



Secretariat of National Aboriginal and Islander Child Care Inc.

Submission

SNAICC submission to NSW Community Services Commission

**Inquiry into the practice and provision of substitute care
in NSW**

'Forwards, backwards and standing still ...'

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1.0 Foreword

The Secretariat of National Aboriginal and Islander Child Care, SNAICC, appreciates the opportunity to participate in this inquiry into the provision of substitute care in NSW. We support the need for the inquiry to occur and its terms of reference. Further we are hopeful that it will assist in producing a shift in the approach taken by the NSW State government to working with Aboriginal and Torres Strait Islander communities in relation to children and the general welfare of families.

Unfortunately no government in Australia seeks to carry out its responsibilities for the care and protection of Aboriginal and Torres Strait Islander children with a primary focus on supporting the healthy development of families and consequently a reduction in the need for children to be removed.

Put more starkly no government has a policy objective to reduce the current rate of removal of Aboriginal and Torres Strait Islander children from their families for child welfare related reasons.

Whilst an inquiry into the provision of substitute care is of value the more important issue to consider is what we can collectively do to prevent the need for children to be removed in the first place.

SNAICC believes that moving to implement the recommendations of both the Royal Commission into Aboriginal Deaths in Custody and the Report of the Inquiry into the Forced Separation of Aboriginal and Torres Strait Islander Children from their families, *Bringing Them Home*, must be the highest priority of the NSW government in relation to Aboriginal and Torres Strait Islander children.

Recommendation One:

That this inquiry recommend that the NSW State Government include as a key objective within its Aboriginal and Torres Strait Islander Affairs policy the objective to reduce the current rate of removal of Aboriginal and Torres Strait Islander children from their families for child welfare related reasons.

Recommendation Two:

That this inquiry recommend that the NSW State Government support and implement recommendations from the Royal Commission into Aboriginal Deaths in Custody and the *Bringing Them Home* report relating to child welfare and protection.

2.0 Background on the development of AICCA's and SNAICC

SNAICC is the recognised national non government peak body in Australia which represents the interests of Aboriginal and Torres Strait Islander children and families.

SNAICC was formally established in 1981 after the establishment of such a body was proposed by Aboriginal and Torres Strait Islander people at a conference, "The First Aboriginal Child Survival Seminar" held in Melbourne in 1979.¹

The organisation first received Federal Government funding support in 1983 from the Federal Office of Child Care within the Department of Social Security. The development of the first Aboriginal Child Care Agencies, SNAICC's founding members, was however supported by the Fraser Government with assistance including an Aboriginal Study Grant for a study trip to the United States for Mollie Dyer from the Victorian Aboriginal Legal Service.²

Inspired by the success of Native Americans in reducing the rate of child removal , and in particular the Yakima Indian Nation, Mollie returned to Australia to establish the Victorian Aboriginal Child Care Agency, VACCA. VACCA soon became a model and source of inspiration and support for the establishment of similar agencies in other States and Territories.

As the discussion paper notes Redfern Aboriginal Children's Service commenced operation at around the same time having initially been funded by Australian Catholic Relief following the first national conference on adoption in 1975.

By 1979 agencies such as Redfern Aboriginal Children's Service , most at the time still operating as voluntary associations, had decided to develop a national organisation to represent and pursue the rights, needs and aspirations of Aboriginal and Torres Strait Islander families and children.

SNAICC now operates from a membership base of Aboriginal and Torres Strait Islander community based child care agencies, (AICCAs), Multi-functional Aboriginal Children's Services,(MACS), family support services, foster care agencies, link up and family reunification services, family group homes, community groups and voluntary associations, long day care child care services, pre schools, early childhood education services and services for young people at risk.

In addition to these members SNAICC has a network and subscriber list of over 700 community groups, mostly Aboriginal and Torres Strait Islander community based services but also significant numbers of non Indigenous community based services and individuals with an interest in Aboriginal and Torres Strait Islander families and children.

Our membership and subscriber network incorporates all facets of the human services sector from health and education to housing, employment, land councils and of course children's and family services. SNAICC interacts with these organisations encouraging them to pursue their core issues taking account of the particular needs of Aboriginal and Torres Strait Islander children and families.

3.0 The history and cycle of forcible child removal

After a long struggle by Aboriginal and Torres Strait Islander communities in 1994 the Australian Federal Government agreed to conduct an inquiry into the forced separation of Aboriginal and Torres Strait Islander children from their families. The inquiry was conducted by the Human Rights and Equal Opportunity Commission, HREOC, which in 1997 produced its final report titled *Bringing Them Home*.

Since their formation SNAICC's oldest member agencies, Aboriginal and Islander Child Care Agencies, have been intimately involved in the issues this inquiry focussed upon.

