



## **Labor Members' Dissenting Report**

- 1.1 Labor members of the Committee cannot support the Government members' report, which ultimately poses a return to Australia's reprehensible legacy of permanently removing First Nations children from their families.
- 1.2 In March 2018, then-Assistant Minister for Children and Families, David Gillespie, sparked community outrage with an unprompted public call to open up adoptions of Indigenous children in out-of-home care.<sup>1</sup> The proposal was quickly condemned by experts and First Nations representatives alike, with the Chief Executive of the peak body for First Nations child protection in New South Wales, AbSec, calling it 'incredibly offensive'.<sup>2</sup>
- 1.3 Labor members of the Committee have long feared that the Inquiry into Local Adoption – which was referred to the Parliament by the very same Minister only a few weeks after his inflammatory media comments – is little more than a means to legitimise and push this preconceived ideological agenda. This concern was confirmed by the first term of reference, of which there were only two, which pre-empts the outcome of the Inquiry by calling for consideration of 'stability and permanency for children in out-of-home care with local adoption as a viable option'.
- 1.4 Regretfully – but as predicted – the Government members' report went on to recommend we open up adoption to children in out-of-home care – a policy that would have a detrimental and disproportionate impact on First

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1 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 8 November.

2 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 8 November.

Nations communities, given their children are ten times more likely to be in out-of-home-care.<sup>3</sup>

- 1.5 Labor members of the Committee simply cannot countenance this recommendation, which would cast aside the evidence-based Aboriginal and Torres Strait Islander Child Placement Principle, sever children's links to their family and culture, and risk creating another Stolen Generation.
- 1.6 The Government members' report not only wilfully ignores the weight of evidence from submitters, it also flies in the face of human rights conventions and the recommendations of countless inquiries that connection to culture, kin, and country is critical to the safety and wellbeing of First Nations children.
- 1.7 The proposed plan in the Government members' report rests almost solely on diverting children from out-of-home care into 'open adoption', which ostensibly aim to deliver an 'open exchange of information and contact between the child and their birth parents and families'.
- 1.8 However, as there are no routine post-adoption monitoring or enforcement practices in place, it is not surprising that many witnesses told the Committee that the lived experience of so-called open adoption is very different. As Family Inclusion Strategies in the Hunter (FISH) explains: 'simply making a law that says any care arrangements will be open will not achieve openness'.<sup>4</sup>
- 1.9 The Committee heard from a number of witnesses that there is scant agreement on what even constitutes open adoption – let alone how it actually works in practice, or what the long-term outcomes may be.
- 1.10 Labor members of the Committee are very disappointed that the Government members' report would wholeheartedly commit the Government to making open adoption a central feature of the national child protection system despite the lack of evidence regarding their viability, appropriateness and long-term impacts on children.
- 1.11 We would also caution that the interventionist policies as advocated in the Government members' report stand in direct conflict with the undeniable reality that the only way to truly achieve long-term sustainable outcomes is by working in genuine partnership with First Nations communities and organisations – not by imposing permanent removal of their children.
- 1.12 Labor members of the Committee are also very discouraged that, despite placing the disgraceful number of children in out-of-home care at the

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3 Australian Institute of Health and Welfare (AIHW), 'Child protection Australia 2016-17', 2017, p. 48, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2016-17/data>>, viewed 19 November 2018.

4 Family Inclusion Strategies in the Hunter (FISH), *Submission 85*, p. [7].

centre of this inquiry, the Government members' report is utterly silent on the root causes of this shameful record and makes no recommendations to remedy the lack of early intervention and prevention supports that contribute to the massive number of children in out-of-home care – particularly First Nations children.

- 1.13 While Labor members of the Committee are horrified by the shocking number of children in out-of-home-care, we are convinced by the evidence that what is needed is a greater investment in support services before families break down, rather than removal of children from their families when the situation has become irretrievable.
- 1.14 We are deeply concerned the Government members' proposal would only serve to increase profound distrust in, and engagement with, the child protection system. Critically, it would discourage families in distress from reaching out for help early in the fear that it may lead to the permanent removal of their children.

