Drug Ice, DPC. Accessed at: <https://www.dpc.nsw.gov.au/publications/special-commissions-of-inquiry/the-special-commission-of-inquiry-into-the-drug-ice/>

<sup>40</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 153. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>41</sup> SNAICC (2020) *The Family Matters Report*, accessed at [https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020\\_LR.pdf?utm\\_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm\\_campaign=7549a0b857-EMAIL\\_CAMPAIGN\\_2017\\_11\\_28\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_aca4310bc4-7549a0b857-155369070&mc\\_cid=7549a0b857&mc\\_eid=32f353fd75](https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf?utm_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm_campaign=7549a0b857-EMAIL_CAMPAIGN_2017_11_28_COPY_01&utm_medium=email&utm_term=0_aca4310bc4-7549a0b857-155369070&mc_cid=7549a0b857&mc_eid=32f353fd75)

## Inadequate funding and resourcing of services

Inadequate funding for services and high workloads, turn over and burnout are identified barriers to effectively supporting both Aboriginal and non-Aboriginal families. In consultation for this submission, we heard that some AbSec members said they do not have sufficient resources to meet the multiple, intensive needs of some families.

Some members said it is often difficult for funded service providers to obtain timely support from DCJ to address key risks affecting families. Without early support, these situations can end up requiring formal oversight from DCJ which impacts on the trusted relationships these funded services have built with families.

## Siloed programs and contracting arrangements impede effective responses

The capacity of Aboriginal organisations to provide the holistic services that families need is constrained by agency and programmatic silos, and by restrictive program criteria.

The Tune review highlighted the need for greater whole-of-government working to deliver the multi-faceted, joined up responses families with child safety issues.<sup>42</sup> Despite numerous restructures aimed at facilitating more joined-up working, government programs are still largely structured by agency rather than according to the child and families' needs.

Prescriptive program criteria also undermines the effectiveness of responses for these families. For instance the Brighter Futures program withdraws support to enrolled families once a ROSH report is received, leaving them with very few options for support.

The inherently risk adverse nature of government combined with the requirement to use only proven, evidence-based models constrains the capacity of organisations and communities to deliver innovative services to meet their needs. Yet this requirement has not delivered better outcomes for Aboriginal families.

Models that DCJ have deemed to be 'evidence-based', such as the new family preservation and restoration programs, were not been proven with respect to Aboriginal families and their children, and have subsequently been shown to be ineffective. These are discussed further at Terms of Reference 5.

Rigid contracting arrangements further limit the scope for Aboriginal communities to be innovative in the services they provide. In those rare cases where innovation has been enabled, Aboriginal communities have developed effective solutions – mainly through their own means.

“...community-driven, holistic and person-centred approaches are key to delivering better services, yet, increasingly, restrictive and metrics-focus funding regimes constrain what works. (Aboriginal health and wellbeing services report)<sup>43</sup>

Systemic change is needed across NSW Government agencies and programs to enable community-led, holistic support that is culturally appropriate for Aboriginal children and their families and their children.

## Aboriginal-led commissioning will improve outcomes

AbSec has recently developed a Commissioning Framework to address some of these constraints in the service delivery model for Aboriginal children and their families. The Framework builds on the findings of the *Bringing Them Home Report (1997)* that, “...to

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<sup>42</sup> Tune D (2016) *Independent review of Out of Home Care in NSW*, NSW Government, Sydney. Accessed 03/12/2020 at <https://www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf>

<sup>43</sup> Bulloch H., Fogarty W., and Bellchambers K. (2019) *Aboriginal Health and Wellbeing Services Putting community-driven, strengths-based approaches into practice*, Lowitja Institute and Australian National University, 1.

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.”<sup>44</sup>

AbSec’s Commissioning Framework builds on the principles of self-determination and accountability to adopt a community-led commissioning for outcomes approach aligned to the needs of Aboriginal children in their family and community. AbSec is currently trialling this approach to develop a Guardianship Support Model with the view to expanding it across the continuum of support.

In conjunction with the Commissioning Framework, AbSec has proposed the establishment of an Aboriginal commissioning body with local decision-making panels to empower local communities to invest in services and supports aligned to agreed high level outcomes. AbSec notes that our proposed body is distinct from the FIC review’s proposed NSW Child Protection Commission, which is predominantly an oversight and monitoring body rather than a service commissioning body. It is our view that these two bodies can both coexist.

AbSec’s proposed Aboriginal Child and Family Commission would be responsible for developing a strategic outcomes framework and directing investment in Aboriginal services to achieve these outcomes in line with agreed service standards. It would establish a state-wide data system and support evidence-building partnerships with Aboriginal communities as well as undertake whole-of-system oversight and advocacy on behalf of Aboriginal children and their families.

“We [Aboriginal people] work together trying to find solutions and supporting each other in different processes in order to achieve better outcomes for our kids. Resources and framework strategies, are what we need to do, and I honestly think that the government should stop trying to control that type of stuff and put those things into Aboriginal hands. We’re competent. We’re educated. There are many strong educated people that are quite capable of taking these things on, but we’re still being micro managed. Constantly.” (AbSec Case Study Report)<sup>45</sup>

The NSW Government has committed to empower local Aboriginal communities through Local Decision Making under OCHRE supported by a governance system and delegated decision-making model.<sup>46</sup> The NSW Ombudsmen recognised that Aboriginal Local Decision Making promotes self-determination and a formal process for resetting the relationship between Aboriginal communities and government agencies in NSW and is a form of healing.<sup>47</sup>

AbSec notes it is imperative that if Aboriginal Local Decision Making is implemented successfully, it needs to be developed and led by Aboriginal communities for Aboriginal people and that participants in these decision making bodies is decided by community and not government.

Aligned to the issue of a Commission is the need for data sovereignty. Aboriginal data sovereignty is the right of Aboriginal people to control the collection, access, analysis, and use data that is about them. Having access to data about Aboriginal children, families and services is essential for communities to make informed local decisions about policies and programs to meet their needs. AbSec endorses the FIC review’s call for Government to

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<sup>44</sup> Human Rights and Equal Opportunity Commission (1997) *Bringing them home report - National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Accessed at <https://humanrights.gov.au/our-work/bringing-them-home-report-1997>

<sup>45</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 27. <https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>46</sup> Aboriginal Affairs, *OCHRE – A continuing conversation*, NSW Government, accessed 23/11/2020 at <https://www.aboriginalaffairs.nsw.gov.au/conversations/ochre/evaluating-outcomes/ochre-local-decision-making/>

<sup>47</sup> NSW Ombudsman (2019) *OCHRE Review Report*, Sydney, 44. Accessed 23/11/2020 at [https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0005/74183/OCHRE-Report\\_October-2019.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/74183/OCHRE-Report_October-2019.pdf)

engage in partnerships with Aboriginal people in the collection and interpretation of data that concerns them.

**Recommendation:**

**The NSW Government establish a commissioning approach in partnership with Aboriginal communities to achieve sustainable Aboriginal child and family outcomes by:**

- **Changing the current investment processes to direct resources for Aboriginal children and families proportionate to need through an Aboriginal Commissioning Framework to deliver a holistic Aboriginal child and family system;**
- **Creating a statutory Aboriginal commissioning body within the Aboriginal child and family sector to undertake commissioning – leading to culturally appropriate sustainable outcomes, investment in local Aboriginal communities to design services in partnership with ACCOs, developing Aboriginal-led service standards, oversighting of services' performance against those standards and outcomes, and monitoring and reporting on the NSW Government's delivery of statutory child protection to Aboriginal communities, families and children; and**
- **Establishing a sound Aboriginal-led evidence based framework to enable Aboriginal organisations to test their service model and direct investment towards community needs and effective solutions.**
- **Establishing a Centre for Aboriginal Child and Family Excellence to promote Aboriginal community-control of Aboriginal child and family research and investing in Aboriginal community-led research aligned to local community priorities and aspirations.**

## **A strong and sustainable Aboriginal child and family sector**

Central to the creation of a more effective, culturally-embedded service system to support Aboriginal children and families through a commissioning approach is a strong and sustainable Aboriginal child and family sector. Strengthening the capabilities of Aboriginal community controlled organisations to develop and deliver evidence informed approaches and operate in a commissioning for outcomes framework is essential to the success of this approach. Aboriginal peak bodies such as AbSec are well positioned to undertake this capacity building work.

**Recommendation:**

**The NSW Government support the growth of a strong Aboriginal child and family sector to improve outcomes for children, families and communities by:**

- **Establishing and resourcing a comprehensive 10 year strategy for a strong Aboriginal child and family sector that strengthens the capacity of ACCOs to deliver evidence-based responses through a commissioning approach and achieve state-wide service coverage;**
- **Establishing a state-wide network of recognised Aboriginal child and family organisations to deliver a holistic range of support for Aboriginal children and families;**
- **Investing in the development of Aboriginal community-controlled data infrastructure as a foundation for a strong Aboriginal child and family sector; and**
- **Properly resourcing and implementing the Aboriginal Industry Development Strategy.**

## **ToR 4. The child protection intake, assessment, referral and case management system including any changes necessary to ensure that all children assessed as being at risk of significant harm receive a proactive and timely in-person response from child protection staff**

### **NSW child protection system is failing Aboriginal children at-risk**

Successive reviews have showed the NSW child protection system is failing Aboriginal children and young people.<sup>48</sup> The over-representation of Aboriginal children and young people across the statutory system increases as they move through the system from the point of identification through to OOHC.<sup>49</sup>

This over-representation suggests that Aboriginal children and young people are not only more likely to come to the attention of the statutory system, but also the interventions undertaken by the statutory system are less effective at diverting Aboriginal children and families from crisis relative to their non-Aboriginal peers.