Through their work with children in the 1970's and 80's who were being removed from their families AICCA's became increasingly aware that those same children's parents had also been removed as children. In 1991 SNAICC was the first national Indigenous organisation to call for an inquiry into the 'Stolen Generations' and the policy of the forced removal of children.

The *Bringing Them Home* report into the Stolen Generations recognised that the deliberate break up of Aboriginal communities and families through the forced removal of children continues to have a devastating impacting on Aboriginal and Torres Strait Islander communities throughout Australia.

*" This inquiry has not been 'raking over the past' for its own sake. The truth is the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what happened and, having listened and understood, commits itself to reconciliation. "*³

It established that the forced removal of Indigenous children and their deliberate assimilation into another community was a form of genocide. It placed issues relating to the rights of children to be raised by their families with access to their culture back at the centre of the struggle for self determination in Australia.

" Genocide is not only the mass killing of a people. The essence of genocide is acting with the intention to destroy the group, not the extent to which that intention has been achieved. A major intention of forcibly removing Indigenous children was to absorb, merge or assimilate them, so Aborigines as a distinct group would disappear. Authorities sincerely believed assimilation would be in the best interests of the children, but this is irrelevant to a finding that their actions were genocidal."

It concluded that,

" the forcible removal of Indigenous children was an act of genocide contrary to the Convention on Genocide ratified by Australia in 1949, " noting that the convention specifically includes, " forcibly transferring children of a group to another group with the intention of destroying the group".⁴

The response by the Australian Federal government to the recommendations from *Bringing Them Home* has been completely inadequate.

It has rejected or failed to implement the following key recommendations from the report:

- Providing a national apology to the Stolen Generations
- Developing a social justice package in order to address ongoing disadvantage for Indigenous children and families
- Developing education modules for schools on the history and continuing effects of the forced removal of Indigenous children
- Enacting national framework legislation, (based on the principle of self determination and the on the rights of children), to allow the transfer of child protection and juvenile justice functions back to Indigenous communities
- Enacting national standards legislation for Indigenous children under state, territory or shared jurisdiction to set national standards for the care and protection of children and administration of juvenile justice
- Establishment of a national compensation fund and national compensation fund board
- Legislating to implement the Genocide Convention with full domestic affect
- Establishment of prisoner services to deliver mental health and other programs
- Development and implementation of a social justice package focussed on Indigenous families and children
- Legislating to amend the Commonwealth Family Law act 1975 to recognise the right of Indigenous children, in community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language

The response by the NSW State government to the recommendations from *Bringing Them Home* has also been inadequate.

In particular it has failed to support, rejected or failed to implement the key recommendations from the report including:

- Supporting the need for national framework legislation, (based on the principle of self determination and the on the rights of children), to allow the transfer of child protection and juvenile justice functions back to Indigenous communities
- Supporting national standards legislation for Indigenous children under state, territory or shared jurisdiction to set national standards for the care and protection of children and administration of juvenile justice
- Developing education modules for schools on the history and continuing effects of the forced removal of Indigenous children
- Legislating to implement the Genocide Convention
- Legislating to amend the NSW Children (Care and Protection) act 1987 to recognise the right of Indigenous children, in community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language

The fundamental direction of the *Bringing Them Home* report recommendations is that over time responsibility for child welfare and protection be transferred back to Indigenous communities within a framework of national standards for the care and protection of children.

It proposes a system of accreditation for providers of substitute care involving Indigenous children and a common standards framework to apply to all of those providers including AICCAs and State Welfare Departments.

Recommendations 42 to 44 of the Bring Them Home report outline the proposal for national framework legislation and national standards. To date the NSW State government has opposed the implementation of these recommendations which in SNAICC's view makes the governments apology to the Stolen Generations somewhat hollow. It is not sufficient to apologise for the past whilst repeating its mistakes.

The Australian Senate is currently conducting an Inquiry into the Stolen Generations and the adequacy of the Federal Government's response to *Bringing Them Home*; in its submission to the inquiry SNAICC states,

" The grief and anguish of being removed as a child is perhaps only matched by the grief and anguish of then having your own children removed. Yet all too often this is the way in which we as a nation respond to the Stolen Generations; we take their children away too.

The challenge today is to build on the strength of AICCA's and other community based agencies to deliver better support to families and stop children being removed in the first place.

*Specifically the Federal government must implement recommendations from Bringing Them Home relating to the development of a social justice package and national legislation. "*⁵

The challenge SNAICC spoke of in its evidence before the inquiry the challenge confronting the NSW State government. It must engage with and build on the existing network of AICCAs in NSW to provide a statewide community based infrastructure for the care, protection and support of Aboriginal and Torres Strait Islander children and families.

