

Lessons learnt from working
with Aboriginal communities:
an Ombudsman's perspective

AbSec Conference

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I would like to acknowledge the traditional owners of the land that we are meeting on today and pay my respects to the elders both past and present.

The Ombudsman take complaints about all government departments and some non government agencies funded by DoCS and DADHC and a whole range of service providers both Aboriginal and non Aboriginal.

We accept complaints from:

- individuals;
- anyone with a genuine concern, such as a friend, family member, worker;
- a parent, guardian, lawyer or advocate;
- an MP.

Our office is made up of approximately 170 staff and within the office we have a 4 person Aboriginal unit.

Our unit was established in response to recommendations made by the Wood Royal Commission into police corruption. The unit's initial focus was resolving complaints from Aboriginal people about police. Rather than continuing to operate as 'stand-alone' unit within our Police Division, a number of years ago we decided to locate the aboriginal Unit within our cross-agency team, a multi-disciplinary team which focuses on reviewing whole-of-government service delivery. I'm sure that you will all appreciate why only reviewing police/Aboriginal relations was too narrowly focused.

As noted by the Ombudsman yesterday, the Aboriginal Unit now examines broader issues aimed at improving the service delivery by government agencies and non government service providers to Aboriginal people in NSW. In addition to our complaint handling role, we meet regularly with local service providers, agencies, and community members to explore ways to improve outcomes for Aboriginal people in their communities. These days, we also have a legislative responsibility to carry out systemic review and auditing work – this is particularly the case in the community services field.

By way of example, for a number of years now we have had a reviewable death role that has looked at the deaths of children known to DoCS. Aboriginal children have represented 20% of the deaths that we have reviewed and are disproportionately represented in the 0-12 months age group. Therefore, this has highlighted the critical importance of programs supporting Aboriginal parents with new borns and young infants. One such important initiative in this regard is the Aboriginal Maternal and Infant Health strategy. We have also carried out around 100 formal child protection investigations over the past six years. A number of these have involved Aboriginal families. Later this year, with the support of the family, we will be releasing a Special Report to Parliament on the death of Dean Shillingsworth.

Over the past 10 years, Parliament has asked us to review about 20 different pieces of legislation, most have been law enforcement related. A number of these reviews have measured the impact of these new police powers on Aboriginal communities. For example, we have reviewed the impact of Criminal Infringement Notices (CINS) on Aboriginal communities. CINS were initially trialled in 14 locations and then subsequently rolled out across the state. In the five years before the state-wide rollout, 2.8% of all CINS were issued to Aboriginal people in trial locations. After the state-wide rollout, Aboriginal people received 7.4% of CINS, and more for offensive language than for any other offence. Our final report on the state-wide implementation of the scheme examined what happens to recipients who are unable to pay their fines to the State Debt Recovery officer, and who are referred for enforcement actions and sanctions. Our work with Aboriginal communities has time and again shown the very adverse impacts unpaid fines can have on the lives of young Aboriginal men and women in locking them into a vicious cycle resulting from non payment of finds from which they can't escape.

We also have an ongoing program of visits to juvenile justice and correctional centres. Our visits ensure Aboriginal detainees have the opportunity to speak with another Aboriginal person about any concerns they may have.

As over 50% of kids in juvenile justice detention centres are Aboriginal, this has to be an issue requiring action and not just by my office. This statistic overwhelmingly demonstrates the major catastrophe unfolding with Aboriginal kids. In terms of the impact of this issue on communities, concerns by Aboriginal community leaders about children and young people whose lives are out of control has been one of the biggest issues raised with us during our extensive consultation work. Insofar as extensive consultation with communities is concerned, I would note that our police/Aboriginal relations auditing alone has covered 36 local area commands and involved discussions with over 4,500 community people.

As a parent with two teenage daughters (and one on the cusp of entering her teenage years), I know firsthand the fears we face when our kids move from childhood into adolescence. Aboriginal parents, grandparents and extended family within communities, have shared with us their heartbreak when they see their kids starting to “go off the rails”. Sometimes problems have arisen because these kids have been in vulnerable homes and no adequate supports have been provided early in their lives. A common scenario involves kids never really connecting with the school system, then effectively dropping out at a young age, or being kicked out. For most of this cohort, it is not long before they turn to crime – sometimes very young – and many will go on to eventually populate the juvenile justice centres. Time and again, community leaders have said to me that one effect of colonisation has been taking from the elders the power to ‘control’ kids (others have talked about the loss of respect for elders). Pearson and Dodson have correctly identified that education is a litmus test as to whether we are going to break the cycle of disadvantage. And communities know this all too well.