“...for every child removed into care, there is a family that did not receive the support they needed, whether it was in relation to poverty and marginalisation, adequate and safe housing, or family violence support.” (Wiyi Yani U Thangani Report 2020)<sup>50</sup>

In early 2019, AbSec engaged with Aboriginal families and communities affected by DCJ. We heard Aboriginal families continue to be subject to systems and practices which perpetuate child removals and an ongoing cycle of harm, despite clear lessons of the past. They spoke about the failure to adequately engage Aboriginal families and communities to find solutions that keep Aboriginal children safe and support them to thrive.<sup>51</sup>

Many of the issues with the child protection system in NSW, in particular intake, assessment, referral, and case management, are well known and have been the subject of numerous inquiries and reviews. Issues include a complex system plagued by a lack of resources, staff shortages, high workloads, culturally biased and inconsistent assessments, and a lack of culturally appropriate, trauma-informed practice.

### **Lack of accountability**

A critical structural challenge is the dual issue of power and accountability across the child protection system. The FIC review found there is often a considerable power imbalance between the parents of Aboriginal children and DCJ staff. It attributed this to families' socioeconomic and health disadvantage, intergenerational trauma, different cultural background to that of caseworkers and lack of knowledge of the child protection system.<sup>52</sup>

In response to feedback for this submission, an AbSec member similarly observed the entrenched inequalities and significant powers wielded over families by DCJ and its failure to

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<sup>48</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 10-20. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>49</sup> Delfabbro, P. (2018). *Aboriginal children in out-of-home care in NSW: Developmental outcomes and cultural and family connections. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care*. Research Report Number 11, NSW Department of Family and Community Services, Sydney, 13.

<sup>50</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>51</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>52</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 163.

recognise this power imbalance when engaging and working with families, particularly Aboriginal families.

DCJ's powers are not kept in check by appropriate accountability measures and oversight of its child protection practices. This was a key finding of the FIC review. Stakeholders submitted there was no oversight of caseworker's assessments and caseworkers were not held accountable for poor decisions.<sup>53</sup> The review recommended establishing a new, independent Child Protection Commission, with an Aboriginal Commissioner and an Aboriginal Advisory Group, as a one-stop shop for the oversight and monitoring of the child protection system.<sup>54</sup>

“...the Review has come to the firm conclusion that the child protection system lacks adequate transparency and effective oversight. There is no effective regulator. It is, quite simply, a ‘closed’ system where information is shared between a small number of primary actors but not the public at large, where reforms are regularly devised and implemented with little or no genuine consultation with the Aboriginal community, where statistics are not adequately collected and published, where court cases are closed to the public, and where interested stakeholders, such as the media, academics and public advocates, struggle to access relevant information.” (FIC review 2019)<sup>55</sup>

Although the NSW Government has recently established an Aboriginal Deputy Children's Guardian, this position does not fulfil the need for a 'one-stop-shop' for oversight and accountability of the statutory child protection system, including the way that DCJ exercises their statutory powers. We discuss this point further at ToR 7.

#### **Recommendation:**

**The NSW Government implement the FIC review's recommendation to establish a new, independent Child Protection Commission with at least one Aboriginal Commissioner and an Aboriginal Advisory Body appointed in consultation with the Aboriginal community to strengthen system accountability and oversight.**

#### **Culturally safe casework is needed**

The power imbalance for Aboriginal families in the child protection system is compounded by a lack of cultural safety, and in some instances, racism. In response to consultation for this submission, an AbSec member reported that caseworkers often make assumptions or misrepresent facts, and in some cases make up stories, to achieve a system-centred outcome rather than a family led outcome. They emphasised the need to decolonise practice, including genuine reflective practices and embedding self-determination.

“I think that their [DCJ] intentions are probably well meaning, but I feel that they've lost sight, they don't have the resources. I don't believe they have the cultural competency whatsoever in dealing with our kids...” (AbSec Case Study Report 2020)<sup>56</sup>

The FIC review similarly found evidence concerning caseworker's lack of cultural awareness and capabilities, and racism in some cases. It emphasised the need for trauma-informed, dignity driven and culturally appropriate work before children enter care, and where they do

<sup>53</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 106.

<sup>54</sup> Recommendation 9. Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 128.

<sup>55</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 195-196. Accessed at:

[https://www.familyisculture.nsw.gov.au/data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>56</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 27.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

enter care, to support restoration. It recommended staff working in the child protection system receive training in how to provide culturally competent and trauma informed casework with Aboriginal children, families and communities. AbSec endorses the recommendation of the FIC review in this area.<sup>57</sup>

**Recommendation:**

**DCJ provide their child protection field staff and management with culturally-competent, trauma-informed training and materials for working with Aboriginal community and families, as recommended by the FIC review.**

### Aboriginal Case Management Policy needs resourcing

AbSec acknowledges and welcomes DCJ's work with AbSec in the development and implementation of the 2018 Aboriginal Case Management Policy. The Policy and associated guidance aims to enable casework that empowers and supports families and communities to address identified risks and reduce the incidence of harm so Aboriginal children and young people thrive.

The FIC review concluded the Policy could address many of the casework issues it identified if properly implemented.<sup>58</sup> AbSec notes while work is still continuing to fully implement and embed the policy across DCJ districts and funded providers, progress has been slow and inconsistent. We remain concerned that no additional funding has been allocated to support implementation, particularly for Aboriginal community facilitators and advocates, in spite of the FIC review recommendation to do so.

**Recommendation:**

**The NSW Government continue to actively fund and support the implementation of the Aboriginal Case Management Policy and the Aboriginal Case Management Rules and Practice Guidance and report publicly on its activity.**

### Navigating a complex, closed system

A key challenge for Aboriginal families engaging with the child protection system is the complex and closed nature of the system. An AbSec member reported many Aboriginal families encounter the system as hostile and adversarial. Aboriginal families find it difficult to navigate the system without advocates to negotiate complicated processes and interpret alienating language.

Similar evidence was presented to the FIC review. Families felt as though they did not have the knowledge they needed to effectively engage with DCJ. Child protection processes were not always explained to Aboriginal families. The review concluded there is a need for advocacy for Aboriginal families at all stages of the process, including the need for more service providers to be trained to assist Aboriginal families in the court process when children were removed.<sup>59</sup>

AbSec supports the FIC review's call for advocacy to assist Aboriginal families. This advocacy must be community based and controlled to ensure confidence and accountability. AbSec members call for DCJ to make the system more accessible and welcoming to

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<sup>57</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 180. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>58</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 264. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>59</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 164. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

Aboriginal families, including providing timely access to relevant information such as policies and how to access needed supports.

“They only let so many people know, whether it’s non-Indigenous or Aboriginal that have got kids in care, what they’re entitled to, or what they can do for us. We don’t know about it. We hear it off other people.” (AbSec Case Study Report 2020)<sup>60</sup>

**Recommendation:**

**The NSW Government resource a state-wide Aboriginal community advocacy model, including an advocacy training program, establishment of a network of resourced community advocates to support families who come to the attention of DCJ, and improved access to legal advocacy in partnership with the Aboriginal Legal Service (NSW/ACT) as recommended by the FIC review.**

## System resourcing and capacity

In consultations with our members for this submission, we heard comments on the high volume of reports made to the child protection intake and assessment system. Coupled with inadequate resourcing, these factors undermines the capacity of the system to effectively assess and respond to children considered to be at Risk of Significant Harm (ROSH). This is particularly acute in rural and remote areas due to the limited investment, staffing and services.

AbSec members said this combination of high demand and under-resourcing means that in some cases children and families requiring support do not receive it, and children reported as being at ROSH do not receive an adequate response from Community Service Centres (CSCs). One member noted this is compounded by mandatory timeframes to complete initial assessments, creating pressure for CSCs to process cases quickly and not have them open for extended times.

The pressure on CSCs to quickly process cases constrains their ability to respond effectively to more complex, long term issues affecting families, including poverty, social and economic marginalisation, and intergenerational trauma.

Stakeholder feedback to the FIC review highlighted a lack of case workers, high staff turnover, and overloaded, under-resourced caseworkers resulted in a lack of support to families and poor quality case work.<sup>61</sup> The review recommended a new Aboriginal Quality Assurance Unit be tasked with improving support for caseworkers engaged with Aboriginal families.

“I have probably spent more than two years without caseworkers or without help, or without any backup.” (AbSec Case Study Report 2020)<sup>62</sup>

## Risk and safety assessments

The FIC review identified a myriad of issues with the way Aboriginal children enter care, including with DCJ’s Safety and Risk assessment processes, referrals, and the way DCJ

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<sup>60</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 9.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>61</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 181.

<sup>62</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 9.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

conducts child removals.<sup>63</sup> The Review identified practice issues in the way the Aboriginal children came into care in nearly half (47 per cent) of the FIC review cohort.<sup>64</sup>

AbSec notes the safety and risk assessment process remains a key area of concern for Aboriginal communities. The FIC review found a substantial level of non-compliance with safety and risk assessment processes, particularly risk re-assessments and safety planning. While safety assessments were conducted on entry to care in most cases, there were errors and compliance issues in the way the assessments were prepared and used.<sup>65</sup> Around half of all safety plans developed did not adequately address identified risks.<sup>66</sup>

In consultations with our members for this submission, we heard that there are issues with referral and assessment documentation provided to funded services. They said these documents have word limits which limits funded services from providing all the relevant information. They also noted there is no option in the documentation to record the family's strengths, which are important protective factors.

The FIC review emphasised safety and risk assessment approaches need to be more appropriate for Aboriginal children and families. It found there is little Aboriginal consultation around safety and risk assessments for Aboriginal children. This is despite positive policy guidance in the department's *Safety, Risk, and Risk Reassessment Policy and Procedures Manual*. The FIC review concluded this lack of consultation undermined the validity of the structured decision-making tool and caseworker's ability to make informed decisions about Aboriginal children and their families.<sup>67</sup>

The FIC Review also noted some caseworkers have cultural bias and make false judgements about Aboriginal people that lead them to deem Aboriginal families as representing a greater risk to their children than might be made for the wider community.<sup>68</sup> It concluded these data findings were indicative of a punitive, inconsistent and unjustified approach to selecting dangers in the safety and risk assessment process.

