

Appendix 4.1

Summary of recent inquiry reports relevant to Aboriginal children's safety and wellbeing

It should be noted that much of the content in this Appendix is taken directly from the stated reports.

Gordon Inquiry 2002 (Western Australia)

The Gordon Inquiry was established by the Western Australian government in response to issues raised by a Coroner's Inquest into the death of a 15-year-old girl in the Swan Valley Nyoongar Community in Perth. The Inquiry examined the responses by government agencies to complaints of family violence and child abuse in Aboriginal communities. The Gordon Inquiry made 197 findings and recommendations in its report, entitled *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*.

Key issues of importance identified by the Gordon Inquiry included:

- Family violence and child abuse occur in Aboriginal communities at a rate that is much higher than that of non Aboriginal communities. Aboriginal women account for 3 percent of the population but 50 percent of domestic violence incidents reported to police. Aboriginal children were the subject of substantiated child abuse at more than 7 times the rate of non Aboriginal children. These figures stand within the context of under reporting
- Better responses are needed to address family violence and child abuse
- The child protection services become overwhelmed when the fundamental needs and priorities of families and communities are not met
- From the perspective of Aboriginal communities planning and coordination need to be improved. The focus needs to shift agencies to planning that is sector wide and responds to each community's need for integrated service provision
- need for a community development approach, focus on sustainable families and communities and building on the strengths of Aboriginal culture
- importance of case management and planning need to identify a lead agency to take overall responsibility for coordination and include the individual client, the family and all relevant agencies
- need to explore ways to create therapeutic change in Aboriginal people who have experienced trauma and violence. There is also a need for long term culturally appropriate counselling and therapeutic services that take account of intergenerational trauma
- gap in the provision of services to children who do not disclose abuse but who exhibit behaviour that indicates they have either been abused or are at significant risk of being abused
- workers who have contact with children need awareness of above so they are

better able to respond when children attempt to disclose

- Need to overcome mistrust by developing positive relationships with Aboriginal communities and need for government agencies to spend time in communities and have a stronger presence to get trust including police
- Attracting and retaining experienced workers particularly for the delivery of regional and remote services, also an inequitable distribution of resources and services to communities, particularly rural and remote communities.
- Workers need to be better educated and trained
- There is a lack of information sharing between agencies
- Some situations where the safety, health and welfare of children are severely threatened require relevant authorities to be informed for a response and services to be provided. The Inquiry recommended that medical personnel who come into contact with children under 13 years who have a sexually transmitted disease, be obliged to report the presence of that disease to the Department for Community Development
- There is a need for an overarching framework to respond to family violence and child abuse. Strategies that cover the spectrum of service delivery and which involve Aboriginal community members in determining directions are necessary

The Gordon Inquiry identified the need for a community focused systemic response and suggested the following as important principles of that framework:

- the allocation of resources using a model based on disadvantage and need rather than based on capacity to lobby and argue for funds;
- the use of Local Action Groups (LAG);
- the integration of funding associated with primary and secondary services to allow for proper continuous integrated service delivery based on clear plans that can make a consistent and significant impact on family violence and child abuse;
- the use of a community development approach, which uses successful strategies from work in developing countries, whilst acknowledging the centrality of local culture, traditions and structures;
- the strategic role of the Indigenous Affairs Advisory Committee (IAAC) in providing direction and support; and
- the development of a 'one stop shop' or community centre that responds to the range of factors and problems that are linked to and result from family violence and child abuse. In rural and remote communities, teleconferencing, video conferencing and other forms of electronic support should be provided so that particular expertise can be accessed through government agencies.

Aboriginal Child Sexual Assault Taskforce 2006 (New South Wales)

The Taskforce's report, *Breaking the Silence: Creating the Future. Addressing Child Sexual Assault in Aboriginal Communities in NSW*, was presented to the NSW Attorney General in March 2006 and made 119 recommendations. In response to the taskforce report, the NSW Government developed and published the Inter-agency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011 (NSW Government 2007).

The plan had three critical level goals:

1. To reduce the incidence of child sexual abuse in Aboriginal communities
2. To reduce disadvantage and dysfunction in Aboriginal communities
3. To build up Aboriginal leadership and increase family and community safety and wellbeing.