Our response needs to be multi-dimensional. We need to particularly support those families which are most fragile and our support needs to be early and effective. We need to tell the truth about truancy rates and measure whether we are getting improvements on this front. We need to be able to welcome vulnerable kids into the school system, not exclude them: in particular, we need to do more intensive work with those kids and their families who early on end up ‘outside’ the pre-school and school systems (and/or are at war within these systems). We must also be working with those pre-adolescent kids whose lives are starting to spiral out of control (Turkandi).

Of critical importance, we must learn to respect, work with, and empower Aboriginal people in responding to these issues. For over 5 years now, the working parties from across the Murdi Parkii region have been raising concerns about young kids on the street at night creating havoc and who are very much ‘at risk’. We have been looking closely at this issue with the Brewarrina community; AbSec; the Children’s Guardian; ACWA and DoCS. Only this week I was in Brewarrina for further discussions around this issue. Let’s not be mistaken. This is not just an overnight accommodation issue. It’s also about: how do we build the best services, for vulnerable families living in vulnerable towns, in relatively remote areas? If we can ultimately show that we have adequately responded to this question, then we can be confident that ‘Keep Them Safe” has made a difference.

As the Ombudsman mentioned yesterday, in 2007 we undertook a detailed review of issues affecting carers of Aboriginal children and the adequacy of services and supports in place to help these carers provide quality care.

Our report, *Supporting the carers of Aboriginal children*, was based on interviews with over 100 Aboriginal and non Aboriginal carers; Aboriginal out of home care service providers; and health/education professionals.

As the Ombudsman noted, there were a number of significant issues identified from this work. Today, I want to briefly revisit a couple that I believe have broad implications in our attempt to improve our work in responding to Aboriginal kids and their families who are in crisis:

1. Cultural support – Obviously, cultural support is critical for Aboriginal kids in an out of home care context. For example, if children have to be placed with carers with no kin connection, then care planning - especially cultural care planning - is crucial. But as I'm being taught by communities, I'm learning how important cultural connectedness is for Aboriginal kids more generally; including (and perhaps particularly) those who are most vulnerable. Without a sense of connectedness to culture/ land/ community/ identity (and the associated pride in oneself and one's people that goes with these qualities), then kids will continue to show us the results of their disconnectedness in destructive ways.
2. Consultation processes – In case we have forgotten, it's 2009. Yet, we haven't got this issue of consultation right. What does this then say about our level of respect for Aboriginal people. In terms of our report on supporting the carers of Aboriginal children, we showed the need for clear and consistent guidelines on how workers should consult with communities about placement decisions for Aboriginal children to ensure proper compliance with the Aboriginal Placement Principles. On this issue, our report also showed that related data capture around the placement rates of Aboriginal kids with Aboriginal/non Aboriginal carers, was very poor.
3. Thirdly, in the report we emphasised the need to build the capacity of the service system, including backing the work of AbSec and expanding the Aboriginal out of home care base (and related Aboriginal support services).

Since the time of our report, we have had the Wood Special Commission of Inquiry. For me, three things in his report stood out in relation to improving our support for Aboriginal children.

Firstly, he emphasised the need to build the capacity of the service system in order to better service Aboriginal communities; including building a strong Aboriginal service base.

Secondly, he emphasised the need for the development of an integrated system of service delivery in Aboriginal communities.

On this point let me make the point that high quality and integrated services are needed. In this regard, I also commend the agreement signed between AbSec and ACWA around partnerships being developed between non indigenous organisations and Aboriginal organisations with the aim of fast tracking skill development within Aboriginal organisations and a transition to complete Aboriginal control over time. However, as the Ombudsman said yesterday, much will need to be done before we can boast of a fully functioning, integrated service system in disadvantaged Aboriginal towns. This is not to say that funding isn't already going to many of these communities. But it is not just about funding. It is about a service system that identifies and addressing the needs of:

- Young babies and infants, particularly those in vulnerable families;
- Kids during pre-school years;
- Children in families with substance abuse/domestic violence/mental health problems;
- Kids at risk in the school environment;
- Kids at risk of self abuse and/or entering into the criminal justice system; and
- Kids and their post school employment challenges.