"These practices raised considerable concerns around the extent to which tools were being used to justify a pre-determined outcome, removal or assumption, for Aboriginal children and families." (FIC Review 2019)<sup>69</sup>

Previous reviews have recommended an independent review of DCJ safety assessment processes and tools to improve their cultural appropriateness and strengthen the objectivity and consistency of assessment outcomes.<sup>70</sup> AbSec supports this recommendation as an

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<sup>63</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 212. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>64</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 46. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>65</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 217. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>66</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 219. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>67</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 214. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>68</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 214. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>69</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 218. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>70</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 216. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

important step to providing better support to Aboriginal children and their families and reducing entries to OOHC. As the peak body, AbSec is well positioned to lead this work in partnership with Aboriginal communities.

**Recommendation:**

**DCJ partner with Aboriginal communities to improve the objectivity and cultural appropriateness of its structured decision-making tools and processes, consistent with recommendations of the Legislative Council General Purpose Standing Committee No2 Child Protection Inquiry 2017 and the FIC review.**

### **Risk adversity leads to removals instead of support**

In addition to risk and safety assessments and greater investment in prevention and family preservation supports, the FIC Review raised significant concerns about the way DCJ conducts removals of Aboriginal children from their families. It found many instances of insensitive and punitive removal practices. This included involving police unnecessarily in removals, removing babies from their mothers shortly after birth without any prior warning, and removing children without telling family.<sup>71</sup>

The Aboriginal and Torres Strait Islander Social Justice Commissioner's recent Wiyi Yani U Thangani (Women's Voices) report said Aboriginal and Torres Strait Islander women and girls consistently raised concerns that child protection services nationally are focused on policing families, as opposed to supporting and working with them. They said removal was viewed as an option of first, rather than last resort. The Commissioner concluded there needs to be a shift in the mentality of child protection authorities away from a risk averse culture of removals at any cost, to one of early intervention and support.<sup>72</sup>

The FIC review called for improved practices when it is necessary to intervene to ensure a child's safety and legislative amendments to require judicial officers to consider the harms of removal for Aboriginal children in child protection matters. AbSec strongly supports the FIC review's recommendations to improve DCJ's processes and practices in relation to removals, and to require judicial officers to consider the known risks of harm to an Aboriginal child of being removed from their parents.

**Recommendation:**

**The NSW Government implement the FIC review's recommendations 59 to 64 to improve DCJ's processes and practices in relation to removals, and to make legislative provisions requiring judicial officers to consider the harm of removal.**

### **Prenatal reports and newborn removals**

The removal of Aboriginal children from their families in the first hours and months of their lives is an area of particular concern to AbSec, particularly given evidence about the importance of the first 1000 days of life and the lifelong, intergenerational impacts of OOHC. The FIC review highlighted a significant proportion of Aboriginal children were removed at, or shortly after birth, and often without any notice.<sup>73</sup>

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<sup>71</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 221. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>72</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 217. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>73</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 203. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

The FIC review identified serious deficiencies in case work in almost all cases involving newborn removals,<sup>74</sup> with case file analysis showing multiple instances of poor and unethical newborn removal practices.<sup>75</sup> The review noted a flawed system of prenatal reporting, investigations and newborn removals which has a significant impact on the number of Aboriginal children entering OOHC and that is in urgent need of reform.<sup>76</sup>

AbSec is strongly opposed to current provisions in s106A(1)(a) and (2) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) which deem evidence that a parent (or primary care giver) previously had a child removed and not restored is evidence for the subsequent removal of other children.

The FIC case file review uncovered evidence that DCJ caseworkers had used the s106A(1)(a) provision to justify newborn removals before undertaking safety and risk assessments. Assessments were later carried out to support the earlier decision and contained inaccurate and out-of-date material. The FIC review noted the introduction of s 106A changed the practice surrounding newborn removals and had subsequently resulted in more babies assumed into care immediately after birth.<sup>77</sup>

AbSec strongly supports the FIC review's call for DCJ to assess the situation of each individual child at the point in time of his or her birth. The onus of proof regarding the care and protection of Aboriginal children should not be reversed on the grounds of the removal of previous children. AbSec believes s106A(1)(a) must be immediately repealed.

The FIC review observed there is a legislative and policy framework that legitimises and encourages prenatal reporting, yet it often fails to provide effective support to expectant parents to address any identified concerns and prevent the need for removal. It observed many cases where DCJ did not provide the Aboriginal parents with any assistance prior to removing the child at birth despite a health worker making a prenatal report.<sup>78</sup> The review concluded that better early intervention support for expectant Aboriginal parents before birth could prevent these highly traumatic removals.<sup>79</sup>

“In Case 99, there were nine reports made about the child prior to his birth. However, no steps were taken to work with the child's parents at this critical time and a caseworker was only assigned to the case after the child's birth. FACS informed the child's family that they would be consulted before the child was taken into care. This did not happen. The child was assumed into care at the hospital despite FACS being informed by the child's grandmother that this did not need to happen as there were family members willing and available to care for him”. (FIC review 2019)<sup>80</sup>

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<sup>74</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 195. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>75</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, XXXiii. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>76</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, XXXiii. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>77</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 203. Accessed at:

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<sup>78</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 198-200. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>79</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 198-200. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>80</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 193. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

The FIC review recommends DCJ develop a comprehensive prenatal reporting and newborn removal policy for Aboriginal children and invest in the substantial expansion of the number of prenatal caseworkers in NSW. Further, it recommends that DCJ develop, trial and publicly report on a ‘triage’ system for prenatal reports, and implement a system of post-removal support for Aboriginal parents who have had a child removed. Critically, it also calls on the NSW Government to repeal s106A(1)(a) of the Care and Protection Act.

AbSec calls for the NSW Government to urgently implement the FIC review’s recommendations in relation to prenatal reports and newborn, in particular by immediately repealing s106A(1)(a) of the Care and Protection Act, so Aboriginal babies can remain with their family and avoid entry to OOH, thereby preventing the harm of removal for Aboriginal parents and their children.

**Recommendation:**

**The NSW Government urgently implement the FIC review recommendations 39 to 53 regarding prenatal reports, newborn removals and alternatives to removal, starting by immediately repealing s106A(1)(a) of the Care and Protection Act in order to reduce the entry of Aboriginal children to out of home care.**

## **ToR 5. The availability of early intervention services across NSW including the effectiveness of pilot programs commissioned under Their Futures Matter program**

Aboriginal community-based, culturally competent early intervention approaches are vital to support families address risks and preventing Aboriginal children from entering OOH. DCJ policy and legislation recognises the importance of early intervention.<sup>81</sup> Prevention is one of the core elements of the Aboriginal Child Placement Principles. Yet in practice the provision of early intervention services falls well short of what is needed to support Aboriginal families address risk factors and improve safety for their children.

### **Systemic lack of early intervention support**

Urbis’s 2020 analysis of recent child protection system reviews found the need to improve access to prevention and early intervention services was one of the strongest and most consistent findings across the reports. All found existing services were inadequate in terms of availability and/or eligibility and that funding was not commensurate to demand.<sup>82</sup>

For Aboriginal children and their families, the lack of early intervention support across the system is compounded by a lack of culturally appropriate services and a lack of casework support to access those services that do exist.<sup>83</sup>

“The critical need for a renewed emphasis on early support for Aboriginal children and families has been echoed in government inquiry after government inquiry.” (FIC Review 2019)<sup>84</sup>

<sup>81</sup> See for example FACS Strategic Directions 2017-2021 and the Care and Protection Act 1998 (NSW)

<sup>82</sup> Urbis (2020) *An analysis of reviews into the NSW child protection system 2008-2019*, FAMS, Sydney. Accessed at: <https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW-Final-Report-20201130.pdf>

<sup>83</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>84</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 146. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

Although most Aboriginal children who enter OOHC are known to the system early, the vast majority do not get access to DCJ's primary early intervention programs. The FIC case file review highlighted the low number of Aboriginal families referred and accepted into intensive support and casework programs. In the two years prior to Aboriginal children's entry to care in 2015-16 the FIC Review found that only:<sup>85</sup>

- 6.5% were accepted into Intensive Family Support Program
- 20% were accepted into Brighter Futures
- 21.7% were accepted into Family Based Services
- 7.4% were accepted into Intensive Family Preservation Services

The FIC review concluded there is a lack of adequate early intervention support for Aboriginal families to prevent entry into care. Case file data revealed ad-hoc approaches to early intervention and prevention work during the cohort period. Referrals were limited and there were limited services available to work with families at risk.<sup>86</sup> This failure to provide adequate early support is a critical opportunity that has life-long and intergenerational consequences for Aboriginal children and their families.

“...data obtained by the Review that highlight deficiencies in the referrals and intake of Aboriginal children (and families) into casework prior to entry into care. These data suggest that further work must be done within DCJ to increase appropriate referrals, particularly ‘warm’ referrals into Aboriginal controlled services.” (FIC review 2019)<sup>87</sup>

AbSec's recent consultations with Aboriginal young people, families, carers and practitioners found numerous factors resulting in Aboriginal families not receiving early intervention and prevention supports. These included a lack of service availability, cost, remote locations and the impact of intergenerational trauma.<sup>88</sup> AbSec members also raised the lack of Aboriginal-designed and led services and a lack of effective casework to bridge the gap between families and communities and services.

