



Response to the Productivity Commission Review of the National Agreement on Closing the Gap - Draft Report

Submission from AbSec - NSW Child, Family and Community Peak Aboriginal Corporation

October 2023

1. Introduction

AbSec welcomes the opportunity to respond to the Productivity Commission's findings and requests for information made in the Draft Report on their Review of the National Agreement on Closing the Gap.

AbSec is the New South Wales peak organisation for Aboriginal children, families and communities impacted by the child protection and care system. We work with Aboriginal community-controlled organisations (ACCOs) across NSW to lead service design, policy, research, and advocacy work required for system transformation. We acknowledge - in common with myriad reports, reviews, and inquiry findings - that Aboriginal families have been raising strong, healthy, and resilient children for millennia. Our first principle is to protect the right of Aboriginal children and families to live in thriving communities, connected to culture and Country. We work to ensure that these human rights are upheld by government and other institutions.

Central to AbSec's work is supporting the development and growth of a high quality, responsive Aboriginal community-controlled child and family sector. This is essential if we are to see meaningful, place-based responses which empower ACCOs to design and deliver the supports and services needed by their community.

Our Submission first offers some general comments on the Productivity Commission Draft Report. It then provides some more focused remarks on the Information Requests relating to the Priority Reforms, which are intended to provide the foundations for the National Agreement on Closing the Gap. Our reflections and recommendations are grounded in significant involvement in the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) and the range of Council, Working Group and Committee structures that have developed Implementation Plans, and which should now be instrumental and accountable in driving progress and fulfilling commitments.

At an organisational level, AbSec is focused on Socio-Economic Outcome 12 (SEO 12): *Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system*. We reflect on the limited progress made towards reducing the rate of over-representation of Aboriginal and Torres Strait



Islander children in out-of-home care (OOHC) by 45 per cent by 2031 (the Target specified in the National Agreement). Our analysis is informed by our experiences as the Aboriginal child protection peak body as we engaged with the NSW Department of Communities and Justice (DCJ) and government on reforms needed to realise SEO12 and to fully implement the 126 recommendations made in the *Family Is Culture Review Report (2019)*.

The *Family is Culture (FIC)* Review, led by Professor Megan Davis, will be a frequent reference in this Submission. The Review was carried out over 3 years and included analysis of the casefiles of over 1,100 Aboriginal children in the OOHC system in 2016-17. It was the most comprehensive independent review of the NSW child protection system and its impact on Aboriginal children and families in recent history. The recommendations made in its final report could enable transformation of the care and protection system of the kind required to reduce the gross over-representation of Aboriginal children and young people in OOHC. It is nearly four years since FIC was released. AbSec continues to ask government what in the hell they are waiting for.

2. General comments

In general terms, the AbSec experience of processes and partnerships under the National Agreement align with the Productivity Commission's damning summary of the progress (or lack thereof) made on the Priority Reforms:

- **Priority Reform 1 - Formal partnerships and shared decision making**
The commitment to shared decision-making is rarely achieved in practice.
- **Priority Reform 2 - Building the community-controlled sector**
Government policy does not reflect the value of the community-controlled sector.
- **Priority Reform 3 – Transforming government organisations**
The transformation of government organisations has barely begun.
- **Priority Reform 4 – Shared access to data at a regional level**
Governments are not enabling Aboriginal and Torres Strait Islander-led data.

In responding to the Information Requests for each of these four areas, we will diagnose key impediments and briefly outline some ways forward. However, it is critical to focus on the lack of any meaningful consideration about applying Priority Reforms in ways that support the attainment of socio-economic outcomes (SEOs). The Priority Reforms were designed to be the platforms on which the National Agreement - and ways of working to realise the 17 SEOs that measure progress on Closing the Gap - were built. In practice, there is little evidence at a whole-of-government level that Priority Reforms are shifting the decision making and operating cultures in government. These remain, very much, 'top down'. There is a failure to recognise that each Priority Reform requires a redistribution of power. Until



Implementation Plans flesh out how changes to roles and responsibilities will be given effect, we will continue to see promising initiatives drift ‘off track’.

AbSec argues that when negotiating Implementation and Action Plans, it would be valuable for NSW CAPO, the Government, and its Officer Level Working Groups to specify discrete and measurable changes in each Priority Reform area and stipulate their logical links to socio-economic Targets.

As a case study, let’s consider the limited attention given to Priority Reform 2 in plans to reduce the over-representation of Aboriginal children and young people in OOHC. In building the community-controlled sector, it is unclear how government measures or is accountable for a greater ‘proportion of Aboriginal and Torres Strait Islander people reporting they are able to have a say in their community on issues that are important to them’.

