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**Re: Issues Paper Four: *Preventing Sexual Abuse of Children in Out-of-Home Care***

Dear Mr Best

I refer to the above and thank the Commission for the opportunity for Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec) to provide comment on Issues Paper Four.

This response focuses on the NSW context. It accompanies the joint response to the Issues Paper between the national peak organisations, the Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the National Aboriginal and Torres Strait Islander Legal Service (NATSILS), as well as state peaks including AbSec, Aboriginal Family Support Services, South Australia (AFSS), Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) and Victorian Aboriginal Child Care Agency (VACCA).

#### About AbSec

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

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

We are responsible for two Keep Them Safe projects; Protecting Aboriginal Children Together (PACT) and Intensive Family Based Services (IFBS). AbSec, in partnership with CS, coordinates the development, support and implementation of these projects in various sites across NSW. We have a lead role in community consultation and engagement.

AbSec is a partner with CS and the Association of Child Welfare Agencies (ACWA) in facilitating the transfer OOHC service provision to non-government service (NGO) providers over the next 5 to 10 years. Our Transition Team works to support established and new agencies build their capacity to take on placements of Aboriginal children and young people in care.

## 1. Historical context

AbSec acknowledges the effects of traumatic past policies and practices involving the removal and separation of multiple generations of Aboriginal and Torres Strait Islander children from their families across the nation. These have left many legacies, well documented in *'Bringing Them Home'*, the report from the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Families"<sup>1</sup> and in multiple inquiries and government reports.

As exposed in the National Inquiry, the purpose of those systematic policies and practices was to "absorb the children into white society, Aboriginality was not positively affirmed...<sup>2</sup>". By separating Aboriginal children from their families, they could be prevented from growing up in culture, from growing up to become Aboriginal adults:

In the course of a few years there will be no need for the camps and stations; the old people will have passed away, and their progeny will be absorbed in the industrial classes of the country<sup>3</sup>."

Yet removals were justified at the time to be in 'the best interests of the child'. So it would be reasonable to expect that removal from parents to placement in an institution or in care would have resulted in a safer environment and offer better outcomes for children than if they grew up with their own parents. Unfortunately, this was very often not the case:

Many witnesses to the (*'Bringing Them Home'*) Inquiry spoke of the appalling standards of care in institutions. Former residents told of being cold and hungry, worked too hard but educated too little. They told of brutal punishments, fear of sexual abuse and of the stifling of affectionate relationships. They reported emotional abuse by the denigration of Aboriginality and the denial of family contact...<sup>4</sup>

The effects of the policies and practices have manifested across generations in a multitude of ways. There were impacts on physical and mental health, identity, spirituality and connection with culture, relationships, family structure, parenting skills and social behaviour. Clear connections exist between the policies' effects and other outcomes, such as misuse of alcohol and other drugs institutionalisation and incarceration of Aboriginal people, as well as the over-representation of Aboriginal children in care and protection jurisdictions Australia wide<sup>5 6 7</sup>.

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<sup>1</sup> HREOC (1997) National Inquiry into the Separation of Aboriginal Torres Strait Islander Children from their Families, Wilson, R. S., & Human Rights 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*/[Commissioner: Ronald Wilson]. Sydney: Human Rights and Equal Opportunity Commission.

<sup>2</sup> HREOC (1997), p154.

<sup>3</sup> Report by an Aboriginal Protection Board official to the Australasian Catholic Congress, 1909. In: Read, P, Edwards, C, editors (1989). *The Lost Children*. Sydney: Doubleday. 1989.

<sup>4</sup> HREOC (1997), p228.

<sup>5</sup> Calma, T. (2008). *Social justice report 2007*. Sydney: Human Rights and Equal Opportunities Commission.

<sup>6</sup> HREOC (1997), p21.

<sup>7</sup> Stanley J, Tomison AM & Pocock J 2003. Child abuse and neglect in Indigenous Australian communities. Child abuse prevention issues no. 19. Melbourne: Australian Institute of Family Studies

The *'Bringing Them Home'* Inquiry found Aboriginal children forcibly removed over the duration of these systematic policies and practices were in fact, highly likely to experience sexual abuse:

Children in every placement were vulnerable to sexual abuse and exploitation... Almost one in ten boys and just over one in ten girls allege they were sexually abused in a children's institution... One in ten girls allege they were sexually abused in a work placement organised by the Protection Board or institution. Other exploitation was known and condemned but not prevented.<sup>8</sup>

As the Royal Commission now and other past inquiries have found, not only were children and young people in OOHHC subject to abuse, they were less likely to achieve the improved outcomes implied in justifications provided for the systematic removal practices. *Bringing Them Home* described wide ranging impacts of sexual abuse, including psychological effects that:

...have often manifested in isolation, drug or alcohol abuse, criminal involvement, self-mutilation and/or suicide... (and about) 'one-third of child victims of abuse grow up to have significant difficulties parenting, or become abusive of their own children. One-third...remain vulnerable, in the face of social stress (they have) an increased likelihood of becoming abusive'<sup>9</sup> (p169).

Given their vastly disproportionate rates of involvement with NSW care, protection and judicial systems, the risks to Aboriginal children and young people of experiencing forms of sexual assault, whether whilst in care, incarcerated or through other institutional means, remain high<sup>10</sup>.