Recommendation Three:

That this inquiry recommend that the NSW State Government support and implement all the recommendations from the *Bringing them Home* report including the following in relation to child welfare and substitute care:

- Supporting national framework legislation, (based on the principle of self determination and the on the rights of children), to allow the transfer of child protection and juvenile justice functions back to Indigenous communities (recommendations 42 - 44)
- Supporting national standards legislation for Indigenous children under state, territory or shared jurisdiction to set national standards for the care and protection of children and administration of juvenile justice (recommendations 42 - 44)
- Legislating to implement the *Genocide Convention*
- Developing education modules for schools on the history and continuing effects of the forced removal of Indigenous children
- Legislating to amend the NSW Children (Care and Protection) act 1987 to recognise the right of Indigenous children, in community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language

4.0 NSW AICCAs - Working for Aboriginal and Torres Strait Islander families & children

Since the 1920's the right of Aboriginal peoples and Torres Strait Islanders to raise their children has been actively pursued by Aboriginal organisations.

The Australian Aboriginal Progressive Association, in 1927 sent the Premier of the State of New South Wales a petition to, "... restore to us that share of our country of which we should never have been deprived". The second demand in the petition was that: "The family life of the Aboriginal people shall be held sacred and free from invasion and that the children shall be left in the control of their parents." ⁶

The development of Aboriginal and Islander Child Care Agencies in NSW and other States in the late 1970's and early 1980's was another chapter in the history of Aboriginal and Torres Strait Islander communities working to keep their children, families and communities together.

The work o the AICCAs in NSW forms part of a longer struggle to provide Indigenous children with knowledge of and pride in their culture and prepare them to take their place in the nation.

It is often the case that governments perceive the work and role of the AICCAs as being limited to the provision of substitute care for Aboriginal and Torres Strait Islander children. Certainly the funding which has been provided to AICCA's, (not only in NSW but elsewhere in Australia), has focussed almost exclusively on engaging them to assist the State meet its responsibility towards Indigenous children in need of care and protection.

Thus AICCAs have been seen by governments as their agent or mechanism through which they can fulfil their obligations for the care and protection of children.

This however is not the only or at times preferred role of the AICCAs. AICCAs were developed primarily to support Aboriginal and Torres Strait Islander families and thereby ensure that they would be able to support and nurture their children. In essence AICCAs were established to prevent family breakdown and child removal - not to provide State governments with a mechanism through which to organise substitute care.

This is not to say that the provision of substitute care by AICCA's is not seen by them as part of their core business - certainly it is; however it should not be seen as their only business.

Governments across Australia have in the past several years increased their focus on early childhood development, early intervention and programs to prevent family breakdown. SNAICC supports this trend in policy and program development but has observed that it is taking place in a manner and at a pace which is beyond the capacity of community based Indigenous services.

The central feature of NSW State Governments approach to substitute care should be to work with the existing AICCAs, recognise the challenges they face and assist in their long term development. Until these organisations can compete with the more well established and financed agencies such as Anglicare, Barnardos and others the disparity in resource allocations will not be resolved.

It is worth comparing the history of how community based providers of substitute care have developed in the Indigenous and non Indigenous communities.

Agencies within the non Indigenous sector are typically church based and operate with a much broader set of programs, operate on a statewide or national basis and within an over arching framework of community service provision. The provision of substitute care services is usually but one small aspect of a multi million dollar organisations community service provision which may include employment services, aged care, substitute care, emergency relief and supported accommodation.

These large scale organisations have typically grown out of the churches they are associated with and have enjoyed the support and backing of the resources these churches have had such as land and infrastructure.

In contrast the AICCAs have typically developed by and from families caught up in the child welfare system fighting to keep their children and families together. Families experiencing inter generational poverty and unemployment, family dislocation and institutionalised racism and discrimination.⁷

Across Australia all of the AICCAs began as community based voluntary associations with a core focus on advocacy of the rights of children and families. The support base and resources they have had access to, and continue to have access to, in order to support their development are miniscule in comparison to the agencies in the non Indigenous sector.

Organisations such as Centacare and Anglicare are labour markets in their own right with enormous pools of human resources, corporate knowledge and management expertise to support new service developments and expansion.

AICCA's are small community based organisations servicing communities with unemployment levels which are typically over 50% in which most adults have not had the opportunity to complete year 10 and in which most families experience poverty.

It is hardly surprising that AICCA's in NSW and elsewhere have remain relatively poorly resourced compared to non Indigenous organisations operating in the area of substitute care.

This imbalance has been evident for more than a decade and it continues to grow - it will not be overcome unless the NSW State government actively supports the development of AICCA's.