The plan also nominated four strategic directions:

1. Law enforcement
2. Child protection
3. Early intervention and prevention
4. Community leadership and support.

Its proposals were built around the four strategic directions above. In broad terms, it proposed:

- strong justice interventions, recognising that child sexual assault is a serious crime against children requiring immediate “circuit breakers”
- comprehensive early intervention and prevention services to support families at risk of violence and child abuse and to promote the wellbeing of Aboriginal children and young people
- opportunities to improve the way child protection services operate, with these measures balanced against “robust support” for community capacity and leadership to assist Aboriginal communities, to ensure the safety of their children and families and to address the problem in ways that are culturally meaningful and appropriate.

The Children on APY Lands Commission of Inquiry (SA Mulligan) 2007

The *Children on APY Lands Inquiry* was established by the South Australian government during the *Children in State Care Inquiry* as a response to allegations of abuse of children on the APY lands. As these allegations were outside the *Children in State Care Inquiry* terms of reference, another parallel inquiry was established with Commissioner Mulligan undertaking both inquiries.

A considerable body of evidence was received during field trips from professional and community members about the sexual abuse of Anangu children even though there were no direct disclosures made by the alleged victims of the abuse. It was reported that some women were too frightened to provide information to the Inquiry and some workers were intimidated by senior staff in some communities.

The key recommendations of the inquiry concerned:

The need for a change in governance arrangement on the APY Lands that both empowered Aboriginal communities and created confidence in disclosing child sexual abuse and creating programs for prevention and treatment. The Commissioner saw this as necessitating the creation of protocols and agreements between the government, and

its human services departments, and key the Aboriginal authorities on the APY Lands including the APY Women's Council.

Improved resourcing of Families SA, Aboriginal services and hospitals including the development of services and programs in therapy, prevention and treatment in the areas of drug and alcohol misuse and mental health to address the issues which impacted on child safety. The Commissioner also saw the need for monitoring and evaluation to ensure the improvement of these services.

Workforce development including

- better salary and conditions and professional development to attract and retain professional staff for Families SA, Aboriginal and mainstream services
- developing an Aboriginal professional workforce through recruitment and training, including pathways to encourage more Aboriginal specialists and doctors, training of interpreters, more Aboriginal liaison workers, and
- more social workers in the community, with some based in schools.

Information sharing and greater co-operation, including the implementation of interdisciplinary and holistic team approaches and more frequent meetings between state departments, Aboriginal services, mainstream NGOs and police

An emphasis on community education and development by

- working closely with elders
- gender appropriate community education on sex and abuse
- improving community social and physical infrastructure in the areas of housing, human services, local courts (but not at police stations), police, corrections, adoption of restorative justice approaches to some offences, development of safe houses, improving education approaches in schools by
 - working with Elders to encourage the embedding of culture in the curriculum
 - focusing on student skill development in literacy, numeracy and information technology,
 - increase teacher skills in delivering education in culturally appropriate ways.

Notification processes including screening tests for STDs as a means to notification and Aboriginal councils given training/guidelines to ensure they notify when appropriate.

Changing the Act to make it an offence to prevent notification and making the Secretary of the department the guardian of Anangu children who have been found to be sexually abused.

Wood Inquiry NSW 2008 (and Keep them Safe Response)

In November 2008, Justice James Wood AO QC inquired into the NSW child protection services, known as the Department of Community Services (DoCS). In relation to Aboriginal children and families, the Wood Inquiry found that

- Aboriginal children and young people are more than three times more likely to be reported to the Department of Community Services than non-Aboriginal children

- that Aboriginal children aged under one year are more than five times more likely to be reported than non-Aboriginal children aged under one year;
- that Aboriginal children and young people are more likely to be the subject of multiple reports, with close to a third of Aboriginal children reported more than 20 times
- that around one third of children in out-of-home care are Aboriginal
- that Aboriginal children feature disproportionately among child deaths in NSW (approximately one-fifth of reportable deaths are of Aboriginal children).

The Wood Inquiry acknowledged the findings in the NSW Aboriginal Child Sexual Assault Taskforce 2006 Report about the widespread and under-reported incidence of sexual assault of Aboriginal children as well as the Government's response to those findings in the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities.

In his report Justice Wood made several recommendations concerning Aboriginal children and families. They were:

Recommendation 18.1

The NSW Ombudsman should be given authority to audit the implementation of the Aboriginal Child Sexual Assault Taskforce recommendations as described in Recommendation 21 of the Taskforce's report.