## 2. "Culture versus safety"

Aboriginal child sexual assault has been cast in public debate as a cultural issue, an 'Aboriginal problem', with government responses and inquiries over the years often reinforcing that perspective. Some public discourse around the care and protection of Aboriginal children has consequently been framed in such a way that implies safety and culture are somehow mutually exclusive constructs, a notion we refute.

Firstly, AbSec and our member agencies reject the notion that sexual abuse is in any way acceptable, whether culturally or in any other way. Furthermore, we challenge the inference of that argument: that OOHHC placement must occur outside of an Aboriginal child's culture for that child to be truly safe and protected from harm. As we have seen through professional and community experience, and mechanisms such as *Bringing Them Home* and the Royal Commission, this is not the case. Arguments advocating placement outside of culture for the purposes of safety and protection, offer no explanation nor any solution, for why child sexual assault and abuse are experienced by both Aboriginal and non-Aboriginal children and young people, at the hands of non-Aboriginal offenders.

VACCA and SNAICC) have submitted responses to Issues Paper Four containing more thorough perspectives about the protective elements of culture, and it's indivisibility from the best

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<sup>8</sup> HREOC (1997), pp140-2.

<sup>9</sup> HREOC (1997), p169.

<sup>10</sup> Australian Institute of Health and Welfare (AIHW). (2013). Child protection Australia 2011–12. In AIHW (Ed.), Child welfare series no. 55. Canberra: AIHW, p 17.

interests of Aboriginal children. AbSec and our member agencies concur with these views. We have a long held, genuine dedication, evident in our various practices and support programmes, to protecting children from our communities who enter the care and protection system, whilst helping them grow strong in their identity and culture.

We understand the submissions on this issue will assist in determining the agenda of a public forum in the first quarter of 2014. As stated in SNAICC's response to Issues Paper Four, specific focus is needed on the protection needs of Aboriginal and Torres Strait Islander children and young people in OOHC. We believe a separate forum is needed to ensure Aboriginal children's protection needs are adequately addressed. A separate mechanism is also required to more closely delve into complex, underlying concepts such as the indivisibility of culture and safety.

**Recommendation 1: We call on the Royal Commission to hold at least one separate public forum that complements the mainstream forum to be held in the first quarter of 2014, specifically focussing on protection needs of Aboriginal and Torres Strait Islander children. Any Royal Commission public forum held must be adequately inclusive of Aboriginal community organisations, individuals and groups.**

### 3. NSW Context

At 30 June 2012, Aboriginal children were significantly over-represented in the NSW care and protection system; 5,991 of the total of 17 192 children and young people in OOHC were Aboriginal and /or Torres Strait Islander. In NSW, the rate of Aboriginal children in OOHC was 11.7 times that for non-Aboriginal children<sup>11</sup>, with Aboriginal children in OOHC at a rate of 83.4 per 1,000 children, compared to the rate for non-Aboriginal children of 7.1<sup>12</sup>.

Neglect is the most common type of abuse in NSW, with 33.6% (n = 7 792 substantiations of notifications in 2011-12); sexual abuse is the least common, comprising 15.7% of substantiated notifications (or 3 644 of a total of 23 175 in 2011-12)<sup>13</sup>.

Amongst Aboriginal children and young people aged 0 – 17 in NSW, sexual abuse is the least common type of abuse or neglect, comprising 13% (553 of the total 4 247) substantiated notifications pertaining to Aboriginal children, compared to 20.6% (2 140 of the total 10 387) for non-Aboriginal children<sup>14</sup>.

#### 3.1. NSW Reforms

**Child Protection Legislation Amendment Bill 2013.** The NSW care and protection system is currently undergoing a major period of change, with the *Child Protection Legislation Amendment Bill 2013* having been introduced to Parliament and currently in the Legislative Assembly, awaiting debate<sup>15</sup>. The Bill amends legislation including the *Children and Young Persons (Care*

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<sup>11</sup> Australian Institute of Health and Welfare (AIHW). (2013). Child protection Australia: 2011–12. *Child welfare series no. 55*.

<sup>12</sup> Steering Committee for the Review of Government Service Provision and Australia, Productivity Commission *Report on Government Services 2013*, 2013, Table 15A.17.

<sup>13</sup> AIHW (2013), Table A5.

<sup>14</sup> AIHW (2013), Table A8.

<sup>15</sup> See: [www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/210C44B32B552A8FCA257C2A00130C18](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/210C44B32B552A8FCA257C2A00130C18)

*and Protection) Act 1998 (the Principal Act), the Adoption Act 2000, the Child Protection (Working with Children) Act 2012. It contains significant reforms regarding protecting children and young persons, a number of which are of specific relevance to the Royal Commission.*

AbSec acknowledges there are a number of changes contained in the Bill that have potential to improve the safety and wellbeing of children, for example that obligations are placed not only on parents in Parenting Responsibility Contracts, but also on NSW Community Services to put in place interventions and services to support parents to meet contract requirements. However AbSec will be carefully examining the proposed legislation; we want to be certain the reforms not only meet the needs of our families and communities, but in particular whether the amendments will achieve their overall aim of decreasing the number of children in the NSW care and protection system. For example, we will be considering the implications of reforms relating to guardianship, which will likely result in a reduction in checks and balances for children currently in OOHC placements who move into guardianship arrangements.