To date insufficient resources have been dedicated to creating community based Indigenous organisations with a specific focus on children and families. Where they do exist and as the discussion paper notes they tend to be grossly under resourced and focussed on the crisis intervention aspects of service provision. The result is that these organisations often miss out on new programs and initiatives and the disparity in funding between Indigenous and non Indigenous children's services is simply increased.

NSW needs a community based infrastructure of Aboriginal and Torres Strait Islander children's and family support services. Like all infrastructure it will require planning, resources and a long term commitment.

Recommendation Four:

That the NSW State Government formally recognise, support and resource the broad role of Aboriginal and/or Torres Strait Islander child care agencies beyond the provision of substitute care services.

Recommendation Five:

That the NSW State Government make a long term commitment to developing a community based infrastructure of Aboriginal and Torres Strait Islander children's and family support services across the State.

5.0 Rates of child removal through the child protection and welfare systems

In 1999 the SNAICC Chairperson, Muriel Cadd, told an Aboriginal and Torres Strait Islander Commission, ATSIC, Indigenous leaders summit that, "*gaining recognition of the right to raise children remains the most important challenge we must address for Aboriginal and Torres Strait Islander families.*"⁸

According to the Australian Institute of Health and Welfare, AIHW, 1997/8 report on children in care and protection, Indigenous children are still seven times more likely to be removed from their families than other children. The key causal factors AIHW note in this and their 1996/7 report include:

- higher rates of poverty
- intergenerational effects of previous separations from family and culture
- cultural differences in child rearing practices, and
- a lack of access to support services.⁹

In the case of NSW Aboriginal and Torres Strait Islander children are, (as the discussion paper notes), over represented on care and protection orders, in out of home care and in substantiations of child abuse and neglect.

The rates of NSW Aboriginal and Torres Strait Islander children on care and protection orders was 22.3 per 1000 at June 30 1998 compared to 3.1 per 1000 for all children. Excluding the ACT where the small Indigenous population makes comparisons difficult NSW has the highest rate of Aboriginal and Torres Strait Islander children on care and protection orders behind Victoria, 28.2 per 1000.¹⁰

In relation to out of home care the Australian Institute of Health and Welfare notes that Victoria (30.7), ACT (24.4) and NSW (21.5) had relatively high rates of Aboriginal and Torres Strait Islander children per 1000 in out of home care. The rate for all children across Australia was 3.1 per 1000.¹¹

Whilst comparisons are difficult in SNAICC's view the situation of Aboriginal and Torres Strait Islander children in NSW is significantly worse than other States and Territories with the exception of Victoria.

5.1 Impact of the age structure on the substitute care system

In examining the substitute care system in NSW the age structure of the Indigenous population is of great significance. Jonas notes that the age structure is, " typical of an underdeveloped country with more children and young people and fewer old people." ¹²

15% of Aboriginal and Torres Strait Islander people are under the age of five whilst only 7% of the whole population is under the age of five.

Other statistics include:

28% of Aboriginal and Torres Strait Islander people are under the age of 10

40% of Aboriginal and Torres Strait Islander people are under the age of 15

68% of Aboriginal and Torres Strait Islander people are under the age of 30 ¹³

As Mick Dodson, the first HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner, commented incarceration rates need to be considered with an awareness of the significant differences in the age structure of the Indigenous population in Australia.,

" This, (the age structure), has enormous consequences for the future of our people. Combined with the over representation of our young people in detention it means that by the year 2011 there will be a 44% increase in the number of our kids in detention." ¹⁴

This is a stark and frightening outcome: a 44% increase in the number of young Indigenous people imprisoned even if incarceration rates are held at current levels.

The age structure of the Indigenous population has similar implications for the substitute care system given the high rates of child removal. Unless there is a dramatic decline in the rate of child removal per 1,000 then there will be a dramatic increase in the total number of Aboriginal and Torres Strait Islander children in need of substitute care in NSW.

If the number of Indigenous children in care in NSW stays at the rate reported in the discussion paper ie 29.2 per 1,000, the age structure of the population means that the total number of Indigenous children in care in NSW can be expected to increase from the figure reported on page 115 of 1,591 to over 2,300 by the end of the decade. ¹⁵

With 70% of the Indigenous population under the age of 30 not only will the number of children requiring placement escalate but at the same time placement options will decline. Quite simply there are fewer and fewer established Aboriginal and Torres Strait Islander families able to provide substitute care and more and more children requiring substitute care.

To talk in terms of an impending crisis is not to exaggerate the urgency with which these issues need to be dealt with.