## Unrealistic expectations

- 1.15 In New South Wales, which has been leading the push toward open adoption, there were almost 18,000 children in out-of-home care in 2017.<sup>5</sup> But in 2016-17, only 177 were adopted.<sup>6</sup> In this light, Labor Committee members contend that the idea that opening up adoptions will have a material impact on the number of children in out-of-home care is fanciful at best. Yet this has been the consistent argument put by Government members.
- 1.16 The Government members' report also ignores the reality that children in out-of-home care rarely fit the criteria of what most people who want to adopt a child are looking for. The brutal reality is that prospective adopters generally prefer to adopt babies.<sup>7</sup> To expect that a large number of individuals or couples will be willing to adopt older children – who are very likely to have experienced intergenerational trauma resulting in complex and challenging needs – is utterly unrealistic.

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5 Australian Institute of Family Studies (AIFS), 'Children in Care CFCA Resource Sheet – September 2018', <<https://aifs.gov.au/cfca/publications/children-care>> viewed 19 November 2018.

6 AIHW, 'Adoptions Australia 2016-17', 2017, p. 15, <<https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2016-17/data>> viewed 19 November 2018.

7 Dr Nicola Ross, *Submission 49*, p. [2]; Feminist Legal Clinic Inc., *Submission 73*, p. [4].

## The right to kin and culture

Cultural identity is not just an add-on to the best interests of the child. We would all agree that the safety of the child is paramount. No child should live in fear. No child should starve. No child should live in situations of neglect. No child should be abused. But if a child's identity is denied or denigrated, they are not being looked after. Denying cultural identity is detrimental to their attachment needs, their emotional development, their education and their health.<sup>8</sup>

- 1.17 Not only is the majority proposal naïve, it is likely to be extremely damaging to First Nations children, as it would sever critical links with culture.
- 1.18 This was the advice of many submitters to the inquiry including AbSec, Grandmothers Against Removals, Aboriginal Legal Service, FISH and the Secretariat of National Aboriginal and Islander Child Care (SNAICC). All of these groups raised explicit objection to the adoption of First Nations children in care, and stressed the importance of children growing up within their culture, their families and their communities.
- 1.19 Labor Committee members are persuaded that opening up adoption to First Nations children in care would not only cause profound damage by separating children from their culture, it would critically compromise fundamental human rights.
- 1.20 Specifically, the *Declaration of the Rights of Indigenous People*, which Australia formally endorsed in 2009, affirms 'the right of self-determination',<sup>9</sup> or the right to 'freely pursue their economic, social and cultural development'.<sup>10</sup> It also recognises '*in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child'.<sup>11</sup>
- 1.21 In addition, the United Nations Convention on the Rights of the Child explicitly asserts that:

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8 Bamblett, Muriel and Lewis, Peter, 'A Vision for Koorie Children and Families: Embedding Rights, Embedding Culture', *Just Policy: A Journal of Australian Social Policy*, No. 41, September 2006, pp. 4-26, <<https://search.informit.com.au/fullText;dn=294344454178951;res=IELHSS>> viewed 19 November 2018.

9 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 3.

10 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 3.

11 *United Nations Declaration on the Rights of Indigenous Peoples*, Preamble.

... a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.<sup>12</sup>

1.22 The Implementation Handbook on the Convention of the Rights of the Child goes further, noting that:

One of the difficulties facing indigenous populations, even today, is that the State, representing the dominant majority, sometimes believes that full integration is in their best interests, regardless of the effect this may have on their culture. Forced integration is a breach of rights and the Committee has recommended that States with significant indigenous populations adopt enforceable legislation to protect their rights.<sup>13</sup>

1.23 While the Government members' report has lofty promises of no forced adoptions, it's difficult to see how gaining consent could be possible in practice, given the vehement opposition among Aboriginal organisations and communities to the proposal of removing children from their culture.