**Transition of OOHC.** The transition of statutory OOHC from CS to non-government organisations (NGOs) commenced in 2012. Expected to take around five to ten years, the objective is improve outcomes for children and young people, allow NGOs to focus on provision of OOHC services and CS caseworkers to focus on provision of child protection related matters and support. The NGO sector now oversees 42% of all OOHC placements after one year of transition<sup>16</sup>. A number of reports have recommended the move from government to NGO service delivery in the sector, from the Usher report in 1990 to Justice Wood's inquiry in 2008, which informed 'Keeping them Safe', the NSW Government's 2009-14 action plan to improve service delivery around provision of family and community services.

The transition has also been a response to calls for system change over many years, due to the challenges to providing consistent good care outcomes in government systems; research consistently suggests NGO are better able to provide consistent quality and lower case loads. Whilst many children and young people have had the best support possible from community services case workers, and research suggests that even more will have that support in NGOs.

Aboriginal people have been calling for the right to look after our own children and young people in need of care over decades. One of the guiding principles of the transition plan is that Aboriginal children and young people in care will only be transferred to, or placed with, accredited Aboriginal agencies, or in partnerships that will result in stand-alone accredited Aboriginal agencies. Unprecedented growth has already begun occurring in the Aboriginal NGO OOHC sector. When the transition began in 2012 there were six accredited Aboriginal agencies looking after three hundred children and young people. By the end of the transition period, plans are in place to develop 25-30 accredited Aboriginal agencies that will look after up to 3,000 Aboriginal children and young people and provide a range of prevention services<sup>17</sup>.

AbSec, our member agencies and sector partners are working diligently to work with community organisations in developing consistently high quality services to Aboriginal children and young

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<sup>16</sup>See: [www.community.nsw.gov.au/docs\\_menu/parents\\_carers\\_and\\_families/out\\_of\\_home\\_care\\_transition/about\\_the\\_transition.html#transition](http://www.community.nsw.gov.au/docs_menu/parents_carers_and_families/out_of_home_care_transition/about_the_transition.html#transition)

<sup>17</sup> See: [www.absec.org.au/services-we-provide/transition/capacity/6-capacity.html](http://www.absec.org.au/services-we-provide/transition/capacity/6-capacity.html)

people, their families and carers with sound governance, sound structures in place, especially in the area of protection of children in care, and strong cultural values.

Other jurisdictions are watching the roll out of the reforms closely. We look forward to contributing more detailed information as the Commission progresses, through mechanisms such as the proposed public forum, regarding the implications and outcomes of the reforms.

**Recommendation 2: That the Royal Commission examine relevant elements of recent reforms in the NSW care and protection sector, to determine their implications in relation to the Commission's Terms of Reference.**

### **3.2. Information about abuse of children in care in NSW**

There appears to be some literature around issues for foster carers in relation to abuse of children in care, for example their vulnerability to and lack of support around allegations they abused children in their care<sup>18</sup>. CREATE recently reported findings from their recent survey of more than 1,000 children and young people in care found that 90% of participants “indicated they felt safe and secure in their care placement”, but they also highlighted that 10% of those surveyed did not feel safe (there was no data about the number of participants who reported past incidences of abuse in care)<sup>19</sup>. However there appears very little information around the numbers of allegations of abuse of children and young people in care, factors such as Aboriginality, age or the type of care abuse may have occurred in, whether notifications were substantiated, charges laid or convictions in these matters.

The NSW Ombudsman's *'Responding to Child Sexual Assault in Aboriginal Communities'* report highlighted problems with data availability and quality around these matters (including with regards to the effectiveness of related programmes for Aboriginal communities)<sup>20</sup>.

AIHW data about allegations of abuse in care are counted in the data for the number of notifications, investigations and substantiations in NSW. However a breakdown of data regarding the prevalence of sexual abuse in OOHC in NSW does not appear readily available, in particular such data categorised by Aboriginality (regarding both victims and offenders). The NSW Ombudsman noted:

It is concerning that despite the priority accorded to ‘victims and witnesses maintaining their involvement in the criminal justice process, from initial report to prosecution’ by the (NSW) Interagency Plan, there has been little progress over the last six years in establishing a seamless process for capturing the data required to report on this issue in relation to Aboriginal child sexual assault victims and child victims generally<sup>21</sup>.

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<sup>18</sup> See: [www.aifs.gov.au/nch/pubs/brief/rb4/rb4.html](http://www.aifs.gov.au/nch/pubs/brief/rb4/rb4.html)

<sup>19</sup> See: [www.create.org.au/files/file/report%20cards/CREATE\\_ReportCard2013%28LR%29.pdf](http://www.create.org.au/files/file/report%20cards/CREATE_ReportCard2013%28LR%29.pdf)

<sup>20</sup> NSW Ombudsman (2012), *'Responding to Child Sexual Assault in Aboriginal communities'* report, p 140.. See: [www.ombo.nsw.gov.au/news-and-publications/publications/reports/child-protection/responding-to-child-sexual-assault-in-aboriginal-communities](http://www.ombo.nsw.gov.au/news-and-publications/publications/reports/child-protection/responding-to-child-sexual-assault-in-aboriginal-communities)

<sup>21</sup> NSW Ombudsman (2012),

Highly complex issues persist around reporting and data collection concerning sexual assault<sup>22 23</sup> and abuse, particularly for Aboriginal women and children<sup>24 25</sup>. The lack of readily available data is one of the reasons behind the difficulty in extrapolating lessons learned from previous research and inquiries to the OOHC sector, about sexual and other forms of abuse in Aboriginal communities. AbSec welcomes any enlightenment the Royal Commission can provide in this area and we look forward to hearing the Commission's recommendations regarding improving collection, publication and availability of data about sexual abuse in OOHC.