Yet if we think about how to build and fund ACCOs to design and deliver place-based early intervention, holistic family support, family preservation and family restoration services then we create a line of sight to reducing the number of Aboriginal children in OOHC. Simple metrics could capture whether the share of ACCO funding at community level reflects the share of Aboriginal children, young people and families participating in government-funded programs.

AbSec has included a copy of our 2023 Family Is Culture (FIC) Report Card which we produced with the Aboriginal Legal Services (ALS) NSW.ACT as an Appendix to this submission. Our monitoring and reporting framework was developed as a response to limited action by the NSW Government on implementing the FIC recommendations following the release of the Review Report in November 2019. For AbSec and ALS it allows us to keep government accountable and documents how and why they have failed to make progress on both implementation processes and implementation priorities.

3. Priority Reforms

3.1 Information Request 1: Effectiveness of Policy Partnerships

NSW CAPO has not formalised any Policy Partnerships with the NSW Government. For AbSec we offer some observations on recent efforts to work in partnership with the new Minister for Families and Communities and her Department (DCJ) to reform the child protection and care system for Aboriginal children and families.

In August 2023, Minister Washington hosted a 2 day forum to *develop a strong roadmap for reform to reduce the number of Aboriginal children in care, focus on the wellbeing of Aboriginal families and their children, and put Aboriginal families in control of their future.*



The difficulty for Aboriginal peaks, ACCOs, community leaders and researchers invited to be part of the forum was the failure to recognise that *Family Is Culture* is our roadmap and we are seeking the opportunity to work in shared and effective decision making partnerships with government to get (after nearly 4 years of waiting) its recommendations fully implemented.

Despite the stated intention of the forum to put 'Aboriginal families in control', AbSec and ALS were only informed two weeks prior to the forum and were presented with a fully drafted DCJ agenda for comment. It was an agenda that made the wholly incorrect assumption that a 'roadmap for reform' would only require tweaks to the current system. We negotiated some changes to the agenda but continue to wonder why - given the commitment to shared decision making implicit in Priority Reform 1 – DCJ seems incapable of asking Aboriginal peak and community organisations about our priorities, ideas, and ways to open up robust and useful policy dialogues?

At the conclusion of the Forum the Minister made a commitment to establish a Ministerial Aboriginal Partnership Group (MAP Group) to oversee the comprehensive reform and governance of the child protection system in NSW. For AbSec and ALS the essence of our response and feedback was the need to determine how the MAP Group would be accountable to Closing the Gap structures and to NSW CAPO. That will be a first task of the Group when appointed.

It was positive to see the Minister responding to Forum Survey feedback on the need for a genuine partnership with the MAP Group to be grounded on principles of self-determination. SNAICC and AbSec have been given responsibility for designing an EOI application and for selecting members. Then the important work of co-designing reform and governance structures that are responsive and accountable to community begins.

The effectiveness of any Policy Partnership to drive child protection reform will require major shifts in the accountability of DCJ structures that have had responsibility to drive reform including the FIC Executive Working Group (for implementation of *Family Is Culture*) and the OLWG - Families (reporting to CAPO and responsible for actions to realise SEO12). In the first instance, they need to show up. The NSW Government has not released a *Family Is Culture* Progress Report since August 2021 and FIC Executive Working Group meetings are frequently cancelled by DCJ without explanation. In a period when DCJ has been working toward proclamation of legislative amendments passed nearly a year ago, it surpasses understanding that DCJ leadership would let 10 months pass between meetings that could have provided input on how best to work and communicate with ACCOs and the sector to enable meaningful change.

The Target 12 Officer Level Working Group (OLWG - Families) needs to be reconfigured and then revived. Beginning in June 2021, the OLWG - Families met monthly to undertake joint work (including with AbSec, ACCO and community representatives) to drive reductions in the number of Aboriginal children in care. It quickly became clear that the membership (across government departments) became too broad and the formal bureaucratic environment compromised meaningful discussions. The meetings largely focused on planning and processes rather than outcomes and progress.



Compounding these barriers to meaningful partnership was a lack of specific data sharing processes and reporting systems from both government and DCJ as well as a lack of agreed-upon accountability mechanisms for lack of or delayed implementation of actions. While disruptions to OLWG processes during the state election campaign and in the transition to the new government were expected and understandable, the OLWG - Families met only once in 2023.