1.24 Similarly, the proposal in the Government members' report to legislate short time limits of six or twelve months in which to determine whether children can return to their birth parents (Recommendation 2) makes the prospect of securing consent even more unlikely.

1.25 AbSec argues that 'the coercive nature of the statutory child protection system suggests that any such permanent orders are more often than not forcibly imposed on families, rather than being entered into with the free, prior and informed consent of children and their families'.<sup>14</sup>

1.26 On the issue of consent, Labor members of the Committee would also draw particular attention to comments made by FISH, which supports birth parents who have had children removed from their care. In its submission, FISH alleges that New South Wales – which Government committee members have modelled their recommendations on – has been 'relentless in its efforts to reduce the need to obtain parental consent when children are adopted from care'.<sup>15</sup>

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12 *United Nations Declaration on the Rights of Indigenous Peoples*, Article 30.

13 UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, <[https://www.unicef.org/publications/files/Implementation\\_Handbook\\_for\\_the\\_Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child.pdf](https://www.unicef.org/publications/files/Implementation_Handbook_for_the_Convention_on_the_Rights_of_the_Child.pdf)>, p. 461.

14 AbSec (Aboriginal Child, Family and Community Care State Secretariat), *Submission 46*, p. 6.

15 FISH, *Submission 85*, p. [6].

- 1.27 The submission goes on to say that ‘many, if not most of the adoptions from care in New South Wales, occur without parental consent’.<sup>16</sup> This is especially disturbing given what we know about the impact of past policies of child removal.

## Learning the lessons of history

- 1.28 In 2008, the Parliament apologised for the deep trauma inflicted on a generation of First Nations’ people. Labor members of the Committee are gravely worried that if we proceed down the path proposed by the Government members’ report, there is a serious risk that a future parliament will be called upon to apologise for the trauma inflicted by the policy of permanent separations being proposed in the Government members’ report in 2018.
- 1.29 It is impossible to overstate the deep and abiding pain inflicted by forced separation practices of successive governments, which has been extensively documented in a number of reports, including the Australian Human Rights Commission’s *Bringing them Home* report (1997); the Senate Community Affairs References Committee Reports on Forgotten Australians (2004) and Commonwealth Contribution to Former Forced Adoption Policies and Practices (2012); and the *Family Matters Report* (2017).
- 1.30 Consistently, these reports caution against permanent removal and urge governments to keep children connected to their family, community and culture wherever possible.
- 1.31 On this specific issue, the national peak body for Aboriginal and Torres Strait Islander children SNAICC warned that:
- Regardless of the intentions that underpin permanency measures, the permanent removal of Aboriginal and Torres Strait Islander children from their families presents harrowing echoes of the Stolen Generations across communities.<sup>17</sup>
- 1.32 Aboriginal Legal Service (NSW/ACT) Limited (ALS) argue that not only will this proposal not solve the out-of-home care crisis, but that ‘the ongoing intergenerational transmission of trauma as a result of such practices materially contributes to the overrepresentation of Aboriginal

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16 FISH, *Submission 85*, p. [6].

17 Secretariat of National Aboriginal and Islander Child Care (SNAICC – National Voice for our Children), Policy Position Statement, *Submission 72*, p. 3.

children in the child protection and out of home care systems'<sup>18</sup> in the first place.

- 1.33 This is supported by the Australian Institute of Health and Welfare, which identified 'the legacy of past policies of forced removal' and the 'intergenerational effects of previous separations from family and culture' as contributing factors in the high rates of First Nations' children in out of home care.<sup>19</sup>
- 1.34 On the obvious similarities between his proposal and the destructive policies that led to the Stolen Generation, former Assistant Minister David Gillespie said:
- We need to shake this reluctance about the fear of being accused of creating a Stolen Generation or another forgotten generation.<sup>20</sup>
- 1.35 It is deeply concerning that, despite overtly recognising that he risks creating another Stolen Generation, the Minister explicitly proposes ignoring criticism, and proceeding with this thoroughly irresponsible and damaging policy regardless.
- 1.36 Labor members of the Committee are convinced by the prescription of ALS that breaking damaging intergenerational cycles of trauma must necessarily involve 'healing, strengthening and reconnecting families and communities'<sup>21</sup> rather than further separating them.