SNAICC's 2020 *The Family Matters* report identified that many practitioners report difficulty accessing services and supports to work with parents and families even where services do exist. Most services are running at capacity or over capacity to respond to the high needs of at-risk families. Services often have a long wait list as a result of high demand.<sup>89</sup> In particular there is a shortage of trauma informed family counselling services, counselling, home visiting and support in remote areas.<sup>90</sup>

In response to the chronic services shortfall, the FIC review recommends mandating the provision of services to prevent entry into care prior to a child's removal. AbSec supports the

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<sup>85</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 154-5. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>86</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 154. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>87</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 154. Accessed at:

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<sup>88</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 6.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>89</sup> SNAICC (2020) *The Family Matters Report*, accessed at [https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020\\_LR.pdf?utm\\_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm\\_campaign=7549a0b857-EMAIL\\_CAMPAIGN\\_2017\\_11\\_28\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_aea4310bc4-7549a0b857-155369070&mc\\_cid=7549a0b857&mc\\_eid=32f353fd75](https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf?utm_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm_campaign=7549a0b857-EMAIL_CAMPAIGN_2017_11_28_COPY_01&utm_medium=email&utm_term=0_aea4310bc4-7549a0b857-155369070&mc_cid=7549a0b857&mc_eid=32f353fd75)

<sup>90</sup> SNAICC (2020) *The Family Matters Report*, accessed at [https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020\\_LR.pdf?utm\\_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm\\_campaign=7549a0b857-EMAIL\\_CAMPAIGN\\_2017\\_11\\_28\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_aea4310bc4-7549a0b857-155369070&mc\\_cid=7549a0b857&mc\\_eid=32f353fd75](https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf?utm_source=Family+Matters+Supporters+-+WEBSITE+SIGN-UPS&utm_campaign=7549a0b857-EMAIL_CAMPAIGN_2017_11_28_COPY_01&utm_medium=email&utm_term=0_aea4310bc4-7549a0b857-155369070&mc_cid=7549a0b857&mc_eid=32f353fd75)

proposal that DCJ be legally required to make 'active efforts' to prevent Aboriginal children from entering out of home care,<sup>91</sup> along with a legislative requirement to mandate the provision of support.<sup>92</sup> This would be strengthened by the Courts requiring DCJ to demonstrate what alternative actions were taken before children entered care.<sup>93</sup>

### Recommendation:

**The NSW Government implement the FIC review recommendations 21 to 40 to strengthen DCJ's provision of early interventions services to Aboriginal families and their children and to aid in the reduction of Aboriginal children entering OOHC. This should include mandating the provision of support.**

### Trauma-informed responses are needed

The effectiveness of early intervention services is undermined by a failure to adequately consider and address trauma, particularly from an Aboriginal perspective. Studies suggest integrating trauma-informed social and emotional wellbeing programs into existing child protection services is likely to provide Aboriginal people with access to protective factors, such as connection to family, culture and country that can reduce risk factors for child safety concerns.<sup>94</sup>

In 2019 Aboriginal families and practitioners told AbSec the needs of Aboriginal children and families dealing with trauma is often disregarded, overlooked or wrongly assessed.<sup>95</sup> AbSec members have reported there is insufficient investment in culturally appropriate, evidence-based models that can support healing for families impacted by intergenerational trauma. When supports are provided, they are often too simplistic or superficial to make a meaningful difference for Aboriginal children and their families.

AbSec calls for greater provision of trauma-informed practice and culturally specific trauma services to heal Aboriginal families and their children and prevent their entry into OOHC. It is our view that empowering Aboriginal communities themselves to design and administer child and family services for their communities is essential to the implementation of trauma-informed, culturally responsive approaches.

### Outreach to specialist programs and services

The recent Wiyi Yani U Thangani (Women's Voices) report observed that family violence is a key factor driving Aboriginal families' contact with child protection authorities. The Commissioner's consultation found many women were frustrated by the lack of available supports and the gendered experience of family violence which demonised women as opposed to support them. Another issue was the lack of available supports for women with few shelters or safe houses available.<sup>96</sup>

Case worker attitudes towards Aboriginal women experiencing family violence was also raised as a concern. The Wiyi Yani U Thangani report highlighted a submission from the

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<sup>91</sup> Recommendation 25. Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>92</sup> Recommendation 24. Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>93</sup> Recommendation 55, Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 211. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>94</sup> Onnis, Leigh-ann, Moylan, Robyn, Whiteside, Mary, Klieve, Helen, Smith, Kieran, and Tsey, Komla (2020) *Integrating the Family Wellbeing Program into practice: a conceptual model*. Australian Social Work.

<sup>95</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 17.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>96</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 217. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

National Family Violence Prevention Legal Services (FVPLS) Forum which stated their clients frequently experience inappropriately punitive responses from child protection workers which punish or blame Aboriginal and Torres Strait Islander women for the violence perpetrated against them, instead of supporting women to safely maintain the care of their children in a home free from violence.<sup>97</sup>

AbSec notes the FIC review findings in relation to DCJ's practice limitations and lack of outreach to specialist programs and services in areas including domestic and family violence, disability and housing from early intervention. DCJ's failure to properly engage with these services denied families' the opportunity to address risk factors around violence, disability and homelessness, and often resulted in their children entering care. AbSec endorses the FIC review recommendations to improve access to these services as a form of early intervention.<sup>98</sup>

#### **Recommendation:**

**The NSW Government improve access to specialist service provision for Aboriginal children and their families, including domestic and family violence, housing, health and disability services, as a form of early intervention to prevent entry into care, in line with FIC review recommendations.**

#### **NSW Targeted Early Intervention (TEI) program reform**

Targeted early intervention is an important mechanism to support Aboriginal families keep their children safe and prevent their entry into the formal OOHC system. There is abundant evidence that providing holistic, culturally appropriate support early to families is the best way to prevent Aboriginal children entering OOHC as well as promoting their social and emotional wellbeing and their life outcomes more generally.

AbSec initially welcomed the intent of DCJ's Targeted Early Intervention (TEI) reform agenda. In particular the move to a local approach and client outcomes focus, along with the commitment to co-design services and culturally safe practices focused on the needs of Aboriginal children, young people and families.<sup>99</sup> AbSec also advocated for significantly greater invested directed to Aboriginal children and families, through Aboriginal community controlled organisations, with DCJ committing to prioritise 30% of TEI funding.

However we are concerned the reform's intent is not being implemented in policy and practice, possibly due to a lack of resourcing and long-term investment in the Aboriginal community-controlled sector, and a failure to adequately engage with Aboriginal services and communities as equal partners in program design and delivery. This adversely impacts the Aboriginal TEI service sector and the Aboriginal families in need of their services and supports.

DCJ previously committed to directing 30 per cent of the TEI Reform Program funding to Aboriginal children and families<sup>100</sup> and earlier guidance indicated a preference for this funding to be directed to ACCOs. However this preference has been removed from subsequent program guidelines as the government's lack of long-term investment in the Aboriginal community-controlled sector and failure to establish a state-wide safety net of services means there are not enough ACCOs to deliver TEI.

Consequently, targeted TEI funding is being allocated to larger mainstream organisations who have employed Aboriginal staff. This is despite evidence showing Aboriginal services are more effective at supporting Aboriginal families and their children. Because of their

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<sup>97</sup> Australian Human Rights Commission (2020) Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report, 219. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>98</sup> See recommendations 28-37 (numbering as per Executive Summary).

<sup>99</sup> DCJ (2016) *Local and client centred – TEI Program Reform Directions*, NSW Government, Sydney.

<sup>100</sup> Department of Communities and Justice (2017) *Aboriginal Outcomes Strategy*, NSW Government, Sydney, 5.

demonstrated effectiveness, the FIC review recommendations that ACCOs should be the preferred deliverers of early intervention services.<sup>101</sup>

“...funding should be directed towards ACCOs to ensure the most effective program design and delivery. This will ensure the best outcomes, that is, fewer entries into care and better outcomes for Aboriginal children and families.” (FIC review 2019)<sup>102</sup>

AbSec is calling for greater transparency around how this targeted TEI funding has been allocated, the number and outcomes of Aboriginal clients served, and the cultural competency of service providers. At the same time, the NSW Government must invest in Aboriginal peaks such as AbSec to strengthen the capabilities of non-Aboriginal organisations to work with Aboriginal children, families and communities while the Aboriginal community controlled sector is being expanded.

### **Aboriginal TEI providers need targeted sector development support**

In March 2020, AbSec held a meeting with Aboriginal TEI providers to gain a better understanding of their experiences with the TEI reform program and their support needs. Participants reported an overall lack of appropriate Aboriginal participation in discussions concerning the reform and in any decisions made about the reform.

Aboriginal TEI providers said DCJ districts had not effectively involved Aboriginal organisations in the priority decision-making and district planning processes. This is despite an underlying TEI reform principle that Aboriginal communities and organisations lead the design and delivery of TEI services for Aboriginal communities.<sup>103</sup> However, while there is a stated commitment to a different approach, the processes actually enacted continue to reflect ‘business as usual’. DCJ’s failure to adequately engage Aboriginal communities and organisations in the decisions made under the reform risks repeating the mistakes made with the earlier Their Futures Matter (TFM) reforms.

Aboriginal TEI providers expressed their frustration with the constant change and inadequate transitioning process. They also said there was a lack of relevant information provided prior to their contract negotiations, including contract duration and whether funding will increase over time or even to continue. There was also a very short turnaround time for finalisation of the new contracts, which did not give organisations the opportunity to fully consider the provisions or seek legal advice.

Providers said TEI funding is not adequate, particular for smaller Aboriginal organisations. Reforms have placed increased responsibilities and requirements onto organisations but without commensurate increased resources. They said some organisations are having to cover program expenses through their own funding stream. Others have had to make the difficult decision to cut staffing in order to maintain delivery of important services and supports for their local community.

Organisations highlighted the lack of autonomy and choice in the TEI reform and almost pre-requisite alignment with Data Exchange (DEX), resulting in a forced form of service delivery that is not necessarily best suited to Aboriginal families and communities. DEX is an Australian government program performance-reporting tool that also collects extended client demographic details, such as homelessness, household composition, education level, employment status, source of income, approximate gross income and income frequency.