**Recommendation 3: Data on the prevalence and nature of sexual abuse in institutions, particularly OOHC, be made more widely available, to help with the research and information gathering, so critical to effective policy making, education and programme design.**

#### 4. Barriers to addressing sexual abuse in Aboriginal communities

Impediments to dealing with sexual abuse are well documented in a number of reports such as 'Little Children are Sacred'<sup>26</sup> and "Snapshot: Kimberley Child Sexual Abuse Group", a report included in Danny Ford's "Aboriginal child sexual abuse and support services". The Kimberley Group reported that Aboriginal people face not only fear but also disempowerment, in being able to deal with the issues relating to sexual abuse, as well as loss of self-esteem:

"Sexual abuse is only one... level of dysfunction... in many communities... If people feel disempowered then it is difficult to talk up the issue and take action... People need a catalyst to start talking up the issue... 'permission' for the people at the community level to talk about it... This is related to cultural roles and not inability to act."<sup>27</sup>

Aboriginal children and young people who experience sexual abuse in care may also be caught up in a cycle that may have begun with the removal of their own parents under past policies:

...most of the perpetrators and/or parents have been abused themselves. Hence the problem appears to be persisting over generations.... It frequently occurred after young people were taken away from family and in situations where the victims were powerless and in the care of others."<sup>28</sup>

Besides experiencing great trauma arising from sexual abuse, one of the more common and well documented effects arising from persistent, systematic abuses is a long held, deep mistrust of 'the welfare' and other government or authorities, to the point where families will not "tap into mainstream services, because there's that fear that the children could be taken away"<sup>29</sup>. Any Aboriginal community worker to this day could relate a story about Aboriginal children playing

<sup>22</sup> See: [www.aifs.gov.au/acssa/pubs/sheets/rs5/index.html](http://www.aifs.gov.au/acssa/pubs/sheets/rs5/index.html)

<sup>23</sup> Wild, R., And Anderson, P. (2007). *Little Children Are Sacred*, Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Darwin: Northern Territory Government, pp.76 - 78.

<sup>24</sup> See: [www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html](http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html)

<sup>25</sup> NSW Ombudsman, 2012, p135.

<sup>26</sup> Wild et al (2007).

<sup>27</sup> Ford, D. "Aboriginal child sexual abuse and support services". In: Dudgeon, P. et al. (2000). *Working with Indigenous Australians: A Handbook for Psychologists*. Perth: Gunada Press, pp455-56.

<sup>28</sup> Phillips, N. In: "Aboriginal child sexual abuse treatment services" In: Dudgeon et al (2000), pp 458

<sup>29</sup> HREOC (1997), p194.

on the street in a community scattering, taking off without any parental prompting, the minute the worker drives into the community in any car resembling a government vehicle.

These are just some of the powerful forces deterring children and young people from reporting of sexual abuse. They are compounded for those children who experience abuse in OOHC, especially where multiple fears exist. There may be worries about repercussions or 'pay back', discrimination in the criminal justice system - particularly for girls<sup>30</sup> or other barriers that may apply to all children and young people in care, like being disbelieved, or around removal from a placement and further instability. These go hand in hand with probity and sentencing matters, and must no doubt be a high priority for the Royal Commission to address. AbSec is happy to contribute to further discussions or information sharing around these issues if required.

**Recommendation 4: The Royal Commission recommendations include suggested strategies to address the barriers to reporting abuse of Aboriginal children in OOHC.**

AbSec has a number of comments in response to questions in Issues Paper Four, set out below. Whilst we have made some recommendations, these are of a general nature and concern the overall direction of the Royal Commission investigation.

We expect to undertake a more thorough consultation process both internally and with member agencies and sector partners to come up with more specific recommendations regarding issues and strategies in the area of sexual abuse in OOHC.

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<sup>30</sup> McGlade, H. Aboriginal women, girls and sexual assault. In: [ACSSA Aware Newsletter No. 12 September 2006](#)

**1. An essential element of OOHC is for a child to be safe and secure. Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?**

**1.1. Prevention of entry to care.** AbSec concurs with the statements in both VACCA and SNAICC's responses to Issues Paper Four, regarding prevention of entry into the OOHC system being the best safeguard against sexual abuse in care. As previously stated, the majority of removals of Aboriginal children and young people take place because of neglect. We strongly agree with VACCA and SNAICC's calls for adequate resourcing of appropriate early intervention and prevention family support services to support Aboriginal families to care for their children safely at home, so there is no need for them to enter the OOHC system in the first place. It is hoped the proposed OOHC reforms in NSW, such as a roll out of Family Group Conferencing programmes, will represent progress in this area.

**1.2. Sector and agency related strategies.** The fundamental practice elements for an Aboriginal child or young person's safety and security in OOHC are the same as for all children in care. Across the sector there are a number of mechanisms in place to manage for risk in OOHC agencies. These include the Working With Children Check (WWCC), and other resources and programmes, such as NSW Ombudsman publications like *'Child protection in the workplace: Responding to allegations against employees'*<sup>31</sup>, the Children Guardian's (CG)/Centre for Children and Young People's (CCYP) *'Child Safe approach'* suite of tools and resources<sup>32</sup>, and in child protection related courses run by organisations such as the Centre for Community Welfare Training's (CCWT) and the NSW Health Education Centre Against Violence (ECAV).