## Child safety and wellbeing

- 1.37 While the Government members' report purports to prioritise 'safety' for children, many submitters to the inquiry pointed out that severing cultural links would do just the opposite.
- 1.38 The peak legal services provider for First Nations people in New South Wales and the Australian Capital Territory, ALS, wrote that 'strong connection to family, culture and community are central to the safety, welfare and well-being of Aboriginal young people'.<sup>22</sup>

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18 Aboriginal Legal Service (NSW/ACT) Limited (ALS), *Submission 100*, p. 4.

19 AIHW, 'Child protection Australia 2015-16', p. 27, <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2015-16/contents/table-of-contents>> viewed 19 November 2018.

20 'Adoptions for more Indigenous children should be an option, Minister says', ABC News, 13 March 2018, <<https://www.abc.net.au/news/2018-03-13/adoption-for-more-indigenous-foster-kids-david-gillespie-says/9543448>> viewed 9 November.

21 ALS, *Submission 100*, p. 4.

22 ALS, *Submission 100*, p. 4.

- 1.39 This is supported by the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse, which warned in its Final Report of ‘insufficient recognition in the child protection system of the essential importance of Aboriginal and Torres Strait Islander culture in keeping children safe, despite legislative and policy requirements to do so’.<sup>23</sup>
- 1.40 Indeed, some submissions argued that it is precisely policies like enforced permanent removals as proposed in the Government members’ report that can inflict serious and lasting harm to children. As ALS point out, ‘harm to children often has inter-generational causes linked to the breakdown of culture and community connectedness and identity’.<sup>24</sup>
- 1.41 AbSec also argue that a move to legislate the permanent legal removal of children puts children at greater safety risk because ‘adoption orders are characterised by the absence of key safeguards to ensure the safety and wellbeing of Aboriginal children’.<sup>25</sup>
- 1.42 Labor members of the Committee also share the concerns of a number of inquiry participants that transferring children out of the out-of-home care system into permanent adoption is a fundamental abrogation of government responsibility that would do nothing to improve child safety or wellbeing.
- 1.43 As Dr Nicola Ross explains:
- Local adoption is attractive to governments who often perceive it as a panacea to many economic and social problems. It effectively privatises the issue and solves the pressing need to find homes for children removed from their parents, but has hidden costs that children, parents and adoptive parents have to bear.<sup>26</sup>
- 1.44 On a similar theme, AbSec argues that a push to have children in care adopted:
- ... could be seen as a deliberate action of the state to defer responsibility for the growing number of children in care, removing key monitoring and oversight mechanisms and failing to transparently report on numbers, let alone more in-depth

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23 Royal Commission into the Institutional Responses to Child Sexual Abuse, ‘Volume 12, Contemporary out-of-home care’, p. 22, <[https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_12\\_contemporary\\_out-of-home\\_care.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf)> viewed 19 November 2018.

24 ALS, *Submission 100*, p. 4.

25 AbSec, *Submission 46*, p. 1.

26 Dr Nicola Ross, *Submission 49*, p. 2.



reviews of their circumstances following an adoption order being made.<sup>27</sup>

1.45 The Feminist Legal Clinic also noted grave concerns about child safety:

A return to increased local adoption will hide rather than cure the scourge of child abuse... It will also leave another generation of children exposed to risk in unmonitored placements, permanently cut off from their mothers and families.<sup>28</sup>

1.46 Labor members of the Committee are of the belief that, not only are local adoptions not in the best interests of First Nations children, but they may present a genuine safety risk for these children.