Recommendation 18.2

The NSW Government should consider the following:

- a. Assisting Aboriginal communities to consider and develop procedures for the reduction of the sale, delivery and use of alcohol to Aboriginal communities.
- b. Working with the Commonwealth to income manage Commonwealth and State payments to all families, not only Aboriginal families, in circumstances where serious and persistent child protection concerns are held and there is reliable information available that income is not being spent in the interests of the safety, welfare and well-being of the relevant child or young person.
- c. Introducing measures to ensure greater attendance at school, preferably by means other than incarceration, including the provision of transport and of meals.
- d. In smaller and more remote communities, introducing the greater use of night patrols to ensure that children are not wandering the streets at night in circumstances where they might be at risk of assault, or alternatively of involvement in criminal activities.
- e. Providing accommodation to Aboriginal children and young people at risk of harm of a boarding nature type where the children are cared for and educated.

Recommendation 18.3

The NSW Government should take steps to ensure that the recommendations of the Aboriginal Child Sexual Assault Taskforce report, and the actions in the Interagency Plan, which relate to provision of direct services to Aboriginal children, young persons, families and perpetrators, are carried into effect within the lifetime of the plan.

Recommendation 18.4

The NSW Government should work actively with the Commonwealth in securing the delivery, in NSW, of the services identified in the New Directions Policy and in the 2008/09 Commonwealth Budget that were earmarked for the benefit of Aboriginal people.

The State Government's response to the Wood Inquiry, *Keep them Safe* included a chapter on Aboriginal children and families. In summary it committed itself to

- a holistic approach to Indigenous disadvantage
- improving the 'two ways together' partnership approach articulated in the NSW Aboriginal Affairs Plan *Two Ways Together 2003-2012* is the Government's ten-year plan to improve the wellbeing of Aboriginal people with its focus on Aboriginal governance and community action plans
- ongoing involvement in the COAG processes to reduce Indigenous systemic disadvantage and *National Framework for Protecting Australia's Children*
- an Aboriginal community empowerment approach to child protection, including Aboriginal community involvement in decision making, local community focus, and integrated targeted service responses
- capacity building for Aboriginal services and communities including professional skill development and cross-cultural competence for mainstream and government workers
- service and program improvements in consultation with AbSec.

Summary of Key Northern Territory Reports Concerning Aboriginal Communities

State of Denial

State of Denial: The Neglect and Abuse of Indigenous Children in the Northern

Territory published by SNAICC in 2003 examined the operation of the Northern Territory child protection system in order investigate the reasons behind the Northern Territory's lower level of substantiated child abuse and neglect compared to other states and territories. The report concluded that in reality the Northern Territory had the highest levels of unrecorded child abuse and neglect in Australia and that the Northern Territory child protection system was failing in its statutory obligations to protect Indigenous children and provide for their welfare.

State of Denial found that

- the socio-economic factors which give rise to child abuse and neglect are higher in the Northern Territory than in any other State or Territory
- the number of child protection notifications, substantiations and placements of Indigenous children in out-of-home care, (measured per 1,000 children), in the Northern Territory remain the lowest for all States and Territories
- non-reporting of child abuse and neglect is significantly higher in the Northern Territory than in any other State or Territory
- to not report child abuse and neglect is a common practice of Aboriginal

communities and non government agencies as reporting child abuse and neglect either results in no discernible response or an intervention from Police or child protection which, from the community perspective, may makes matters worse