In NSW, to deliver statutory OOHC, agencies must be accredited with the NSW Children's Guardian. To become accredited, organisations must comply with the *NSW OOHC Standards for Statutory OOHC* ('the Standards')<sup>33</sup>. The Standards, outlined in the Royal Commission's *Fact Sheet 4.1: 'Preventing Sexual Abuse of Children in Out of Home Care'*, set out clear, agency-wide guidance about all levels of OOHC agencies' statutory responsibilities for keeping child focused and protecting children from abuse of all kinds, from casework practice, including placement matching, monitoring (including ongoing assessment whether others in the placement are at 'at risk' of perpetrating harmful behaviours, or even of becoming a victim), carer assessment, training support and supervision, to review to governance.

From an agency perspective, one element of child safety needs the other to be working properly and in balance. A caseworker may more readily maintain high standards of casework in their agency where there is rigour and consistency in application of policy and practice standards, sound case management procedures, solid human resources management practices and systems, clear risk management measures, ready access to quality training, clear delegations

<sup>31</sup> See: [www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/child-protection/child-protection-in-the-workplace-responding-to-allegations-against-employees](http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/child-protection/child-protection-in-the-workplace-responding-to-allegations-against-employees)

<sup>32</sup> See: [www.kids.nsw.gov.au/Working-with-children/Become-a-Childsafe-Organisation](http://www.kids.nsw.gov.au/Working-with-children/Become-a-Childsafe-Organisation)

<sup>33</sup> See: [www.kidsguardian.nsw.gov.au/accreditation/nsw-out-of-home-care-standards](http://www.kidsguardian.nsw.gov.au/accreditation/nsw-out-of-home-care-standards)

and reporting procedures, a functional board that grasps their responsibilities regarding OOHC and a CEO that ensures the smooth operation of the organisation. For example, disclosure of abuse can occur in respite placements; if the CEO ensures all children in an agency's care receive respite, this may prove to be an equitable prevention measure for children who might have otherwise remained at risk. Additionally, agencies must ensure compliance with the transfer policy over the course of transition of care from CS to the NGO sector in NSW. For example, children and young people who are the subject of an ongoing Reportable Conduct matter or unresolved child protection issue may not be transferred to an agency from CS.

Maintaining the balance needed in running a high quality OOHC service is an involved and complex process; a number of our more experienced member agencies have much to teach us as the peak in this area. For those of our member agencies that seek assistance in getting to grips with applying for and maintaining accreditation, AbSec's Accreditation and Practice Support team works closely with member agencies, providing ongoing support to assist our member agencies in applying rigour in their practices and sustaining high standards in their governance and operations generally. We view this as essential role in keeping our agencies supported to uphold the safety of the children and young people in their care.

### **1.3. Legislation.**

#### **S13, the Aboriginal and Torres Strait Islander Child and Young Person Placement Principle.**

Genuine, diligent and properly consultative application of the s13 framework, remains a top priority for safeguarding Aboriginal children, should there be a need to remove them from their parents care. Placing children and young people in an Aboriginal placement with family, extended family or other kin and community networks, following

**NSW OOHC Reforms.** One of the reforms to be implemented in the *Child Protection Legislation Amendment Bill 2013* currently before NSW Parliament is that a new 'hierarchy' of placement in the care and protection system, to be known as 'Permanent Placement Principles' (not to be confused with the *Aboriginal Placement Principle*).

The order of preference is first for restoration to parents, second for guardianship of a 'relative, kin or other suitable person', third is adoption (except for Aboriginal children, for whom adoption is the 'last preference') and if these options are not possible, the child or young person to be placed parental responsibility of the Minister. Guardianship and OOHC adoption will not be counted as OOHC.

The NSW Government's aim is to provide more stable, permanent placement. However AbSec is concerned that removing carer supports, payments and decreasing placement checks and balances, such as supervision and carer training in guardianship arrangements (and in the case of adoption, no supervision) will result increased risk for children in those placements, including risk of placement breakdown and abuse.

**1.4. Children and young people.** For Aboriginal children and young people there are additional elements to keeping a child protected from sexual and other forms of abuse. Ensuring that children's rights are central is of critical importance in provision of OOHC related services to Aboriginal and Torres Strait Islander children.

First and foremost, their right to protection from harm must be clear and understood by not only their extended family, agency employees, carers and others living in or connected with the placement, but in particular understood by children and young people in care themselves. In line with the *Standards*, agencies must promote children's rights, participation and their right to complain, developing and sustaining a relationship with the children and young people in their care so that trust develops and workers are in a position to be aware of changes in behaviour.

Age appropriate, culturally relevant education programmes that empower children and young people with knowledge and ways to recognise and deal with risk are an important part of helping children uphold their rights.