## Stability and permanency

1.47 The Government members' assertion that 'legal permanency is key in providing stability and permanency for children' has been rejected by many submitters to the inquiry.

1.48 On this issue, AbSec cautions against conflating stability with legal permanency, saying:

We seek to disentangle the often conflated legal frameworks for permanency from the (in our view) more important developmental frameworks, which emphasise a broader set of relational and environmental factors for consideration, as well as the existing evidence of the appropriate safeguards to ensure children in out-of-home care are safe and adequately supported, regardless of the nature of their legal order.<sup>29</sup>

1.49 Similarly, SNAICC said that mainstream notions of stability in no way reflect the experience of an Aboriginal or Torres Strait Islander child.<sup>30</sup> The SNAICC submission outlines that stability is 'grounded in the permanence of their identity in connection with family, kin, culture and country'<sup>31</sup> and argues that the means to achieve stability isn't in permanently removing children from their culture.

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27 AbSec, *Submission 46*, p. 13.

28 Feminist Legal Clinic, *Submission 73*, p. 4.

29 AbSec, *Submission 46*, p. 13.

30 SNAICC, *Submission 72*, p. 3.

31 SNAICC, Policy Position Statement, *Submission 72*, p. [11].

- 1.50 Similarly, Dr Nicola Ross submits that, while all forms of care are subject to disruption, many children do well in kinship care or long-term stable foster care.<sup>32</sup>
- 1.51 FISH calls on recent evidence from the United Kingdom to argue ‘that legal permanence created by adoption per se is not a significant factor in achieving actual permanence and stability for the many children and young people’.<sup>33</sup>
- 1.52 AbSec also rejected the suggestion that the lack of legal permanency is a key contributing factor to instability for children in out-of-home-care:  
... the current instability experienced by many children and young people in OOHC [out-of-home] care is not due to a lack of legal permanence or a lack of commitment from foster or kinship carers in the absence of a legal order, but rather a failure of the child protection system to provide the necessary supports that empower families and communities to meet the changing needs of children and young people in OOHC care over the course of their development.<sup>34</sup>
- 1.53 The Grandmothers Against Removals submission succinctly captures the inherent conflict between coerced child removals and Government members’ stated goal of stability for children:  
Stability and permanency planning for First Nations children means supporting families to stay together, not tearing them apart.<sup>35</sup>
- 1.54 Labor members of the Committee are persuaded that legal permanency is not a necessary and sufficient condition for stability. We also accept the significant evidence that connection to family and culture has a much more critical impact on stability for First Nations children than legal permanency.

## Open adoption

- 1.55 The Government majority members have portrayed open adoption as the panacea that would allow adopted children to maintain their birth links and relationships. However, there is a dearth of local evidence to support

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32 Dr Nicola Ross, *Submission 49*, p. 2.

33 FISH, *Submission 85*, p. [5].

34 AbSec, *Submission 46*, p. 13.

35 Grandmothers Against Removals, *Submission 48*, p. 3.

this proposition. Indeed, many submitters point to an inherent disconnect between the promises of open adoption and the actual lived experience.

1.56 Grandmothers Against Removals argued that the very concept of open adoption is 'meaningless' and asserted that even agreement not to change children's names or remove birth families from their lives is hollow as this can happen anyway after the adoption has gone through.