- confidence amongst non-government agencies in the Northern Territory child protection system was so low at the time of the research that the system was seen as almost completely ineffective
- specific forms of child maltreatment included in the Northern Territory child protection legislative definition of maltreatment, such as malnutrition leading to physical impairment, occurred at much higher rates within the Aboriginal communities than the child protection data recognised
- the Northern Territory child protection system was not meeting its statutory obligations to protect children or provide for their welfare with chronic levels of poverty, homelessness and preventable diseases amongst children often viewed as 'normal' for Aboriginal children and therefore not requiring a child welfare response
- the narrow investigative approach of the Northern Territory child protection system tends to blame Aboriginal parents and families for factors which are beyond their control – such as poverty and homelessness
- non-government agencies that work directly with Aboriginal and Torres Strait Islander children and families consistently experience major difficulties in getting child protection authorities to respond to or even register notified cases of child abuse or neglect
- there is a lack of clarity on the role of the Northern Territory police within the child protection system
- mandatory reporting of child abuse and neglect in the Northern Territory appears to have failed as the general community and more particularly Aboriginal communities have not been provided with useful, systematic and ongoing education and training about the requirements to report child abuse and neglect
- the alternative care and foster care systems in the Northern Territory are woefully inadequate creating scenarios where Aboriginal children are left in situations where they are likely to be maltreated as child protection authorities have no alternative care options for at risk children
- past practices of forcibly removing Aboriginal children and forcibly relocating Aboriginal communities continue to impact significantly on Aboriginal people and dramatically undermine the effectiveness of the Northern Territory child welfare system
- resources directed by governments, Commonwealth and Territory, and by churches and their associated organisations, towards the break up of Aboriginal families and forced removal of children in previous generations massively exceed the resources now dedicated to supporting Aboriginal families with children
- Aboriginal and Torres Strait Islander communities in the Northern Territory have no significant or secure role, purpose, resources or power within the child protection system – a system which continues to operate as an external source of control rather than as a collaborative partnership for advancing the welfare of children within a framework of rights and respect.

The recommendations included in *State of Denial* included calls for:

- an NT child welfare summit
- an Indigenous child and family Welfare council
- the review of the NT police in child protection
- a review of mandatory reporting legislation
- a review of compliance with the Aboriginal Child Placement Principle
- more community education and awareness
- the development of a needs based approach to welfare
- a specific focus on neglect
- the expansion of Indigenous family support services
- the development of a child welfare reform funding package
- the NTG to develop an Indigenous child welfare policy statement
- the establishment of long term planning mechanisms
- and the influencing of reforms at a national level

Little Children Are Sacred

Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse was established by the Northern Territory Government in August 2006 to research and report on allegations of sexual abuse of Aboriginal children and to find better ways to protect Aboriginal children from sexual abuse. Rex Wild QC, a former Northern Territory Director of Public Prosecutions, and Pat Anderson an Alyawarr woman who is well known as a strong supporter of disadvantaged people and has many years experience working with Aboriginal people, especially in Indigenous health, co-chaired the inquiry.

The Inquiry was asked to:

- study how and why Aboriginal children were being abused, focusing on unreported cases
- identify problems with the way the government responds to and attempts to protect Aboriginal children from abuse
- look at how government departments and other agencies can better work together to protect and help children
- look into how the government can better support and educate Aboriginal communities to prevent child sexual abuse.

The Inquiry gathered feedback from more than 260 meetings with individuals, agencies and organisations, and visited 45 communities to talk with local people. The Inquiry received 65 written submissions. The Inquiry report *Ampe Akelyernemane Meke Mekarle* "Little Children Are Sacred" found that sexual abuse of Aboriginal children was happening largely because of the breakdown of Aboriginal culture and society. Its key theme was the need for processes and systems which empowered Aboriginal communities to overcome the factors which led to child sexual abuse and create solutions.

The Inquiry found that

- Child sexual abuse was serious, widespread and often unreported.
- Most Aboriginal people are willing and committed to solving problems and helping their children. They are also eager to better educate themselves.
- Aboriginal people are not the only victims and not the only perpetrators of sexual abuse.
- Much of the violence and sexual abuse occurring in Territory communities is a reflection of past, current and continuing social problems which have developed over many decades.
- The combined effects of poor health, alcohol and drug abuse, unemployment, gambling, pornography, poor education and housing, and a general loss of identity and control have contributed to violence and to sexual abuse in many forms.
- Existing government programs to help Aboriginal people break the cycle of poverty and violence need to work better. There is not enough coordination and communication between government departments and agencies, and this is causing a breakdown in services and poor crisis intervention. Improvements in health and social services are desperately needed.
- Programs need to have enough funds and resources and be a long-term commitment.

The Inquiry's first recommendation formed a platform for addressing the sexual abuse of Aboriginal children.

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.