Providers said they are required to collect client information that could be seen as providing information to DCJ to facilitate child removals in some instances. They were concerned that

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<sup>101</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 151. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>102</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 150. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>103</sup> DCJ (2017) *Draft TEI Aboriginal Strategy Discussion Paper*, NSW Government, Sydney.

if they did not agree to use Data Exchange in order to protect their client's privacy they would not receive funding to support Aboriginal families.

Organisations that choose to align to the TEI outcomes framework have priority for training, support and help with their program logics while organisations who DO NOT align to the TEI outcomes framework may not be eligible for access to training or any support with program logics and are expected to conduct business as usual.

Some providers also raised client privacy and confidentiality concerns regarding TEI data collection under DEX while others said they had not received sufficient support with how to use Data Exchange.

To deliver an effective TEI program across NSW, DCJ must invest in building the capacity of NSW Aboriginal TEI providers to provide Aboriginal children and families with access to culturally appropriate services and support. AbSec as the peak body is well positioned to support this work.

AbSec notes that DCJ has extended TEI provider's funding for a further six months. Not with standing, additional funding needs to be made available for new and existing holistic support services as recommended by the FIC review.

#### **Recommendation:**

**DCJ provide further targeted funding for all Aboriginal TEI providers to build their skills and capacity to effectively support Aboriginal children, families and communities through the new TEI program.**

#### **Their Futures Matter (TFM) reform**

Another of DCJ's key reform programs, Their Futures Matter (TFM), has not fulfilled its promise of establishing an evidence-based, whole-of-government early intervention approach for at-risk children and families in NSW. In his 2020 report on the performance of the TFM reforms, the Auditor-General found this key reform objective had not been achieved.<sup>104</sup>

In particular, access to culturally appropriate family preservation and restoration programs for Aboriginal families remains problematic. The need for greater investment in family preservation and restoration services to prevent Aboriginal children's entry into out-of-home care (OOHC) and to facilitate safe reunification with their families is well established. DCJ's Permanency Support Program allocated half of the 900 additional preservation and restoration places for Aboriginal families.<sup>105</sup> Take-up of these services by Aboriginal families has been well below this target, with many Aboriginal families withdrawing from the programs before completion. As a result of this failure to achieve their targets, the government has subtly revised their commitment from 50% of places identified for Aboriginal families to being 'targeted', in an apparent acknowledgement of their inability to meet this commitment.<sup>106</sup>

The NSW Audit Office report noted the new Multisystemic Therapy for Child Abuse and Neglect (MST-CAN) and Functional Family Therapy – Child Welfare (FFT-CW) programs were ill-suited to Aboriginal communities.<sup>107</sup> Although these models were had demonstrated outcomes in international jurisdictions such as in the United States, there was no evidence for their effectiveness for Aboriginal families and communities in NSW.

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<sup>104</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

<sup>105</sup> Department of Communities and Justice (2017) *Aboriginal Outcomes Strategy*, NSW Government, Sydney, 5.

<sup>106</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

<sup>107</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

In response to feedback for this submission, an AbSec member observed that rigid program models and strict fidelity conditions meant MST-CAN and FFT-CW were not suitable for the type of flexible, holistic engagement and intensive longer-term support required for Aboriginal families. This impacted on take-up and engagement with Aboriginal families. Access to these programs was also restricted by referrals solely being made by DCJ.

The NSW Audit Office also noted the NSW Government's failure to involve Aboriginal communities in designing the program models and guiding the TFM reforms.<sup>108</sup> Rather than engaging with Aboriginal communities to identify potential approaches appropriate to their needs, in line with self-determination principles, DCJ chose to impose these models in a top-down, one-size-fits-all approach. Subsequent attempt to adapt these programs has been constrained by strict program licensing requirements.

This example underscores the need for DCJ to undertake a fundamentally different approach, one that empower Aboriginal communities to design, and deliver community-led approaches that are appropriate to the needs of local children and families. In this way, Aboriginal communities can build a local evidence base of culturally embedded approaches, drawing on international evidence as well as the expertise and experience of Aboriginal communities, to continually refine Aboriginal community-controlled child and family services.

### **Nabu is an example of Aboriginal-led program design and delivery**

AbSec draws the Committees attention to the Nabu Aboriginal family preservation and restoration program as an example of what can be achieved when Aboriginal communities and organisations design and deliver programs that meet their needs.

Waminda South Coast Women's Health and Welfare Aboriginal Corporation led the development of the Nabu Program in collaboration with Their Futures Matter. Waminda developed the program after withdrawing from FFT-CW. They determined the FFT-CW model rigidity and the requirement for strict program fidelity was not suitable for the type of flexible, holistic engagement and intensive support required for Aboriginal families.

The Nabu Program provides culturally appropriate wrap around services to local Aboriginal children and families at risk. It aims to support individual, family and systemic change in Aboriginal family preservation and restoration by embedding cultural practice, self-determination, participation in decision making, community empowerment and dignity.

The Nabu Program is driven, led and delivered by Aboriginal people and aligns to the cultural values and perspectives of the local community. It operates across the Illawarra, Shoalhaven and Ulladulla regions. An evaluation of the program's outcomes is forthcoming.

The Nabu Program demonstrates how ACCOs effectively design and deliver holistic services that are responsive and appropriate to the needs of their local communities. It is for this reason that AbSec has called for the establishment of an Aboriginal commissioning approach and greater investment in the Aboriginal community controlled sector to develop locally responsive services to meet Aboriginal communities' needs (See ToR 3).

### **Intensive Family Based Services**

Intensive Family Based Services (IFBS) is another family preservation and restoration model that provides secondary early intervention and prevention for families in crisis. DCJ internal review data indicates a high level of client satisfaction with the program. However there is limited availability of the service with places capped at 22 per CSC which is insufficient to meet community needs. Increased and long-term secure funding of the program is required.

As with MST-CAN and FFT-CW, IFBS is an externally sourced program. It is based on the American Homebuilders model. Although IFBS has been locally adapted to a certain extent,

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<sup>108</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

the requirement for service providers to maintain fidelity to the program guidelines means that it is not responsive to local Aboriginal communities and the specific needs of Aboriginal families.

IFBS also faces issues regarding narrow referral pathways. DCJ is the single referral pathway to access the service, reflecting their positioning at the point of statutory intervention. This means families in need cannot self-refer before they hit crisis point. This positions DCJ as the gatekeeper of the majority of intensive family preservation and restoration services, rather than empowering Aboriginal communities to respond to the needs of their families.

### **Protecting Aboriginal Children Together (PACT)**

Protecting Aboriginal Children Together (PACT) was an independent Aboriginal specific service that provided specialist advice and case consultation to DCJ about Aboriginal children reported at ROSH. It is an example of how the effectiveness of programs designed to support Aboriginal families and children can be undermined by a lack of full Aboriginal community control.

PACT aimed to ensure there was an Aboriginal perspective in DCJs decision making about the care and protection of Aboriginal children and young people. It did this by having Aboriginal cultural advisers work alongside DCJ caseworkers at all key decision-making points in a child protection case, subject to family consent.

PACT was developed by AbSec and DCJ following a recommendation from the Wood Inquiry in 2010. It was based on Victoria's 'Lakidjeka' program which has been running for 20 years using cultural advisers employed by Aboriginal community controlled organisation. The PACT model was piloted in two sites, Shellharbour and Moree in 2011.

Program evaluations noted positive indications about what PACT achieved when the service was working well. It helped create a safe space for families, build caseworkers' understanding of Aboriginal culture and local services, improved some caseworkers' knowledge and practice, and supported families' understanding of risk and safety issues and child protection processes. It may also have helped prevent some children being removed.<sup>109</sup>

However the PACT model was affected by an apparent mismatch in expectations across stakeholders, with differences in views as to how it was supposed to work and what it was to achieve. While some families felt support through PACT was too limited, Departmental staff felt PACT often overstepped its remit and did not necessarily provide what they were seeking from cultural advice.<sup>110</sup> DCJ subsequently discontinued the program.

DCJ as part of implementation of the FIC review recommendations should revisit the PACT project and consider re-implementing the project in its original format, allowing for community control under the Aboriginal Family-Led Decision-Making and Aboriginal Case Management Program initiatives.

### **Aboriginal-led family preservation and restoration programs**

Aboriginal-led intensive family support services are clearly needed to address the over-representation of Aboriginal children and young people within the statutory system. Existing externally sourced approaches are not evidence-based with respect to Aboriginal families and communities in NSW. Prescriptive program guidelines coupled with limited referral

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<sup>109</sup> ARTD Consultants (2014) *Evaluation of Protecting Aboriginal Children Together (PACT) Final Report*, NSW Family and Community Services, Sydney.

<sup>110</sup> SNAICC (2018) Baseline Analysis of Best Practice Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle New South Wales, 17. Accessed at: <https://www.snaicc.org.au/wp-content/uploads/2019/02/ATSICPP-Baseline-NSW-Final-April-2018.pdf>

pathways restrict the abilities of Aboriginal community-led services to help Aboriginal families keep their children at home safely and have them restored to their care.

AbSec, in partnership with ACCO's and IFBS service providers, has developed an Aboriginal Family Preservation and Restoration model. The model draws on the expertise of Aboriginal IFBS Practitioners and Protecting Aboriginal Children Together (PACT) practitioners as well as the existing literature about effective family supports, particularly from an Aboriginal perspective. AbSec's [Aboriginal Family Preservation and Restoration Model Guidelines](#) are attached with this submission.

The Aboriginal Family Preservation and Restoration model aims to effectively address risk of harm concerns for Aboriginal children and support families to have their children safely restored home. The model proposes intensive, in-home supports targeted at clearly identified risks, with step-down supports that promote the sustainability of changes achieved. It is focused on strengthening Aboriginal families' capacity to meet their children's needs, enhancing community-level supports for families, and advocating on behalf of families within the statutory child protection system.