Discussing incarceration in 1996 Mick Dodson commented as follows:

" This is the crisis. It is on us already. It will simply become more acute in the future, as our kids, who are now babies, move with the relentlessness of mathematics into what has become their birthright as the Indigenous children of this country. "

At the time Dodson spoke of this crisis young Indigenous people aged 10 - 17 in NSW were removed from home through the child welfare system at four times the rate at which they were removed by the juvenile justice system , (7.45 per 1,000).¹⁶

Recommendation Six:

That through a process of negotiation and discussion with AICCAs and other relevant Indigenous organisations the NSW State Government develop a planning framework for the provision of substitute care for Aboriginal and Torres Strait Islander children taking account of the age structure of the Indigenous population.

6.0 The Indigenous Child Placement Principle

Within all of Australia's States and Territories *the Indigenous Child Placement Principle* sets out the priority options for a child's placement when they have been removed from home due to child protection issues.¹⁷

Despite the acceptance of the principle by all State and Territory governments approximately 25% of Aboriginal and Torres Strait Islander children across Australia are still placed with non Aboriginal foster parents.¹⁸

SNAICC considers this situation to constitute a serious risk to the rights of Indigenous children in Australia. In particular their right to grow up in a community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language.

In the case of NSW 16% of Aboriginal and Torres Strait Islander children are still being placed with non Indigenous care givers.¹⁹

Within all of Australia's States and Territories key child protection functions are contracted to Aboriginal and Islander Child Care Agencies, AICCA's.

Typically protocols operate such that staff from AICCA's are informed of any child protection notifications and if children are taken in to care placements are facilitated and managed by the AICCA's.

In States such as Queensland, Victoria and South Australia the AICCA's have protocols in place with the Children's Court to ensure any decisions relating to the issuing of care and protection orders are informed by an assessment from the AICCA. In these and other states the bulk of out of home care placements are organised and supervised by the local AICCA's.

NSW currently operates with a heavy dependence on Departmental workers and a relatively marginalised and residual role for the AICCAs. As the discussion paper points out only 266 or 14% of the 1891 Indigenous children in care were placed by AICCAs.²⁰

This sets NSW apart from all other States and Territories and reflects the failure of successive NSW governments to come to terms with the rights, needs and aspirations of Aboriginal and Torres Strait Islander communities.

Sadly, by failing to pursue the development of community based responses to issues of child abuse and neglect, it suggests that NSW government is yet to learn the lessons of the Stolen Generations.

It is not enough for State governments to concern themselves with the fate of a child once they are removed from their family. Whilst the adoption of the Aboriginal Child Placement Principle represented a sea change in arrangements for substitute care it is a measure focussed entirely at the crisis intervention end of child welfare and family support work.

Governments should be focussed on preventing family breakdown and thereby minimising the need for children to be placed in substitute care. In SNAICC's view the capacity of the State of NSW to work on prevention rather than intervention is severely restricted due to its failure to sufficiently develop Indigenous community based children's and family support agencies.

Significantly successive governments in NSW have failed to engage and work with existing AICCAs in NSW and Aboriginal and Torres Strait Islander communities in order to develop a network of AICCAs to cover the State. Instead child welfare matters have predominantly been left in the hands of the State welfare department, under whatever name, despite the history of forcible child removal and mistrust between communities and the department.

Whilst the combination of the existing NSW AICCAs and specialist Department of Community Services staff provides a means of implementing the child placement principle it has not enabled the community based programs, policies and support services intended to keep families together to develop.

SNAICC considers that the lack of support shown by successive NSW governments to the further development of existing and new AICCAs is a matter of great shame and the major impediment to reducing the flow of children into the substitute care system.

Recommendation Seven:

That the NSW State Government support the expansion of the number of and resources available to AICCAs such that they can take full responsibility for the implementation of the Indigenous Child Placement principle with case management responsibility for all Aboriginal and Torres Strait Islander children in substitute care.

7.0 Development of community based Indigenous children's and family support agencies

The *Stolen Generations* is anything but a past phenomenon and that the cycle of child removal and family breakdown has become intergenerational.

Whilst we applaud the NSW government for its apology to the *Stolen Generations* for past practices of removal it has failed to redress the current policies of removal.

Until such time as the NSW government commits to developing well resourced and supported AICCAs across NSW it will be unable to implement recommendations from the *Bringing Them Home* report.

New efforts in NSW to develop a broader range and number of AICCAs would need to ensure that the existing services are supported, including through long term funding, to develop a suite of programs which extend from primary prevention and early intervention to crisis intervention.

We recommend that a timetable be developed for the expansion of AICCAs across NSW.

Such an expansion should be underpinned by a policy objective to reduce the number and rate of children per 1000 in out of home care.

Further it needs to be supported by a fair funding allocation to ensure the current under resourcing of AICCAs in NSW is resolved.