From our extensive consultations with disadvantaged communities, one thing which has struck us when looking at child protection and other social issues within Aboriginal communities, has been a lack of effective services on the ground in some of the more remote and disadvantaged communities. Once again, I make the point that this is not to say that funding is not being provided to these communities. Very often, we have found a whole range of disparate services being funded – often a number run by Aboriginal services. However, too often these services can be inefficient and lacking in accountability. More importantly, services that are generally known by communities to be failing to provide an adequate service can tend to harden the attitude of key community people against the government agencies that continue to fund them. Put simply, community leaders who see the needs of their communities take the view that government agencies which fund these services are demonstrating a lack of genuine commitment to meeting their community's needs. Let me compare this scenario of poor quality service provision with what has been happening in the field of Aboriginal out of home care. The emergence of strong Aboriginal out of home care services supported by a robust regulatory scheme which promotes accountability is great to see. In addition, greater accountability on the AMS front over recent years has not only helped to strengthen service delivery in this critical area, but also provides another platform we can potentially leverage off to build high quality, integrated services in Aboriginal communities over time.

Thirdly, and critically, Wood endorsed the application of the principle of self determination. This involves Aboriginal people and communities making decisions on the future of their kids and delivering the outcomes required. The partnership agreement announced as part of this conference is an important step by government in laying down a process by which genuine partnerships, in a range of contexts, can be worked out.

As the Ombudsman also said yesterday, Section 11 of the Children and Young Persons (Care and Protection) Act says that it is “a principle to be applied in the administration of this Act that ATSI people are to participate in the care and protection of their children and young people with as much self-determination as is possible”. We would all accept that we are yet to properly give effect to this principle in this state, notwithstanding that the Act acknowledges the capacity of the Minister to negotiate with Aboriginal people to give effect to this principle. And without true partnerships, child protection intervention in communities will still look and feel like the welfare practices of the past. Let me also make the point that communities are ready for genuine partnerships. Several months ago, inspired by an ECAV course, women from the community in Lightning Ridge went on the front foot around the removal of some 30-40 kids from that and surrounding communities over the past few years. They got a community meeting together with around 100 community people present. And they got the attention of the Australian newspaper with the cry of “Stolen Generation”.

We went up to that community and met with the 100 or so community people. Our contacts from both within and outside government agencies told us that the organisers were well respected. And we are now working with these women and DoCS to examine how we might create a genuine partnership arrangement which has legal standing and practical application. Already, those women have got together around 20 people who have put their hands up to become carers. In 45 degree temperature last Monday, the Regional Director from DoCS sat for hours in a room listening to community member after community member tell her about what had been happening which threatens the development of a true spirit partnership. This practical process of reconciliation is vital. And Glynis and her senior staff sat and listened to the concerns of these community members after we had already been engaged in 3 hours of discussion around the future relationship between community services and community. The Minister for Aboriginal Affairs, Paul Lynch, met with this same group after our first visit. He is going back up there again to keep the dialogue going. This show of respect by senior Community Services' staff and the Minister has been very well received. Our discussions to date highlight the fact that a genuine partnership needs to not only include DoCS but the other key government and non government agencies as well.

At the same time, we are continuing work with other communities out west, including Brewarrina and Bourke which we also visited again this week. Today, I am very pleased to introduce the chairperson of the Ngemba (Namba) Working Party, Aunty Jenny Barker with whom we have been having an ongoing dialogue for around five years now. More recently, AbSec, ACWA and the Children's Guardian have been a part of these discussions – and I want to thank Bill for his fantastic support in this regard. DoCS is also very involved in these discussions – for example, this week both the Regional Director and Community Services' acting Director of Operations (together with our senior DoCS staff) sat together with us and with an AbSec rep to witness the powerful demonstration and vision for the kids of Brewarrina. In particular, the community was very clear about the need for integrated services and efficient and high quality services that are designed “hand-in-glove” with the community. In this regard, they also referred to examples of lack of consultation resulting in lost opportunities and poor integration of and overlapping service delivery. But let me stop at this time and let Jenny talk to you about her community's vision for their kids and what genuine partnership means between her community and agencies in the human services area.

From where I sit, I see a ground swell of desire from Aboriginal leaders to determine the required action needed from within their communities to better respond to vulnerable kids in their families. Where we end up in terms of this need for partnerships will be a major factor in determining whether *Keep Them Safe* keeps Aboriginal kids safer.

Under the Child Sexual Assault 'Safe Families' initiatives in the Western region, effective engagement with communities around child protection is an essential requirement. It will be critical for my office to assess whether this goal of 'effective engagement' is able to be achieved.

On our part, we will continue to actively promote it and explore what it might look like in different communities. We are also conscious of the need for continuing to work closely with AbSec and key government agencies on this issue.

Finally, in terms of the Ombudsman's broad commitment to this area of Aboriginal child protection, I would observe that our resourcing, responsibilities and powers relating to auditing the interagency plan for Aboriginal child sexual assault will mean that assessing, and reporting on, this state's progress in relation to Aboriginal child protection initiatives generally, will be an even stronger area of focus for my office over the years ahead.

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