The Aboriginal Family Preservation and Restoration model is part of AbSec's vision for a holistic Aboriginal service system across the continuum of care. AbSec similarly proposes this model be funded through our Aboriginal Commissioning Framework, so that local Aboriginal communities are empowered to design, develop and deliver the services and supports that Aboriginal children and families in their community need.

## ToR 6. The adequacy of funding for prevention and early intervention services

Under-investment is a major factor affecting the availability of early intervention and prevention services, with very little directed to Aboriginal child and family services despite identified need. AbSec recognises the government's significant investment in the child protection system. However, funding remains focused on crisis care rather than targeted early intervention and prevention services that reduce the need for more costly care. Consequently, there has been little improvement in outcomes for both Aboriginal and non-Aboriginal children and their families despite numerous attempts at reform.

### Cost of insufficient early intervention funding

The economic cost of children entering out of home care are high. The 2016 Tune Review showed the average cost to government for a child or young person in care was approximately \$62,000 and this was 42 per cent higher for Aboriginal children. The costs to government continued after the child or young person left care with average service costs of \$284,000 over the next 20 years.<sup>111</sup>

The social costs of failing to intervene early are even higher. Studies have shown that children and young people in out of home care experience more serious physical, mental and emotional health problems than other children and have poorer educational outcomes.<sup>112</sup> Aboriginal children in OOH are at even greater risk of poor outcomes.<sup>113</sup>

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<sup>111</sup> Tune D (2016) *Independent review of Out of Home Care in NSW*, NSW Government, Sydney, p19-20. Accessed 03/12/2020 at <https://www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf>

<sup>112</sup> Walsh, P., McHugh, M., Blunden, H. and Katz, I. (2018). *Literature Review: Factors Influencing the Outcomes of Children and Young People in Out-of-Home Care. Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care*. Research Report Number 6, NSW Department of Family and Community Services, Sydney, 12-13.

<sup>113</sup> Walsh, P., McHugh, M., Blunden, H. and Katz, I. (2018). *Literature Review: Factors Influencing the Outcomes of Children and Young People in Out-of-Home Care. Pathways of Care Longitudinal Study: Outcomes of Children*

These impacts are lifelong and intergenerational. People who were in OOHC (non-Aboriginal and Aboriginal) are ten times more likely to have their own children removed by statutory child protection authorities into compared to the general population.<sup>114</sup> The FIC review found that over two-thirds (68.3 per cent) of mothers of Aboriginal children in out of home care had a child protection history.<sup>115</sup> One-third (32.4 per cent) of Aboriginal children in out of home care had both parents with a history of child protection themselves.<sup>116</sup>

“Aboriginal children belong in their communities with their family, culture and language. Many kids go through the system and come out with no family connection, no access to their language and culture and the cycle repeats for them and their children.” (AbSec Case Study Report 2020)<sup>117</sup>

Research undertaken by Social Ventures Australia points to the value of investment in targeted early intervention in reducing ongoing and future costs to governments. The report estimates such an approach could prevent 1,200 children a year from entering out-of-home care. This would save the Victorian government \$1.6 billion over 10-years in the child protection and OOHC system alone, which equates to a \$2 saving for each \$1 invested.<sup>118</sup> AbSec envisages commensurate cost savings would apply in NSW.

### Funding is crisis orientated

Despite the evidence about the value of early intervention approaches, the Auditor General notes the majority of NSW child protection funding remains crisis focused rather than directed to early intervention.<sup>119</sup> As a result, children and young people continue to enter the system in increasing numbers with lifelong and intergenerational impacts. The inadequate funding for early intervention and prevention services creates a vicious circle with a system that is difficult to reorient from crisis.

“...Investing resources earlier in the system is the key to diverting children away from care and ensuring better outcomes for children and families. The best way to prevent Aboriginal children entering the OOHC system is through providing appropriate support to Aboriginal families prior to children entering care, particularly when children first come into contact with the child protection system. Increasing early intervention and secondary prevention support for vulnerable families is a way to change the system focus from reactive to proactive support, which is needed to move beyond the current crisis-driven, tertiary intervention focused approach.” (FIC review 2019)<sup>120</sup>

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*and Young People in Out-of-Home Care*. Research Report Number 6, NSW Department of Family and Community Services, Sydney, 14.

<sup>114</sup> Tune D (2016) *Independent review of Out of Home Care in NSW*, NSW Government, Sydney, p19-20.

Accessed 03/12/2020 at <https://www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf>

<sup>115</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 47. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>116</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 47. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>117</sup> AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*, Sydney, 11.

<https://www.absec.org.au/images/downloads/AbSec-CaseStudy-Report-FINAL-Digital.pdf>

<sup>118</sup> SVA Consulting (2019) *The economic case for early intervention in the child protection and out-of-home care system in Victoria*, Berry Street, Victoria. Accessed 03/12/2020 at:

<https://www.berrystreet.org.au/sites/default/files/SVA%20Research%20Paper%20Early%20Intervention%20November%202019.pdf>

<sup>119</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney, 7. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

<sup>120</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 145. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

The most recent Report on Government Services demonstrates that not only does the government spend more on child protection and OOHC, but the proportion of expenditure on early intervention type services has markedly decreased over the past seven years.<sup>121</sup> In 2011-12, spending on family support services was 26 per cent of all child protection funding. This declined to just under 17 per cent in 2015–16 and by 2017-18 had declined to just 14 per cent of the total child protection spend in NSW.<sup>122</sup> The proportion of this funding directed to Aboriginal children and their families is even less.

### **Greater investment in prevention and early intervention is needed**

Significantly greater investment in prevention and early intervention is needed in order to support Aboriginal children and families identified at risk. A finding of the FIC review was that investment in early intervention services was not sufficient to reorientate the system from reactive to proactive. It recommended the NSW Government increase financial investment in early intervention and family support as a long-term strategy to prevent entries into OOHC. A proportion of this investment should be directed towards Aboriginal children and families, through Aboriginal communities and their community controlled organisations, with the overall level of investment aligned to the proportion of Aboriginal children in OOHC.<sup>123</sup>

“...the proportion of spending in relation to early intervention must be increased as a matter of urgency. Early intervention spending must be significantly increased from 14% of child protection spending. Without adequate funding, program development and delivery will be seriously impaired.” (FIC review 2019)<sup>124</sup>

AbSec recommends the NSW Government urgently addresses the long-term systemic underfunding of prevention and targeted early services particularly those directed to Aboriginal children and families, to address the disproportionate rate of Aboriginal children being removed into OOHC. This funding must be commensurate to the proportion of Aboriginal children in OOHC, as recommended by the FIC review and reflect the long-term nature of prevention and early intervention work.

#### **Recommendation:**

**The NSW Government increases prevention and early intervention funding, including family support and restoration services, for Aboriginal children and families by:**

- **Increasing investment in early intervention and prevention as a proportion of total child protection system funding to reorientate the system from a crisis focused approach; and**
- **Investing in Aboriginal community-controlled family supports to a level commensurate with the numbers of Aboriginal children in OOHC (at least 30% of TEI, and 50% of family support and intensive family support investment) directed through an Aboriginal commissioning framework to achieve equitable state-wide coverage.**

<sup>121</sup> Productivity Commission (2020) *Report on Government Services*, Canberra, Source PAGES 1-3 of TABLE 16A.7, accessed at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>122</sup> Productivity Commission (2020) *Report on Government Services*, Canberra, Source PAGES 1-3 of TABLE 16A.7, accessed at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/child-protection/rogs-2020-partf-section16.pdf>

<sup>123</sup> Recommendations 20 and 21. Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 151. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>124</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 151. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

## ToR 7. Any recent reviews and inquiries

### Family is Culture review

The 2019 Family is Culture (FIC) review chaired by Professor Megan Davis was the largest, most comprehensive independent review of the over-representation of Aboriginal children in out-of-home care to date. The review examined the reasons for the disproportionate and increasing number of Aboriginal children and young people in OOHC. The review was led by an esteemed Aboriginal academic and advocate, Professor Megan Davis, and developed through extensive consultation with Aboriginal communities.

The FIC report presents a deeply concerning picture of the child protection system in NSW. It reported on failures by the statutory system and practitioners to uphold the rights and best interests of Aboriginal children, including a culture of non-compliance with established safeguards in legislation and policy. It notes the continued resonance of the current child protection system with historical practices used against Aboriginal communities.<sup>125</sup>

In response the review's recommendations outlined a detailed roadmap for reform of the NSW child protection system. These recommendations address greater accountability and oversight of the system, self-determination, access to family supports and advocacy, and proposed legislative safeguards for Aboriginal children and their families. In particular, improved oversight and accountability and respect for the right of Aboriginal peoples to self-determination was considered as critical to addressing the ongoing disproportionate impact of statutory systems on Aboriginal children and families.

AbSec has serious concerns about the NSW Government's response to the FIC review. The NSW Government's initial response was a brief overview that proposed only limited new initiatives and pointed largely to ongoing initiatives already considered by the FIC review, delaying or deflecting key systemic and legislative reforms. Following community and sector criticism the government subsequently released the more detailed *Family is Culture Response - Progress Report* in November 2020.<sup>126</sup>

Although the progress report introduces some new measures, both responses fundamentally fail to adequately address the core foundations of the FIC report - accountability and self-determination. It also delays consideration of critical legislative changes and does not commit the much needed additional funding for prevention, preservation and restoration. As yet, there has been no announced additional resources to implement the recommendations of the FIC review.

### Partnership approach is needed to implement reform

Foremost of AbSec's concern is how the government's response itself was developed. There was no consultation with Aboriginal stakeholders to consider the review's findings and recommendations and develop a shared plan of action. Rather the government only engaged with AbSec and Aboriginal communities after it had already decided the priorities, actions and timeframes, even though it had committed to work in partnership with Aboriginal communities.