1.57 This sentiment was reiterated in contributions from other submitters:

Castle (2014) found that even voluntarily relinquishing birth mothers found it very difficult indeed to maintain regular contact and an openness in relationship with their children despite the existence of a post adoption contact plan.<sup>36</sup>

Unfortunately, we continue to see the devastating effects of separating siblings from each other and the cutting of ties with birth families. The reality is that adoption is a strong disincentive to maintenance of birth family relationships.<sup>37</sup>

There is limited evidence to date that newer forms of 'open adoption' will be successful in supporting ongoing relationships, although quality research into these new models would be of value.<sup>38</sup>

There has been no research that we are aware of to explore the experience and practice of the openness of arrangements when a child is adopted from out of home care in Australia. However research from the US suggests that open adoptions from out of home care are considerably less open than adoptions that occur privately despite the existence of legislation and rules that requires adoption arrangements to be more open.<sup>39</sup>

1.58 FISH emphasised how little is actually known about how open adoptions function in practice. Its submission urged against making rash decisions in the absence of a solid evidence base:

At this stage in Australia there is no consensus, or even much discussion, about what we actually mean when we are talking about *open* adoption. There is an urgent need to better understand what we mean by openness and how this is actually experienced by children and their families. Until this happens we should be extremely wary about growing the numbers of adoption from care.

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36 FISH, *Submission 85*, p. [7].

37 The Law Society of New South Wales, *Submission 44*, p. 1.

38 FISH, *Submission 85*, p. [7].

39 FISH, *Submission 85*, p. [7].

Little is known about the actual experience of open adoption and almost nothing is known about open adoption from out of home care. Our traditional understanding and practice of adoption in Australia has been founded on consent and the voluntary relinquishment of infants by their parents (usually mothers) to the care of alternate families. This is very different to adoption following the involuntary removal of children from their families and the subsequent adoption of that child, sometimes without consent from family.<sup>40</sup>

- 1.59 Labor members of the Committee recognise that the New South Wales Government has provided seed funding to establish the Institute of Open Adoption Studies.<sup>41</sup> However, we note that the explicit role of the Institute is described as ‘to bridge the knowledge gaps around the benefits of open adoption’ as well as ‘increasing awareness about the benefits of adoption from out-of-home care’.<sup>42</sup> Labor members fear that this presumption of inherently positive outcomes from open adoption risks colouring research assumptions and could diminish the value of findings.
- 1.60 We urge the Government to ensure that objective local research is undertaken into the viability, appropriateness and effectiveness of open adoption *before* making it a central feature of the national child protection system.

## **The need for early intervention and support**

- 1.61 There can be no argument that the rate of First Nations children in care has reached a crisis point. These children are ten times more likely to be in out-of-home care than other children, and the number of First Nation children in care has doubled since the 2008 Apology.<sup>43</sup>
- 1.62 Despite this, the Government majority members’ report failed to make any recommendations for investment in preventive measures, nor did they put

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40 FISH, *Submission 85*, p. [6].

41 Ms Simone Czech, Executive Director, Child and Family, Commissioning, Department of Family and Community Services, New South Wales, *Committee Hansard*, Canberra, 22 June 2018, p. 3.

42 Institute of Open Adoption Studies, ‘FAQs’, <<https://www.facs.nsw.gov.au/about/reforms/children-families/IOAS/chapters/faqs>> viewed 9 November 2018.

43 Productivity Commission, ‘Report on Government Services 2018’, Chapter 16 – Child Protection Services, <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2018/community-services/child-protection/rogs-2018-partf-chapter16.pdf>> viewed 19 November 2018.

forward any proposals to address the root causes of this distressing state of affairs.

1.63 Labor members are under no illusion that there are any quick fixes. But we are persuaded by evidence nothing will change until we focus on helping families before they reach crisis point and children end up in care – rather than coerced removals after they have fallen apart.

1.64 As the Law Society of New South Wales submitted:

... it is far preferable to invest resources into supporting Indigenous families and kin to stay together than to look to adoptions of Indigenous children by non-indigenous families as a 'solution'.<sup>44</sup>

1.65 Labor members of the Committee support SNAICC's call for 'appropriate investment in early intervention, intensive family support and healing services'.<sup>45</sup>

1.66 This simply isn't happening. Indeed, the shocking reality is that governments 'continue to invest significantly more in separating children from their families than supporting families at risk',<sup>46</sup> with only 17 per cent of state and national child protection funding in 2015-16 going toward support services for children and their families. The remaining 83 per cent of the funding was spent on investigation, court orders and out-of-home care services.<sup>47</sup>