3.2 Information Request 2: Shifting service delivery to ACCOs

As discussed in Section 2, it is critical that government sets clear targets and timelines to increase the share of funding that ACCOs receive until it achieves parity with the share of Aboriginal children, young people and families using Government funded services. Targets need to be defined at both State and community level and reporting on Closing the Gap, in budget papers and Indigenous Expenditure Review reports must highlight funding shifts as key measures of accountability.

NSW Treasury published their *Comprehensive Indigenous Expenditure Report 2021–22* in September 2022. AbSec is positive about the work NSW Treasury has done to develop a First Nations Outcome Budgeting approach which it states will:

...support the government to make investment decisions that are outcome focused, aligned with communities' aspirations and well informed by regular performance updates through outcome and business planning processes.

It had previously been stated that ACCOs would be able to develop budget proposals that would be considered for funding by Treasury as part of the annual budget cycle. AbSec sees the value of an outcome budgeting approach as a means by which ACCOs can have greater freedom to use funding in a way that responds to community needs and serves to break down funding silos. It is also compatible with the Aboriginal Led Commissioning framework we are developing under a Closing the Gap grant. A shift of this nature requires partnership work so that outcomes chosen are meaningful for Aboriginal children, families, and communities and to build capacity for ACCOs to manage outcome budgeting and to develop budget proposals.

A damning independent evaluation of the NSW Permanency Support Program (PSP) - that is at the centre of the NSW child protection and care system - has recommended a complete redesign of the system so it can ensure safety, wellbeing and effective care and protection for Aboriginal children and families. AbSec and its members welcome the importance the evaluation attaches to shifting service system resourcing which is heavily weighted toward acute, intensive, and expensive (OOHC) services to more effective early intervention work. It also stresses the need to shift from reporting that focuses on administrative compliance to reporting focused on children's wellbeing and development. The government is yet to formally respond to the recommendations made in the PSP Evaluation but we will be seeking to collaborate and co-design responses that do not simply 'shift services to ACCOs' but 'shift



the type of services and reporting structures that ACCOs deem will best meet the needs of their community'. Then we want to monitor shifts in how funds are distributed across the continuum of care.

A Closing the Gap project commenced in 2022 involving a partnership with AbSec and the Association of Child Welfare Agencies (ACWA – the peak for NGO OOHC providers) committed to transferring at least 300 Aboriginal children in the care of non-Aboriginal providers (from a total of 1,561 children on 31 December 2022) to ACCOs per year for 3 years. However, since its inception last year, only 19 case management transfers have been undertaken due to the lack of proper scoping and resourcing to underpin success. As the Productivity Commission noted in your Draft Report, when services are 'lifted and shifted from the non-Indigenous service sector into the ACCO sector, the approach has not always enabled ACCOs to design services that align with community needs and culture'. For our project, the current models for funding of established and emerging ACCOs have created both delays in establishment and barriers to service delivery. Our member ACCOs report persistent challenges and delays due to long and complicated commissioning process and a lack of resources to enable the timely completion of these processes, and to develop requisite policies and procedures.

3.3 Information Request 3: Transformation of government organisations

AbSec finds it difficult to cite any examples of the transformation of government organisations in our areas of work. One point we want to stress is that 'transformation' of the type required by the National Agreement on Closing the Gap cannot occur by creating public service silos of Aboriginal staff. We completely support the need to increase the number of Aboriginal people in the NSW public service and in leadership positions within the public service. However, Closing the Gap requires cultural change across Departmental and Agency structures and at a whole-of-government level.

In November 2021, the NSW Government created the Transforming Aboriginal Outcomes (TAO) division within DCJ. In addition to driving DCJ to meet Closing the Gap targets for child protection, a key aim of TAO was to improve the way DCJ engages with Aboriginal communities. Although the creation of TAO, was initially viewed as a positive step, TAO still demonstrates a government-led approach to consultation with community. Often, we will ask about consultation undertaken and realise that consulting Aboriginal staff in the Department is being used as a proxy for community consultation. Government speaking about its agenda to its employees cannot be a substitute for meaningful engagement with Aboriginal families and communities.

When we consider transformation of government organisations we must simultaneously consider where independent oversight of government is required. The Family Is Culture report made a number of recommendations to strengthen accountability and oversight of the child protection system. This included establishing a new Child Protection Commission (Recommendation 9) with at least one Aboriginal Commissioner and an Aboriginal Advisory Body appointed in consultation with the Aboriginal community.