It has been reported to SNAICC that case workers with NSW Aboriginal child care agencies have case loads of over 50 children to case manage whilst their counterparts working for the Department of Community Services, (managing indigenous children's placements), have maximum case loads of 15. Currently in NSW there is only one family group home to provide short term support and accommodation to Aboriginal children whilst placements are being organised.²¹

In Queensland it has been noted that Aboriginal and Torres Strait Islander children comprise only 5% of the States' children aged between 0-17 but make up 25% of children in care. Despite this only 10% of total funding for alternative care in Queensland is allocated to indigenous agencies for the support of these children and families.²²

To resource the expansion of AICCAs in NSW the State government should commit itself to a fair funding model, similar to that adopted in Queensland.

In addition it should work with existing agencies to develop a new service and funding model which recognises that services need to work across the spectrum of activities from prevention to crisis. Further this service and funding model needs to recognise that excessively high case loads diminish the prospect of quality and case management and place AICCA staff under unsustainable pressure.

Recommendation Eight:

That the NSW State Government develop in partnership with AICCAs and other relevant Indigenous organisations an optimal service model and funding formulae for community based Indigenous child care agencies and family support services which incorporates and recognises:

- that services need to be provided with long term funding to work across the spectrum of activities from prevention of family breakdown to crisis intervention
- the need to place limits on case loads for staff supervising substitute care placements

- a fair funding formulae which apportions the total NSW budget allocation for substitute care according to the number of Indigenous children in care ie as Indigenous children make up approximately 25% of all children in care - approximately 25% of all resources for substitute care should be directed towards supporting these children
- that new AICCA's need to be developed to provide statewide coverage for AICCA's throughout NSW

8.0 Kinship Care

SNAICC is concerned that the current operation of the substitute care system in NSW has developed a dependence on the use of informal kinship care, as defined by the discussion paper on pages 97 and 130.

57.3 % of Aboriginal and Torres Strait Islander children in care are in kinship care²³. The discussion paper does not indicate what proportion of these are formal placements - which are supervised and attract some payment - as opposed to informal placements which are unsupervised and ineligible to receive foster parent payment, but may receive the non parental care allowance.

The number of Aboriginal and Torres Strait Islander children in kinship care should be seen as an indicator of the general well being of Aboriginal and Torres Strait Islander families. The high incidence of children in kinship care suggests that many families are struggling to cope and feel unable to provide their children with the support and nurturing they need.

It is hardly surprising given the history of the Stolen Generations that Indigenous families will seek out informal and community based systems of support as opposed to the formal support of a State Government 'Welfare Department'.

Rather than turning a blind eye to this system of informal care the response from government should be to assist by adding value. Governments should as a minimum ensure that parents and families have access to support through community based support services which can assist and advice all those involved in the informal kinship care system - parents/guardians, carers and children.

AICCA's in NSW have expressed concerns to SNAICC in relation to the unsupervised and unsupported nature of kinship care within which families, (both the legal guardians of a child and the family actually caring for a child), remain uncertain of the legal status of children in kinship care.

The differences between informal and formal care and the supports attached to different forms of care are not transparent and are not well understood by families. It is often difficult for families to understand why similar situations of substitute care attract different forms and levels of financial and other support.

The lack of financial and other forms of support for informal kinship care contributes to the quality of care being diminished notwithstanding the commitment of Aboriginal and Torres Strait Islander families to assist families in need.

There is a growing sense within SNAICC that State Governments are choosing to let the informal kinship care system expand in preference to seeing the formal, and more costly, forms of care expanded. Even if this is not the intention of governments it is occurring and the consequences for children, families and the broader community remain unclear.

In the short term governments may save resources by allowing the informal care system to expand. This may however simply hide a higher incidence of family breakdown than is otherwise recognised. As we know family breakdown comes at a great cost to children, families, communities and to governments. We need to be open and honest about current levels of family breakdown and deal with the causes - not leave family breakdown hidden away in the informal kinship care system and ignore the causes.

SNAICC considers that the informal kinship care system can provide opportunities to intervene early in situations of family stress in order to keep children and families relatively intact. However like all work involving families and children experiencing severe difficulties it needs to be planned, supported, monitored, reviewed and resourced.

Currently the support AICCAs can provide to kinship care placements is severely restricted by their limited resources and the lack of established AICCAs throughout most of NSW.

Aboriginal and Torres Strait Islander families and children need to be able to community based services which can assist them in times of crisis, provide legal advice on issues relating to children, assist with respite and short term substitute care, provide material support and crisis accommodation, supervise kinship care placements, support family mediation and reunification and where required oversee longer term foster care placements where this is in a child's best interests.