1.67 Aboriginal Medical Services Alliance of the Northern Territory (AMSANT) clearly articulated the way forward in its submission:

We must work to ensure that the drivers of child protection intervention are addressed, rather than continuing with a poorly designed and resourced system that reacts when it's too late, after families have already reached breaking point and children have been harmed.<sup>48</sup>

1.68 Similarly, UNICEF Australia urged that all state, territory and federal governments:

... must take every measure possible to ensure that families and children across Australia are provided with adequate services and

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44 The Law Society of New South Wales, *Submission 44*, p. 4.

45 SNAICC, *Submission 72*, p. 3.

46 AbSec, *Submission 46*, p. 5.

47 Family Matters, 'Report 2017: Measuring trends to turn the tide on over-representation of Aboriginal and Torres Strait Islander Children in Out of Home Care in Australia', p. 10, <<http://www.familymatters.org.au/wp-content/uploads/2017/11/Family-Matters-Report-2017.pdf>> viewed 9 November 2018.

48 Aboriginal Medical Services Alliance of the Northern Territory (AMSANT), *Submission 92*, p. 1.

supports to help them with caregiving responsibilities so as to preserve family unity, and to keep children connected to their identity and culture.<sup>49</sup>

- 1.69 Labor members of the Committee also recognise arguments made by multiple submitters of the grave need for greater investment in supporting kinship carers. Indeed, a failure to support kinship carers was recognised as a common failure of child protection systems by the Royal Commission into Institutional Responses to Child Sexual Abuse.<sup>50</sup>

## **Aboriginal and Torres Strait Islander Child Placement Principle**

- 1.70 When the ground-breaking *Bringing Them Home* report into the Stolen Generations was released in 1997, Australia was shocked to learn that Aboriginal and Torres Strait Islander children represented one in every five children living in out-of-home care. Today – 21 years later – they are one in every three.
- 1.71 The causes of over representation are complex, including the legacy of past policies of forced removal, intergenerational effects of separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child-rearing practices.
- 1.72 The consequences of child removal are profound: devastating families; deepening intergenerational trauma; too often severing children’s cultural bonds and triggering poor life outcomes; and eroding culture and community.
- 1.73 The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) was developed in recognition of these devastating effects of government policies that removed children from the care of their families and severed links to kin, culture and country.
- 1.74 The Principle recognises the importance of connections to family, community, culture and country in child and family welfare legislation, policy, and practice, and asserts that self-determining communities are central to supporting and maintaining those connections.

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49 UNICEF Australia, *Submission 108*, p. 1.

50 Royal Commission into the Institutional Responses to Child Sexual Abuse, ‘Volume 12, Contemporary out-of-home care’, p. 15, <[https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_12\\_contemporary\\_out-of-home\\_care.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_12_contemporary_out-of-home_care.pdf)> viewed 19 November 2018.

- 1.75 The five core elements – prevention, partnership, placement, participation, and connection – work across the continuum of the child protection system to protect and realise the rights of Aboriginal and Torres Strait Islander children, families, and communities.
- 1.76 These five core elements are often overlooked, or not implemented, because they are not included in legislation.
- 1.77 Numerous inquiries and reports have highlighted both the high regard for and importance of the Principle, and for the First Nations individuals and organisations who support its implementation. These reports have also highlighted significant limitations in the implementation and monitoring of the Principle – noting that the Principle has been fully applied in as few as 13 per cent of child protection cases involving Aboriginal children.<sup>51</sup>
- 1.78 Labor members of the Committee support a strong Aboriginal and Torres Strait Islander Child Placement Principle, with more rigorous compliance requirements, accompanied by strong supports for families in crisis. This represents the best chance to improve well-being for Aboriginal and Torres Strait Islander children and families who come into contact with the child protection system.
- 1.79 Yet, the Government members' report remains silent on all of these key issues.
- 1.80 SNAICC Chairperson, Sharron Williams, made a salient point when she penned a media article asking:
- What more needs to happen for us to learn as a society that assimilation is not the answer to child protection concerns?<sup>52</sup>

## Community led solutions

- 1.81 Time after time, the failure to work with First Nations communities has been a critical reason for the failure of Indigenous policy.
- 1.82 By now, we should know that the only way to make sustainable, effective policy is in genuine partnership with Aboriginal communities. But regretfully, the Government members' report demonstrates that they still haven't learnt this vital lesson.