AbSec acknowledges the NSW Government has subsequently engaged with AbSec to host a series of community consultations in 2021, more than 12 months after the release of the FIC report. However, this small, belated step towards partnership falls significantly short of the Aboriginal community-led process required. It remains to be seen whether this engagement will be constrained by the government's parameters and priorities, or if

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<sup>125</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, XVI. Accessed at: [https://www.familyisculture.nsw.gov.au/data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>126</sup> Department of Communities and Justice (25 November 2020) *Family Is Culture Progress Report*, NSW Government, Sydney.

Aboriginal communities will have a genuine opportunity to shape the reforms agenda in response to the FIC report.

AbSec urges the NSW Government to genuinely partner with Aboriginal communities to progress the broad-ranging recommendations arising from the FIC review. An appropriate process led by Aboriginal peak bodies must be established for direct negotiation about the necessary reforms. It must recognise the important role of Aboriginal community controlled organisations and community advocates, respecting local governance processes within Aboriginal communities. It must also engage directly with non-Indigenous representatives in a non-partisan way, including independent statutory bodies.

**Recommendation:**

**The NSW Government develop a genuine partnership approach with Aboriginal people, organisations and communities to progress the recommendations arising from the FIC Review as a matter of priority.**

**Self-determination continues to be misunderstood and overlooked**

Of equal concern to AbSec is that none of the government's new headline measures empower Aboriginal communities to develop and implement our own processes and frameworks. The FIC review identified the need for greater self-determination as a core area to improve outcomes for Aboriginal children and their families.

The review found that while the term self-determination is used in government policy and legislation in NSW it is not properly understood or implemented in practice. It is frequently conflated with consultation and participation rather than the devolution of power and autonomy in decision-making through to implementation.<sup>127</sup> The NSW Government's response demonstrates this continues to be the case.

"...Self-determination requires more than consultation because consultation alone does not confer any decision-making authority or control over outcomes. Self-determination also requires more than participation in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been determined by Indigenous peoples. Inherent in the right of self-determination is Indigenous decision-making carried through into implementation." (Bringing them home report)<sup>128</sup>

Positive examples of self-determination in the child protection context are already evident in other Australian jurisdictions. States such as Victoria have delegated statutory powers for certain child protection functions performed by the Secretary to ACCOs, with a planned transition of case management and out of home care for Aboriginal children to ACCOs.<sup>129</sup> Early indicators show that children in these arrangements are doing well by being placed with their kin or reunified with their families.<sup>130</sup>

Support mechanisms and adequate resourcing must follow the transfer of authority for genuine partnerships and effective service delivery. AbSec has outlined how the NSW Government can deliver on its stated commitment to self-determination by implementing an

<sup>127</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 78,81-85. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>128</sup> Human Rights and Equal Opportunity Commission (1997) *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 276.

<sup>129</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 91. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>130</sup> Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report*, 232. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

Aboriginal community-led, holistic service system through a commissioning approach in ToR 2.

### Greater accountability remains paramount

Along with self-determination, accountability and oversight of the statutory child protection system was the other core areas identified by the FIC review as in need of significant structural reform. The report identified deficiencies in the current regulatory system. It uncovered a system dominated by ritualism having an outward appearance of compliance shielding a culture of non-compliance.

The review recommended establishing an empowered, independent Child Protection Commission with an Aboriginal commissioner and Aboriginal Advisory body (appointed in consultation with Aboriginal communities). The Commission would undertake a range of functions including those currently handled by the Office of the Children's Guardian. It also proposed introducing a system of qualitative case reviews based on American models with the additional component of an optional Family Group Conference.

AbSec acknowledges the NSW Government's establishment of an Aboriginal Deputy Children's Guardian. However this position does not fulfil the need for a 'one-stop-shop' for oversight and accountability of the statutory child protection system, including the way that DCJ exercises their statutory powers.

Rather, the Deputy Children's Guardian is primarily focused on OOHC and lacks key powers and responsibilities deemed essential by the FIC review. It does not have oversight of DCJ and its compliance with legislation, policies and guidelines. Without this remit it cannot address the issue of a closed system plagued by ritualism and non-compliance identified by the FIC review.

AbSec calls for the NSW Government to urgently review the powers and resources available to the Children's Guardian and recently appointed Aboriginal Deputy Children's Guardian against the scope and powers recommended by the Review, along with the changes necessary to achieve alignment. AbSec emphasises that the success of this role depends on gaining the confidence of the Aboriginal communities it serves, and as such it should be an independent position with its own authority.

#### Recommendation:

**The NSW Government undertake an urgent review of the powers and resources available to the Children's Guardian and recently appointed Aboriginal Deputy Children's Guardian against the scope and powers recommended by the FIC review and implement necessary changes to achieve alignment.**

### Legislative changes must be prioritised

Another key finding of the FIC review was the Aboriginal Child Placement Principle (ACPP) have not been effectively implemented in NSW. The review cited the ACPP as another example of ritualism. In addition to widespread non-compliance, the review found the ACPP was poorly implemented and misunderstood. This was compounded by the lack of comprehensive data required to adequately measure compliance. The review recommended strengthening legislative provisions aligned to the ACPP, in particular so that adoption is not an option for Aboriginal children in OOHC.<sup>131</sup>

AbSec is very disappointed with the NSW Government's decision to defer consideration of the proposed legislative reforms until the planned review of the *Children and Young Persons (Care and Protection) Act* in 2024. At their current level, this delay will mean over 2400 Aboriginal children will be taken from their families and subject to a legislative framework

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<sup>131</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

that is known to inadequate, causing lifelong and intergenerational harm. These reforms must be implemented now to address the identified shortcomings in the legislative framework and protect Aboriginal children.

AbSec recommends the NSW Government resource ALS (NSW/ACT) to undertake a project, in partnership with other key stakeholders, to identify relevant recommendations and develop proposed amendments prior to 30 June 2021.

**Recommendation:**

**The NSW Government immediately resource ALS (NSW/ACT) to undertake a project, in partnership with other key stakeholders, to develop the draft legislative amendments recommended by the FIC review.**

**Investment to deliver the reforms**

AbSec is concerned that the NSW Government has not allocated any new funding to implement the reforms. In particular the FIC review's recommendation for significant additional investment in early intervention and family supports as discussed earlier in this submission. The NSW Government must appropriately resource implementation of the FIC report recommendations or risk continuing the legacy of successive failed reforms. AbSec's recommendations in response to ToR 3 and 6 above provide further details about this investment.

**Recommendation:**

**The NSW Government adequately resource the implementation of the FIC review's recommendations, with a particular focus on increased investment in prevention, family support, and advocacy.**

**NSW Government must fully implement the FIC recommendations**

The opportunity presented by the FIC review must not be allowed to pass unfulfilled as so many inquiries before it. The FIC review's consultations with Aboriginal communities foresaw the likelihood that the report would not be properly implemented. The experiences of Aboriginal children and families that informed the review demands urgent and courageous action.

"In my engagement with Aboriginal stakeholders, it was routinely expressed that the Review would 'gather dust' on bookshelves like the many other inquiries and reviews that have come before. It is difficult to hear so many members of the Aboriginal community dismiss the Review as another dust gathering exercise." (FIC review 2019)<sup>132</sup>

The NSW Government must partner with Aboriginal communities to develop and implement a program of reform to address the systems and practice issues arising from the Family is Culture review. These reforms must be built on the foundations identified in the report – Aboriginal self-determination and public accountability and oversight – and work towards keeping Aboriginal children safe at home, and connected to their family, community and culture.

"Too many Aboriginal and Torres Strait Islander children, families and communities have been devastated by the interventions of child protection authorities. If we do not act now, we risk even more generations being stolen from us, the erosion of our

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<sup>132</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, XIV. Accessed at: [https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

culture, and cycles of trauma to continue.” (Wiyi Yani U Thangani (Women’s Voices))<sup>133</sup>

## Other recent reviews

Prior to the FIC review, multiple inquiries have shown the need to address the overrepresentation of Aboriginal children and families in the NSW child protection system.<sup>134</sup> They have also demonstrated that current approaches are not working. While the NSW Government has undertaken some incremental steps towards change, it has failed to implement the transformation change needed to truly reform the system. Structural reform remains elusive in the face of a large and powerful bureaucracy.

“There is a wealth of reports and recommendations setting out the fundamental changes required to halt the current trajectory of removals of children from their families, communities and culture. Tinkering around the edges is no longer an option for the state of child welfare in this country.” (Wiyi Yani U Thangani (Women’s Voices))<sup>135</sup>

Fams NSW commissioned Urbis to analyse four major reviews since 2008.<sup>136</sup> Urbis identified consistent findings across the reviews relating to expanding early intervention services, strengthening independent oversight, improving intake and assessment processes and practices, improving leaving care planning and support and building the evidence base for interventions that work to reduce entries into OOH. All emphasised the need to address the overrepresentation of Aboriginal children and families in the child protection system.<sup>137</sup>

Collectively these reviews have made a total of 286 recommendations to improve the system.<sup>138</sup> Yet less than two-thirds of the recommendations have been implemented (excluding the recent FIC review).<sup>139</sup> As a result the systemic change identified by all the reviews as necessary to improve outcomes for at-risk children and their families in NSW has not been achieved.

“The problems are well understood, but there appears to be barriers, either in capacity, authority, will (or a combination of these), to implement all the recommendations as intended. As such, the capacity for reforms to achieve the ambitious objectives outlined in each report is limited.” (Urbis report 2020)<sup>140</sup>

The recent Audit Office report on Their Futures Matter highlights the NSW Government’s inability to reform itself and underscores the need for an independent mechanism to

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<sup>133</sup> Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women’s Voices) Securing Our Rights, Securing Our Future Report*, 234. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani>

<sup>134</sup> These include: 2017 Legislative Council report: Child Protection, 2016 Legislative Council report: Reparations for the Stolen Generations, 2015 Tune Review, 2015 NSW Auditor-General report on OOH, 2012-2014 NSW Ombudsman reports, and 2008 Wood inquiry.