Currently none of the existing AICCAs in NSW is resourced to provide such a continuum of services and supports to children and families. As a result the informal kinship care system remains highly unregulated and unsupported.

Recommendation Nine:

That the placement of children in informal kinship care arrangements be formally facilitated, supported and monitored through an expanded role for, funding of and number of AICCAs.

Recommendation Ten:

That the NSW CSC convene discussions with the NSW State Government, AICCAs and other relevant Indigenous organisations to determine the appropriate mechanisms and standards for facilitating, supporting and monitoring informal kinship care arrangements for Aboriginal and Torres Strait Islander children.

9.0 Summary Recommendations

Recommendation One:

That this inquiry recommend that the NSW State Government include as a key objective within its Aboriginal and Torres Strait Islander Affairs policy the objective to reduce the current rate of removal of Aboriginal and Torres Strait Islander children from their families for child welfare related reasons.

Recommendation Two:

That this inquiry recommend that the NSW State Government support and implement recommendations from the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home report relating to child welfare and protection.

Recommendation Three:

That this inquiry recommend that the NSW State Government support and implement all the recommendations from the *Bringing them Home* report including the following in relation to child welfare and substitute care:

- Supporting national framework legislation, (based on the principle of self determination and the on the rights of children), to allow the transfer of child protection and juvenile justice functions back to Indigenous communities (recommendations 42 - 44)
- Supporting national standards legislation for Indigenous children under state, territory or shared jurisdiction to set national standards for the care and protection of children and administration of juvenile justice (recommendations 42 - 44)
- Legislating to implement the Genocide Convention
- Developing education modules for schools on the history and continuing effects of the forced removal of Indigenous children
- Legislating to amend the NSW Children (Care and Protection) act 1987 to recognise the right of Indigenous children, in community with other members of their group, to enjoy their own culture, profess and practice their own religion and use their own language

Recommendation Four:

That the NSW State Government formally recognise, support and resource the broad role of Aboriginal and/or Torres Strait Islander child care agencies beyond the provision of substitute care services.

Recommendation Five:

That the NSW State Government make a long term commitment to developing a community based infrastructure of Aboriginal and Torres Strait Islander children's and family support services across the State.

Recommendation Six:

That through a process of negotiation and discussion with AICCAs and other relevant Indigenous organisations the NSW State Government develop a planning framework for the provision of substitute care for Aboriginal and Torres Strait Islander children taking account of the age structure of the Indigenous population.

Recommendation Seven:

That the NSW State Government support the expansion of the number of and resources available to AICCAs such that they can take full responsibility for the implementation of the Indigenous Child Placement principle with case management responsibility for all Aboriginal and Torres Strait Islander children in substitute care.

Recommendation Eight:

That the NSW State Government develop in partnership with AICCAs and other relevant Indigenous organisations an optimal service model and funding formulae for community based Indigenous child care agencies and family support services which incorporates and recognises:

- that services need to be provided with long term funding to work across the spectrum of activities from prevention of family breakdown to crisis intervention
- the need to place limits on case loads for staff supervising substitute care placements
- a fair funding formulae which apportions the total NSW budget allocation for substitute care according to the number of Indigenous children in care ie as Indigenous children make up approximately 25% of all children in care - approximately 25% of all resources for substitute care should be directed towards supporting these children

- that new AICCA's need to be developed to provide statewide coverage for AICCA's throughout NSW

Recommendation Nine

That the placement of children in informal kinship care arrangements be formally facilitated, supported and monitored through an expanded role for, funding of and number of AICCA's.

Recommendation Ten

That the NSW CSC convene discussions with the NSW State Government, AICCA's and other relevant Indigenous organisations to determine the appropriate mechanisms and standards for facilitating, supporting and monitoring informal kinship care arrangements for Aboriginal and Torres Strait Islander children.

10.0 Conclusion

The discussion paper provides a comprehensive summary of the current operation of NSW substitute care system as it pertains to Aboriginal and Torres Strait Islander children. It also makes appropriate references to the recent history of substitute care and the history of forcible removal of children and the Stolen Generations.

What this material demonstrates is that the failure of the substitute care system to meet the needs Aboriginal and Torres Strait Islander communities has been well known within the NSW Government for more than a decade. Yet the problems persist and Aboriginal and Torres Strait Islander children suffer as a result. No doubt the issues involved in the ongoing over representation of Indigenous children in care are complex, challenging and perhaps even intimidating - but this is no excuse to walk away and leave issues unresolved.

All too often when confronted with the negative outcomes of colonisation and the impact of government policies on Aboriginal and Torres Strait Islander communities Australian governments have simply turned their backs.