It made recommendations concerning:

- the Empowerment of Aboriginal communities so that they can take more control and make decisions about their future by
 - enhancing the leadership role which men and women play,
 - the introduction of community justice groups and
 - better dialogue between mainstream society and Aboriginal communities.
- the education system to ensure that
 - children are safe when they are at school,
 - children are educated about child sexual abuse and protective behaviours
 - schools were culturally and linguistically appropriate and provided opportunity, empowerment and achievement as means to overcoming the social and economic problems which contribute to violence

- community education campaigns to inform people about:
 - child sexual abuse and what to do about it
 - mandatory reporting of child sexual abuse
 - the impact of alcohol, pornography and gambling on communities, families and children
 - the value of education, and encouraging a culture of parental and community commitment to sending children to school.
- urgent action to reduce alcohol consumption in Aboriginal communities.
- how Family and Community Services (FACS) and the Police operate in communities so that they build the trust of communities so everyone can work together to combat child sexual abuse.
- the improvement, development and expansion of family support services particularly in Aboriginal communities
- the establishment of an independent Commissioner for Children and Young People

Response to the Ampe Akelyernemane Meke Mekarle “Little Children Are Sacred” report: The Northern Territory Emergency Response (NTER)

On 21 June 2007, the Howard Government announced a national emergency response to the *Ampe Akelyernemane Meke Mekarle “Little Children Are Sacred” Report*. The response became known as the ‘Northern Territory Intervention’ or the Northern Territory Emergency Response (NTER). The NTER was originally designed with three phases:

- a. stabilisation—the introduction of emergency measures to protect children and make communities safe (year one) including compulsory acquisition of Aboriginal lands and assets for five years in 78 ‘proscribed Aboriginal Communities, increases in policing, use of the army to construct buildings and facilities for Government Business Managers to administer the communities and doctors to undertake health checks of Aboriginal children, bans on alcohol and pornography in the communities, compulsory income management for Aboriginal people on welfare payments,
- b. normalisation of services and infrastructure (years two to five)
- c. longer term support based on the same norms and choices that other Australians enjoy (year five onward).

In August 2007 legislation was introduced into Federal Parliament and passed both houses giving the Federal Government powers to implement the stabilisation phase. As part of those measures, the Howard Government moved to abolish the Community Development Employment Program (CDEP). The new Acts and amendments included:

- changes to the Land Rights Act,
- exemption of measures from the protection of the Racial Discrimination Act
- emergency powers for the Federal Minister for Indigenous Affairs to acquire assets of Aboriginal councils and corporations

- removal of the permit system.

The NTER was controversial and some measures were initially opposed by the Northern Territory Government. Even the authors of the *Little Children are Sacred Report* were on record in their opposition. Co-Chair Pat Anderson commented:

There is no relationship between their emergency powers and what's in our report. ... We did want to bring it to the government's attention but not in the way it has been responded to by the Federal Government.¹¹²¹

The change of federal government in November 2007 and developments over time saw some changes of direction in the NTER including

- introduction of more consultations with Aboriginal leaders and communities,
- restoration of most aspects of the permit system, and
- restoration of most aspects of the CDEP program.

Report of the NTER Review Board

On 13 October 2008, the NTER Review Board, appointed by the Commonwealth Government to conduct an independent review of the first 12 months of the NTER to assess its progress, reported a mixed response to NTER, in particular, it

- found a “deep belief that the measures introduced by the Australian Government under the NTER were a collective imposition based on race” and a “strong sense of injustice that Aboriginal people and their culture have been seen as exclusively responsible for problems within their communities,”
- found that the effectiveness of the intervention was diminished through its failure to engage constructively with the Aboriginal people and
- identified some gains and noted that there was support for the additional police stations, and the measures designed to reduce alcohol related violence, to increase the quality and availability of housing and to advance early learning and education.

The Review Board recommended

- the restoration of the protections of the *Racial Discrimination Act*,
- that while the benefits of income management were being increasingly experienced, it should be imposed only as a part of child protection measures,
- that laws prohibiting the possession and transportation of alcohol on prescribed lands be maintained and that alcohol supply, demand and harm reduction strategies be implemented and comprehensive alcohol management plans finalised,
- that illicit drug use should also be addressed, and
- there be a greater focus on community and Aboriginal services capacity building.

¹¹²¹ P Anderson, cited in L Murdock, 'Aboriginal action: A betrayal', *The Sydney Morning Herald*, 6 August, 2007; R Wild, 2007, 'Unforeseen circumstances', in *Coercive reconciliation: Stabilise, normalize, exit Aboriginal Australia*, ed. J Altman & M Hinkson, Arena: North Carlton, Australia.