**1.5. Families, communities and services.** Phillips, in outlining issues relating to Aboriginal child sexual abuse laid out a framework, *'The Yorgum Program'*, ranging from victim support and knowledge of families and culture, to community awareness and education. Its elements are helpful not only for protecting Aboriginal children and young people in an OOHC context, but also for enshrining their right to safety and protection, empowerment, the right to be heard, supported, to heal and to reclaim other roles and relationships in life<sup>34</sup>. Phillips called for services in this area to have appropriate ways of dealing with the aftermath of abuse, which are just as applicable for safeguarding Aboriginal children in an OOHC agency setting today:

Programmes must be operated in culturally appropriate ways with the individual client, the family and their community knowledge and history taken into consideration. They must also consider Aboriginal terms of reference, (that are) inclusive of Aboriginal ways of conceptualising, processing and working<sup>35</sup>."

The Yorgum program, has evolved and is still in place today<sup>36</sup>.

Others have argued for a community based (in co-operation with government agencies) response to prevention, which reduces risk through practical measures:

Aboriginal healing processes and programs must affirm the importance of prevention and the need for the community's active role in prevention... (i.e.) 'situational crime prevention'... a relatively new criminological approach that shifts the focus from the supposed deficits of the offenders to the situational environment... For example, communities can make it harder for offenders to gain access to children; they can teach children personal safety, and teach adults to recognise the signs of grooming.

Ensuring community understanding and knowledge around sexual assault and abuse, and related definitions can not only help children and families to recognise abuse, protect themselves from perpetrators, but also assist families and communities to develop strategies to prevent it, deal with disclosure and ensure supports<sup>37 38</sup>.

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<sup>34</sup> Phillips (2000), p461 – 463.

<sup>35</sup> Phillips (2000), p458.

<sup>36</sup> See: [www.yorgum.com.au/services](http://www.yorgum.com.au/services)

<sup>37</sup> McGlade (2012), p112.

<sup>38</sup> Bessarab, D *'Child sexual abuse'* in: Dudgeon et al (2000), p 447.

**2. Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?**

AbSec concurs with both SNAICC and VACCA's response to this question, i.e., that connection to cultural identity, a sense of belonging and place in family and community lies at the heart of Aboriginal children's wellbeing, security and safety. We understand this can be a difficult concept to grasp; it is a complex concept to explain. "Individual identity is inseparable from the collective identity of Aboriginal people<sup>39</sup>", so a sense of belonging plays a critical part in developing a sense of self, identity, self-esteem and therefore maintaining resilience for an Aboriginal child or young person. Staying connected to extended family, kin and culture is a vital protective factor for an Aboriginal child who is removed from their parents and placed in the care and protection system. Aboriginal children are more readily able to maintain these important cornerstones in their wellbeing if they are allowed to maintain connections to their mob, throughout their time in OOHC.

With regards to having strategies in place according to placement type, it is vitally important that children be able to expect the same level of safeguarding and support regardless of where they are placed. For example, not only should the same level of placement supports<sup>40</sup> be available for kinship care placements as for other OOHC providers, but also checks and balances. As mentioned in (1), we remain concerned about the potential loss of support, checks and balances for children and young people through a decrease safety measures such as caseworker home visits, placement reviews etc, should Aboriginal children be transferred to guardianship (and even possibly OOHC adoption, which may be possible) arrangements en masse, under the new Bill. Residential care may require different strategies again to ensure adequate safety measures are in place.

Agencies should maintain clear policies based on the legislation and on sector standards, community expectation regarding how they will deal with allegations, recording, and reporting of matters that take into account the placement type and needs of the child or young person, including those who may have special needs in residential care. Creating strategies around these matters and responding to allegations may necessitate a collaborative, cross agency response.

We hope to provide more considered opinion and evidence around this issue in the public forum setting and through our own consultation and research at a later date.

**3. What are the strengths and weaknesses of models that check OOHC practices by an audit approach, a regular supervisory visit, or an irregular visit by someone like a community visitor?**

In AbSec's experience, regular supervisory visits by agency caseworkers, who have built up trust over time with the child or young person in care, are the most effective means of checking

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<sup>39</sup> Carriere, J. (2007). Maintaining Identities in First Nation Adoption. *First Peoples Child and Family Review*. Vol 3(1), p51.

<sup>40</sup> McHugh, M. and Valentine, K. (2010). *Financial and non-financial support to formal and informal out-of-home carers*, Occasional Paper No 38. Canberra: FaHCSIA, p.4.

OOHC practices. During these visits, issues with the child, the carer, or others present in the placement are more likely to be picked up by the caseworker. It also allows for the worker to spend time with the child separately from the carer, and grow trust and understanding further.

An audit, or desk based approach would be viewed as inadequate and, generally, as going against cultural practices of our many of our member agencies, who prefer a face to face 'yarning' based system, that allows them to connect with children, carers and others in the placement. This system can gather a great deal more information and allow the worker to take cues from those in the placement, than paper based audit or assessment of placement arrangements allow. For example grooming behaviours may not be able to be picked up using a paper based, audit approach. Workers are still required to record notes following home visits, so the strength of recording details only enhances the face to face model. As stated by an AbSec staff member:

(an) audit simply means an investigation of records... we are talking about children and young people placed into the care system (and) removed from family. The term should never be used in ensuring their safety.... Regularity of casework visitation (should be determined) holistically with all... children and young persons' needs, health, safety, family, education etc (taken into account). It is ultimately the responsibility of agencies (and caseworkers) to evaluate what's required and provide that without any shortcuts<sup>41</sup>.

Additionally, a community visitor presence may not be able to sustain the level of continued connection that a regular supervisory visit by a skilled agency caseworker may present. We hope to provide more detailed practice examples in future forums and research.