Aboriginal and Torres Strait Islander communities cannot and will not turn their backs on Aboriginal and Torres Strait Islander children. It is time the NSW State governments stopped turning its back on Aboriginal and Torres Strait Islander children. Instead it should turn to Aboriginal and Torres Strait Islander community based agencies to ensure children receive the care, protection, support and nurturing they need.

Endnotes:

¹ Briskman, L. (2000). *Aboriginal Activism and the Stolen Generations: The Story of SNAICC*. Thesis submitted for the degree of Doctor of Philosophy, National Centre for Australian Studies - Monash University. Melbourne. page 2.

² *ibid* page 128

³ Human Rights and Equal Opportunity Commission, HREOC. *Guide to the findings and recommendations of the National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. HREOC 1997. page 4.

⁴ *Ibid*. page 27.

⁵ Secretariat of National Aboriginal and Islander Child Care, SNAICC. *Submission to the Australian Senate Legal and Constitutional References Committee – Inquiry into the Stolen Generations*. SNAICC. Melbourne 2000. Page 13.

⁶ Goodall, H. (1982) *A History of Aboriginal Communities of New South Wales 1909-1939*. PhD Thesis. University of Sydney. Unpublished. p. 241 [as cited in *The future for Aboriginal children in foster care: Indigenous cultural care or back door assimilation ?* Paper for 1999 International Foster Care Organisation Conference, Melbourne, July 1999. D'Souza, Nigel & Cadd, Muriel]

⁷ Briskman, L. (2000). *Aboriginal Activism and the Stolen Generations: The Story of SNAICC. Chapter 5. We all had the same stories: struggle and success*. Thesis submitted for the degree of Doctor of Philosophy, National Centre for Australian Studies - Monash University. Melbourne.

⁸ Secretariat of National Aboriginal and Islander Child Care, SNAICC. *'Self Determination for Aboriginal and Torres Strait Islander children'*. Briefing paper for ATSIC 1999 Indigenous leaders. Beyond 2000 Summit. Unpublished. (available from ATSIC office of public affairs and SNAICC)

⁹ Australian Institute of Health and Welfare; *Child Protection Report 1996/97*. Australian Government Publishing Service, Canberra 1997; and Australian Institute of Health and Welfare; *Child Protection Report 1997/98*. Australian Government Publishing Service, Canberra 1999.

¹⁰ *ibid* page 27

¹¹ *ibid* page 38

¹² *ibid* page 32

¹³ Australian Bureau of Statistics and Australian Institute of Health and Welfare. *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander People – 1997*. ABS Catalogue 4704.0 . AGPS Canberra. 1997 page 9.

¹⁴ Dodson, Mick. Human Rights and Equal Opportunity Commission, HREOC. *Aboriginal and Torres Strait Islander Social Justice Commissioner – Fourth Annual Report*. HREOC. Sydney 1996. page 66.

¹⁵ NSW Community Services Commission. *Inquiry into the practice and provision of substitute care in NSW. Forwards, backwards, standing still* Sydney. NSW. July 2000 page 115. [Note the estimate of 2,300 is based on a 44% increase in the Indigenous population aged 0 - 17 between 2000 and 2010].

¹⁶ Dodson, Mick. Human Rights and Equal Opportunity Commission, HREOC. *Aboriginal and Torres Strait Islander Social Justice Commissioner – Fourth Annual Report*. HREOC. Sydney 1996. See Table on page 18. Original source: Australian Institute of Criminology, *Persons in Juvenile Corrective Institutions*, No. 74 June 1996 Figure 4.

¹⁷ Australian Institute of Health and Welfare; *Child Protection Report 1996/97*. Australian Government Publishing Service, Canberra 1997. See appendix on State and Territory child protection legislation and child placement principle.

¹⁸ Ah Kee, Margaret and Tilbury, Clare. *The Aboriginal and Torres Strait Islander Child Placement Principle is about self-determination*. 'Children Australia' journal, Vol 24, No 3. 1999. Page 6.

¹⁹ AIHW 1997/8 *op cit* page 39

²⁰ NSW Community Services Commission. *Inquiry into the practice and provision of substitute care in NSW. Forwards, backwards, standing still* Sydney. NSW. July 2000 page 110.

²¹ Secretariat of National Aboriginal and Islander Child Care, SNAICC. *1998 Annual General Meeting Minutes – State Reports*. SNAICC. Melbourne. 1999

²² Ah Kee, Margaret and Tilbury, Clare. *The Aboriginal and Torres Strait Islander Child Placement Principle is about self-determination*. 'Children Australia' journal, Vol 24, No 3. 1999.. Page 6.

²³ NSW Community Services Commission. Inquiry into the practice and provision of substitute care in NSW. Forwards, backwards, standing still Sydney. NSW. July 2000 page 69.