<sup>135</sup> Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women’s Voices) Securing Our Rights, Securing Our Future Report*, 234. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani>

<sup>136</sup> These four reviews are: Wood report 2008, Tune review 2016, Donnelly inquiry 2017, and Family is Culture review 2019.

<sup>137</sup> Urbis (2020) *An analysis of reviews into the NSW child protection system 2008-2019*, FAMS, Sydney. Accessed at: [https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW\\_Final-Report-20201130.pdf](https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW_Final-Report-20201130.pdf)

<sup>138</sup> Urbis (2020) *An analysis of reviews into the NSW child protection system 2008-2019*, FAMS, Sydney. Accessed at: [https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW\\_Final-Report-20201130.pdf](https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW_Final-Report-20201130.pdf)

<sup>139</sup> Urbis (2020) *An analysis of reviews into the NSW child protection system 2008-2019*, FAMS, Sydney. Accessed at: [https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW\\_Final-Report-20201130.pdf](https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW_Final-Report-20201130.pdf)

<sup>140</sup> Urbis (2020) *An analysis of reviews into the NSW child protection system 2008-2019*, FAMS, Sydney, 3. Accessed at: [https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW\\_Final-Report-20201130.pdf](https://fams.asn.au/wp-content/uploads/2020/12/Better-outcomes-for-kids-in-NSW_Final-Report-20201130.pdf)

oversight real systemic change. The audit report was highly critical of the reform implementation and concluded it consequently failed to realise its policy intent. The report cited failures in governance, including a lack of Aboriginal expertise on the TFM board, ineffective cross-agency partnerships, lack of robust evidence-base, a failure to reprioritise investment to early intervention approaches, and a lack of ongoing plan beyond the reform life-span.<sup>141</sup>

The NSW Government can end this ongoing inquiry cycle by fully implementing the recommendations of the FIC review and previous inquiries. The solutions and ways forward have been well documented; they require political will and resources to implement them. It is evident that internally-led reforms that are partially implemented or retro-fitted around existing measures does not achieve the systemic change required. The NSW Government must use this opportunity to make a real difference to the lives of all children and their families involved with the child protection system.

## ToR 8. Any other related matter

### Permanency

AbSec is strongly opposed to the use of permanent legal care orders that result in the adoption of Aboriginal children or their guardianship by non-Aboriginal carers.<sup>142</sup> Adoption of Aboriginal children is not a culturally accepted practice. Adoption and the placement of Aboriginal children with non-Aboriginal carers removes them from their family, community and cultural relationships.

In some circumstances, AbSec supports the use of short-term orders with restoration planning. These orders may be appropriate if OOHC is the only option available for an Aboriginal child or young person and no other appropriate options can be identified, such as family placement. Such orders and plans must be made in consultation with the family and Aboriginal community.

NSW is the state with the highest number of Aboriginal children on long-term (permanent to age 18) guardianship, custody or third-party parental responsibility orders with 7,126 children or 44 per cent. This indicates a trend towards a growing use of permanency options in NSW.<sup>143</sup> AbSec believes this is largely driven by DCJ's desire to reduce the numbers of children and young people considered to be in OOHC.

Children on permanent care orders are considered to have 'exited' the OOHC system which means that children are no longer counted in OOHC data. This undermines transparency and accountability, and further exacerbates distrust that Aboriginal families and communities already hold regarding statutory child protection systems, and the ongoing removal of Aboriginal children.

Legal permanency orders that result in Aboriginal children and young people being adopted or placed with non-Aboriginal carers do not represent the best interests of those children and young people in need of alternate care. Permanent care orders lack the safeguards for Aboriginal children's safety and wellbeing that exist in OOHC. This includes their rights to ongoing support, connection to family, community and culture, safety monitoring and periodic review of their placement and treatment.

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<sup>141</sup> Audit Office NSW (2020) *Their Futures Matter – Performance Audit Report*, NSW Government, Sydney. accessed at: <https://www.audit.nsw.gov.au/our-work/reports/their-futures-matter>

<sup>142</sup> AbSec's opposition to permanent legal care orders does not preclude guardianship to appropriate family members determined through Aboriginal processes.

<sup>143</sup> SNAICC (2020) *The Family Matters Report 2020*, 13.

Aboriginal communities fear that permanent legal care orders such as adoption are contributing to another lost generation.<sup>144</sup> The prioritisation of legal permanency, through non-Indigenous processes, undermines both the rights of Aboriginal children to their family, community, identity and culture, and the rights of Aboriginal communities to self-determination. This is contrary to the Aboriginal Child Placement Principles (ACPP).

Aboriginal community concerns are exacerbated by DCJ's inability to adequately implement the ACPP. The FIC review highlighted concerns about DCJ's compliance with the ACPP, along with identification of Aboriginal children's cultural background and the development and implementation of cultural care and support plans.<sup>145</sup> Consequently AbSec has concerns that DCJ's practice issues with regards to Aboriginal children in OOHC are being carried through and made permanent by these legal orders.

AbSec calls for an immediate end to the adoption or guardianship by non-Aboriginal carers of Aboriginal children. Legislative changes are required to protect Aboriginal children from being permanently disconnected from their Aboriginal family, community and culture. The FIC review was clear in its calls for the NSW Government to amend the Care and Protection Act and the Adoption Act to ensure adoption is not an option for Aboriginal children in OOHC.<sup>146</sup>

These legislative must include be supported by safeguards in policy to ensure that Aboriginal families and communities participate in decision making regarding the placement of Aboriginal children in care and the provision of ongoing casework support delivered through Aboriginal community-controlled organisations.

#### **Recommendation:**

**The NSW Government end the use of adoption and non-Aboriginal carer guardianship of Aboriginal children and instead work with Aboriginal communities to develop culturally appropriate long-term solutions that keep children safe and connected to family, community, culture and Country.**

#### **Transition to guardianship**

The transition from OOHC to permanent legal orders, such as guardianship and adoption, can present significant challenges for Aboriginal children and those who care for them. These challenges have been largely overlooked by the system. AbSec understands a number of Aboriginal children 'exited' on guardianship orders have re-entered OOHC due to inadequate support.

Unlike OOHC, there is no ongoing support available for children once they have left statutory care. For Aboriginal children and young people, this presents additional challenges, particularly with regard to the development and implementation of cultural care and support plans to protect their cultural rights and the lack of access to specialised therapeutic care and ongoing casework support.

Following consultations with guardians of Aboriginal children in mid-2020, AbSec is seeking to address issues arising from the shift to guardianship orders through the development of an Aboriginal Guardianship Support Model. We are proposing to establish a model of support and a network of services, supports and resources for Aboriginal children on guardianship orders and their families. It will be delivered by ACCOs through a

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<sup>144</sup> Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women's Voices) Securing Our Rights, Securing Our Future Report*, 236-237. Accessed at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

<sup>145</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 252-264. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

<sup>146</sup> Davis, M. (2019) *Family is Culture – Final Report. Independent review into Aboriginal out of home care in NSW*, NSW Government, Sydney, 380. Accessed at:

[https://www.familyisculture.nsw.gov.au/\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

commissioning for outcomes approach. DCJ has supported AbSec to undertake trial sites in the Hunter and South Western Sydney.

AbSec notes that our advocacy for an effective model of support provision for Aboriginal children and young people on guardianship orders does not alter AbSec's opposition to the guardianship of Aboriginal children by non-Aboriginal carers as discussed above.

**Recommendation:**

**DCJ further support Aboriginal children's transition from OOHC to permanency, including those subject to Guardianship orders, to address their needs through the provision of ongoing casework support, appropriate therapeutic care and support to maintain connection to family, community and culture.**

## Conclusion

The FIC review again shows us how Aboriginal children and families are harmed by the current child protection system. The system is failing to intervene early and effectively to prevent entries to care, failing to provide culturally safe response and failing to adequately engage families and work towards the timely restoration of Aboriginal children. Without urgent change driven by and for Aboriginal communities these poor outcomes will continue.

Significant systemic change is required to align the NSW child protection system to the needs of Aboriginal children, their families and communities. Despite numerous reviews recommending significant structural reforms to address these long-standing issues, their intent has never been fully realised. A genuine commitment to transformational change has been lacking. The FIC recommendations provide a new opportunity for reform through its roadmap for how we must better support Aboriginal children and families.

As such, AbSec calls for the creation of an open and transparent child protection system that enables and adequately resources Aboriginal communities and families to care for and protect their own children, in line with both our position papers and the FIC review recommendations. As a matter of priority this should include the:

- investment in Aboriginal communities through Aboriginal community-controlled organisations delivering early intervention and support services, with long-term proportionate funding allocated through a commissioning approach;
- establishment of an independent Aboriginal Child Protection Commission;
- prioritisation of legislative amendments proposed by the FIC review, in partnership with Aboriginal community representatives; and
- development of a genuine partnership approach with Aboriginal people, organisations and communities to progress the recommendations arising from the FIC Review.

Longer-term, Aboriginal organisations must be given oversight of the system and supported to deliver crucial early intervention supports which prevent Aboriginal children from entering OOHC to begin with. AbSec believes Aboriginal-led solutions are the way forward. The creation of a holistic Aboriginal child and family service system through a commissioning for outcomes approach and state-wide safety-net of Aboriginal service providers is the most culturally appropriate, effective way to improve outcomes for our children and their families.

## Attachments

AbSec, (2016) [\*Achieving a holistic Aboriginal Child and Family Service System for NSW\*](#), Sydney.

AbSec, (2017) [Aboriginal Community Responses: Communities for Kids](#), Sydney.

AbSec (2017) [Our families, our way Strengthening Aboriginal families so their children can thrive](#), Sydney.

AbSec (2020) [Aboriginal Family Preservation and Restoration Model Guidelines](#), Sydney.