**4. What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?**

Any agency that has external monitoring responsibility should also have enforcement powers for when remedial measures are not enacted. Whilst Community Services may hold some powers as a funding body (in that they may withhold funding), there remains a conflict of interest for them in regulating a placement for a child for whom they may later become responsible for making a placement decision about. To date, CS still awaits accreditation from the CG.

A properly resourced, independent body that has standing in the community and respect in the sector, with no perceived conflicts of interest, can provide more effective means of assessment and, if required, investigations, to ensure the needs of a child or young person are met.

**5. What are the core components of the training needs of those working with children who might be sexually abused including carers, caseworkers and staff of regulatory bodies? What priority should be given to training in relation to sexual abuse compared to other training needs?**

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<sup>41</sup> AbSec staff member; written response to Royal Commission Issues Paper Four, 15 November 2013

Standard 18 *'Training and Development'* in the NSW *'Standards'* provides key messages and assessment criteria that guide agencies in establishing training and professional development. All agency employees, be they authorised carers, caseworkers or managers need a thorough understanding, skills and knowledge in this area that is kept up to date, to allow them to continue working effectively with children in care. Whether this is around prevention, identifying grooming behaviours, trauma; whether training focuses on working with children who are at risk or may have been sexually abused, it is essential that the highest priority be given to training in this area compared to other needs, given the damage that can occur if agency employees fail to undertake such training. The most fundamental need, as identified in many of the reports already mentioned, is training to ensure agency employees, including carers, have an understanding of what sexual abuse is, are able to identify indicators in the children and young people in their care and respond appropriately. Training measures already mentioned in (1), for example training centring around application of Child Safe Organisation principles, *'Identifying and Responding to Abuse'*, or ECAV training comprise just a few of the options available to agencies in NSW.

As mentioned in (2), training strategies will likely differ according to placement type. A significant proportion of Aboriginal children in NSW are in kinship care placements; they must be included in any agency training strategies, and provided with appropriate training and support. For example, agencies may develop an individual carer strategy responsive to the needs of every individual child that comes into a carer's home, to ensure the carer is well prepared to deal with the individual needs of each child. A Carer Training Plan should not only respond to the child's needs, but complies with agency policy and fit with the requirements of the NSW *Standards*. Any such approach would complement screening processes conducted by agencies. In the case of Aboriginal agencies, any training must include appropriate cultural elements. Besides being culturally safe for participants, ideally training would be deliverable locally to help maximise participation.

**6. Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?**

This is an area that would benefit from further, effective and appropriate training for carers of Aboriginal children. Such training would ideally be mandated for carers of children or young people who have sexually abused other children, not only to develop their knowledge, as well as skills in dealing with behaviours, but also to seek ways of supporting children and young people. The most critical need is to help protect other children and young people by preventing further offending behaviour. However training should help play a role in helping young people to break the cycle of abuse, neglect and removal, perpetration and incarceration experienced by disproportionate numbers of Aboriginal people. As previously mentioned, many Aboriginal children live in kinship placements with extended family, adding an extra layer of familial and cultural complexity to this already sensitive subject; so any strategies developed in this area require cross sector collaboration and consideration of appropriate cultural approaches to adequately address the issues.

**7. How should the rate of sexual abuse of children in OOHC be determined, noting that the National Standards for Out-of-Home Care require reporting of substantiated claims of all types of abuse? Would a form of exit interview assist in capturing information? What should be introduced to ascertain whether information on child sexual abuse in OOHC is resulting in changed OOHC practices?**

The CS Helpline determines whether a report will result in an assessment because it meets the threshold for 'risk of significant harm' (ROSH). As mentioned in the Background section, a range of recent reports and inquiries have highlighted the issues with disclosure and reporting of sexual abuse of children in OOHC and around data collection, that contribute to the complexities involved in determining rates of sexual abuse. These include the NSW Ombudsman's recent report *'Responding to Child Sexual Assault in Aboriginal Communities'*, which also highlighted numerous issues that could impact on rates, such as the need for consistent reporting thresholds, the need for better resourcing of Joint Investigative Response Team (JIRT) and the decrease of face to face interviews with children who have been the subject of a report<sup>42</sup>.

In our opinion, exit interviews may be a valuable tool in determining therapeutic and other needs of care leavers, as well potentially detecting historical incidents of abuse or for triangulating data where matters relate to incidents that occurred in the same financial year as the report. However exit interviews are too late to prevent further instances of trauma and abuse with the young person or other children in contact with alleged offenders.

One indicator of whether information on child sexual abuse in OOHC is resulting in changed practices could be whether reportable conduct numbers are reduced. However there are other possible indicators. Sector discourse is required around these and other matters relating to determining outcomes, such as investigation processes, so that stakeholder views can be taken on board in discussion and worked through.

**8. What is the usefulness and validity of different ways to address allegations of sexual abuse brought against carers? In particular, which approaches enhance participation by the child particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from behavioural changes) from children? Are the current processes fair? What appeal processes should be available for carers?**

AbSec member agencies adhere to NSW statutory requirements for addressing allegations of sexual abuse; they also rely on their own various policies, procedures and resources. We can provide greater detail around our agencies' approaches through further Commission mechanisms such as the public forum, particularly in relation to any innovative or culturally sound programmes or practices for addressing allegations against carers and measures for engaging children's participation.