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51 Fiona Arney, Marie Iannos, Alwin Chong, Steward McDougall, Samantha Parkinson, 'Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle', p. 1, <<https://aifs.gov.au/cfca/sites/default/files/cfca34.pdf>> viewed 13 November 2018.

52 'SNAICC Chairperson responds to Sammut's opinion piece in *The Australian*', 22 January 2015, <<https://www.snaicc.org.au/snaicc-chairperson-responds-sammuts-opinion-piece-australian>> viewed 12 November 2018.

- 1.83 Not only do the recommendations in the report stand in opposition to all advice of First Nations representative organisations to the Committee, but it proposes the sort of regressive interventionist policy that has consistently failed to make a difference.
- 1.84 AbSec points out:
- Statutory child protection systems disproportionately intervene in the lives of Aboriginal children and young people, and yet the voices of Aboriginal communities are routinely marginalised as governments determine what is in the best interest of our children and young people.<sup>53</sup>
- 1.85 Despite this, the Government members' report makes no mention of any role for the First Nations community to develop the policy or support its implementation.
- 1.86 At the very least, Labor members of the Committee would urge the Government to halt progressing any decisions and genuinely consult with First Nations communities on the best way forward and the guiding principles that should underpin any national adoption framework.

## Guiding principles

- 1.87 Labor Committee members recommend that any policy changes comply with the Principles for Stability and Permanency Planning,<sup>54</sup> which were developed in consultation with Aboriginal and Torres Strait Islander leaders from across the country:
1. Aboriginal and Torres Strait Islander children have rights of identity that can only be enjoyed in connection with their kin, communities and cultures.
  2. Permanent care for Aboriginal and Torres Strait Islander children should only be considered where the family has been provided with culturally appropriate and ongoing intensive and targeted family support services.
  3. Traditional adoption that severs the connection for children to their families and communities of origin is never an appropriate care option for Aboriginal and Torres Strait Islander children, except as it relates to traditional Torres Strait Islander adoption practices.

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53 AbSec, *Submission 46*, p. 4.

54 SNAICC, *Submission 72*, p. 4.



4. Decisions to place an Aboriginal and/or Torres Strait Islander child in permanent care, including adoption decisions, should only be made with the appropriate and timely review of the child's individual circumstances, and with informed support for the decision from an appropriate Aboriginal and Torres Strait Islander community-controlled agency.
5. Aboriginal and Torres Strait Islander communities and organisations must be resourced and supported to establish and manage high-quality care and protection-related services, and to make decisions regarding the care and protection of children and young people in their own communities.
6. Permanency and adoption should never be used as a cost saving measure in lieu of providing Aboriginal and Torres Strait Islander families and communities with adequate and appropriate support. The burden of care held by Aboriginal and Torres Strait Islander families and communities should be adequately resourced, whether placements are temporary or permanent.
7. Aboriginal and Torres Strait Islander communities and their organisations must lead the development of legislation and policy for permanent care of their children based on an understanding of their unique kinship systems and culturally-informed theories of attachment and stability.
8. Where Aboriginal and Torres Strait Islander children are permanently removed from their parents, genuine cultural support plans must be developed and maintained (including with regular review) on an ongoing basis.

**Ms Sharon Claydon MP**  
Deputy Chair

**Ms Emma Husar MP**  
Member

**Dr Mike Freeland MP**  
Member