The functions of the Commission (Recommendations 9a to 9k) that FIC recommended include handling of complaints; management of the reviewable deaths scheme; reviewing the circumstances of an individual child or group of children in OOHC with the power to apply to the Children’s Court to rescind or vary an order; and monitoring the implementation of the Aboriginal Case Management Policy. The new Labor Government has yet to make any commitment to establishing a Commission, but AbSec is working closely with SNAICC and looking at the Aboriginal Child Commissioner models operating in all other states and territories to design and advocate for a model that meets needs in NSW.

3.4 Information Request 4: Indigenous data sovereignty and Priority Reform 4

Although Priority Reform 4 is foundational to the National Agreement on Closing the Gap, the NSW Government and DCJ continue to demonstrate a lack of commitment to the transformative change needed to achieve Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG).

AbSec witnesses a lack of transparency and public accountability from the government including gatekeeping and/or delayed reporting on core data about the rate, nature, and journey of Aboriginal children through the child protection and OOHC system. For AbSec and our members, long lags in data being made publicly available limits how capacity to engage in both systemic and individual advocacy at a time when the care system is under enormous strain and growing numbers of our most vulnerable children are being placed in inappropriate emergency care settings including hotels, motels and caravan parks.

Priority Reform 4 requires government to understand and embrace the values implicit in Aboriginal and Torres Strait Islander ways of governing and sharing data. Decentralising data and providing ACCOs and Aboriginal communities with the resources that enable them to collect, manage and own data that is meaningful to them, and can best inform their practice, is a large and vital project that needs to get underway.

But let’s finish on a good note.

To close, AbSec would like to share a positive case study in Indigenous Data Governance that we developed in partnership with the Family and Community Services Insights Analysis and Research (FACSIAR) Division within DCJ. FACSIAR funds and leads the *Pathways of Care Longitudinal Study* (POCLS) which, since 2010, has collected detailed information on the life-course development of children and young people in out-of-home care (OOHC) and the factors that influence their development. The POCLS provides a strong evidence base to inform policy, practice, and professional development, to improve decision making and support for children and young people who cannot live safely at home. It is one of the few datasets of its kind in the world and the only one in Australia.



Aboriginal children and young people comprise 43 per cent of the POCLS sample. For this reason, AbSec was delighted to work with DCJ over the past 15 months to establish an Aboriginal Governance Panel (AGP). AbSec constructed nomination and selection procedures and recruited an Interim AGP that included Aboriginal practitioners experienced in working with Aboriginal children and young people in care, an Aboriginal carer, and Aboriginal researchers and data specialists. FACSIAR provided tailored orientation on the POCLS dataset, how data was gathered and interview techniques. However, it was in the June to August period of 2023 when the positive influence of the AGP became most apparent.

POCLS and its scientific research community were developing the first wave of their Extended Care study. This would collect data from Aboriginal young people as they left OOHC and transitioned to adulthood. AGP members came met with the researchers. Together, they worked through sets of spreadsheets containing detailed and often highly personal (and potentially triggering) potential questions. Members of the AGP argued against an approach that would see all meeting participants working through possible questions to determine a final (and lengthy) draft questionnaire that could be piloted. Although POCLS had received ethics approval, AGP members returned to first principles and asked whether young people participating in the study would have the choice of a face-to-face rather than online interview and whether they could have an Aboriginal person conduct their interview. They provided thoughtful advice on the need for interviewers to build a connection and foundation of trust with the young person and the time that needed to be built in to enable this. AGP members understood why including difficult and intimate questions (including in areas such as personal relationships, contact and connection with birth family, mental illness including suicidal ideation and/or suicide attempts, pregnancies, experiences of abuse) was important if the data collected was to genuinely capture the lived experience of Aboriginal young people transitioning from care. They recommended a greater number of open questions, provided input on the phrasing and ordering of questions, and piloted the questionnaire with young people.

The response of FACSIAR and the Scientific Advisory Group was deeply respectful of the insights AGP members offered. Additional Aboriginal interviewers recruited from ACCOs were added to the Extended Care Survey team and interviews with young people will soon commence. The POCLS Aboriginal Governance Panel was formalised, and is now part of a non-hierarchical shared governance structure. The AGP will be responsible for providing oversight and decision-making across all stages of DCJ research with respect to Aboriginal participation and data. This includes but is not limited to:

- Key policy and research questions
- Research design, including proposals for additional commissioned research or external research
- Research methodology and approach
- Data analysis
- Interpretation of results
- Draft reports
- Knowledge translation, and
- Data dissemination and management.



The Panel's role will also include the review of external research applications to access the POCLS data, and review of external researcher's analysis and reporting of that data.