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<sup>42</sup> NSW Ombudsman (2012), p 68.

SNAICC describes key aspects necessary for achieving genuine participation of Aboriginal children in decision making “in line with their capacity, age and maturity”<sup>43</sup> which may be applied to their participation in processes around disclosure and interviews. These include that:

- Children have access to culturally appropriate participation processes and representatives
- Children are informed of their right to be free from abuse and have easy access to ways of reporting abuse; and
- Children have access to redress where their right to participate has been violated<sup>44</sup>

In NSW, the PACT model utilised ensures services work closely with children and young persons to maximise their participation in their case planning and gain their understanding and perspectives regarding risk assessments. Whilst we acknowledge advancements made in this area, we also concur with some of the concerns raised about processes such as JIRT, for example that if a child does not, for various reasons such as fear, confusion, lack of a culturally safe setting or other factors, disclose abuse in the JIRT interview, the matter is not followed up. All children and young people may need more than one opportunity to participate and have their disclosure heard and followed up. That a lack of resources for conducting safety and risk assessments may result in a case closure is disturbing, especially if closure occurs before the opportunity for even one interview with a child can take place, and where there may exist details that point to a child or other children being at risk of serious harm<sup>45</sup>.

**9. What measures could be used to assess whether the safety of children from sexual abuse in OOHC is enhanced by independent oversight of the handling of allegations of sexual abuse?**

Following on from the previous question, if children and young persons’ participation in the case planning and risk assessment processes is encouraged, their input may be able to contribute to measures around independent oversight of handling of allegations. Their feedback may prove critical to the progress of investigations.

The NSW Ombudsman could also provide reports as a further measure, improving its sharing of information with the OOHC sector on investigation findings and then provide training, fact sheets, template policies or other useful resources to help improve practice.

Consideration could also be given to the employment of supplementary measures to assess independent bodies’ oversight of handling of allegations, and whether the safety of Aboriginal and children and young people is enhanced. Whilst measures such as Reconciliation Action Plans (RAPs), may not be directly related to investigation processes, they are connected to other key aspects of government agencies’ work with Aboriginal people. Tools such as this may provide a

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<sup>43</sup> Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2013). *Whose Voice Counts: Aboriginal and Torres Strait Islander participation in child protection decision-making*, p44. See: [www.snaicc.org.au/projects/dsp-default-c.cfm?loadref=292](http://www.snaicc.org.au/projects/dsp-default-c.cfm?loadref=292)

<sup>44</sup> SNAICC, (2013), p44.

<sup>45</sup> NSW Ombudsman (2012), p76.

useful mechanism from which to assess the success of a body's engagement with Aboriginal communities and agencies<sup>46</sup>.

#### **10. What are the strengths and weaknesses of different oversight mechanisms in keeping children safe from sexual abuse in OOHC?**

Oversight systems comprise only one aspect of prevention of abuse in OOHC; they can provide valuable information from their experience to help agencies and the sector as a whole minimise the risk of abuse occurring, however they respond to agencies' handling of allegations retrospectively. Where oversight authorities are centrally based, there may be time constraints and limited knowledge on local issues, particularly in regional and remote areas and with regards to cultural protocols.

As discussed in previous responses, agencies must remain adequately resourced in order for the whole system of keeping children safe to work effectively. In particular, agencies must remain sufficiently funded and supported to rigorously carry out preventative measures, including applying Child Safe Organisation principles, conducting assessment and review of employees (including carers) and of placements for Aboriginal children, as well providing training for employees and opportunities for growing knowledge and empowerment amongst the children and young people in their care.

#### **11. What implications exist for record keeping and access to records, from delayed reporting of child sexual abuse?**

The most critical implications of delayed reporting of child sexual abuse are the potential deferred responses such as keeping children and young people safe from harm, from accessing services and from families being informed.

Alleged offenders could maintain access to children and young people in the care and protection, community or other sectors, potentially placing them at risk, if reporting is delayed. From the child's perspective, any delays in reporting may be impacted by issues around memory of incidents and related details, particularly where those incidents were traumatic for a child or young person. From an agency perspective, staff or carer situations may change over the duration of any delays; information or evidence could be lost in the process. Scenarios such as these could result in less chance of charges being laid and alleged perpetrators being convicted. Where reports are delayed but agencies have knowledge, but not written records of allegations, operational issues such as human resources matters may arise that cause difficulty for agencies.

Additionally, escalation processes, whether internal or those in the CS Helpline system may be impeded where reporting is delayed, placing the matter at increased risk of being closed off.

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<sup>46</sup> See: [www.reconciliation.org.au/home/reconciliation-action-plans](http://www.reconciliation.org.au/home/reconciliation-action-plans)

## Conclusion

All children and young people are entitled to safety and protection from harm if they are removed from family and placed in the care and protection system.

We welcome the work of the Royal Commission in exposing those failed systems and uniting the sector in addressing contemporary failures. The aim is to ensure they are not repeated and that any reforms to policy and practice go as far as is possible to protecting all children and young people from experiencing harm and abuse through institutions.

We thank you for considering our responses to the Issues Paper questions. Should you wish to discuss any aspect of our submission, please do not hesitate to contact me on 9559 5299 or by email at [excasst@absec.org.au](mailto:excasst@absec.org.au)

Yours sincerely



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