

The Ombudsman's work in  
Aboriginal child protection  
and out of home care:  
challenges and opportunities

AbSec Conference 2009

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# 1. Introduction

I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past and present.

I am very pleased to have the opportunity to speak at today's conference. My office has had close links with AbSec for many years now. A major inquiry by my office into the situation of 185 Aboriginal children in out of home care and the supports provided to their carers in 2007 highlighted –amongst many things – the vital role of organisations such as AbSec in the out of home care side of protecting Aboriginal children. In particular, we found that Aboriginal out of home care agencies - working closely with AbSec - were active in building strong links to communities and those caring for Aboriginal children. The Minister's partnership announcement this morning is proof of the important role AbSec has played and will continue to play in the future.

As we speak today, the facts are that young Aboriginal kids are overrepresented in the child protection system, many of them in out of home care are disconnected from their culture and community. Far too many kids are in JJ centres and too many young Aboriginal babies die in circumstances that are preventable.

These facts are distressing, appalling and unacceptable. We have to do more so that these facts are no longer the starting point.

Today I am going to discuss what I believe are the main challenges and opportunities to changing those facts in Aboriginal child protection and out of home care in NSW.

Based on our work over many years with Aboriginal communities, the findings of the Wood Commission and the Government's response, I believe the three major challenges for Aboriginal child protection are:

- building the capacity of the service system in order to better support Aboriginal communities
- developing an integrated system of service delivery in Aboriginal communities.
- the practical application of the principle of self determination

These key challenges are also where the greatest opportunities lie and although the challenges are not new we need to do much more to meet them.

As part of the *Keep them Safe* reforms, a great deal of attention has been paid to high level issues that need to be addressed to improve service delivery in the area of Aboriginal child protection. Importantly, the partnership agreement between AbSec and the department is about developing the mechanisms needed to bring about the desired change – this is a very positive first step.

However, it will be critical that robust accountability systems and measures are established to ensure the partnership agreement is not only being adhered to, but the principles and actions underpinning it are making an actual difference; reducing the number of Aboriginal children caught up in the child protection system and better supporting those children already in the system, by helping them to remain connected to their culture and supported by their communities.

Given my office's responsibility to review the delivery of community services – including those services provided to Aboriginal communities – we will be seeking to determine the impact and overall success of such changes. New systems and partnerships need to be carefully monitored to make sure what is being delivered measures up to what has been promised.

## 2. Building capacity in the Aboriginal service sector

While the department and the non government sector have achieved improvements in out of home care practices in recent years, the capacity of the Aboriginal out of home sector remains very limited. Aboriginal services can currently place approximately five percent of the almost 4,000 Aboriginal children in care.

There is a critical need to expand both the number of Aboriginal out of home care services and the number of placements available for Aboriginal children with Aboriginal carers to address the current restraints and the continuing growth in demand. The department is aiming to increase the percentage of children placed with out of home care agencies from 5% to 10%. Even if this is successful, this is still a small number.

There are even significant challenges in meeting this target of 10%. At the time of our foster carer review, over 50% of all Western Region children in care were Aboriginal, there is currently no Aboriginal out of home care service in that region. This is also the case in New England. We acknowledge the department is seeking appropriate providers to fill these gaps, and I hope they are successful very soon.

There is merit in considering ways for successful non-Aboriginal services to mentor staff from Aboriginal staff from Aboriginal services, both to build the capacity of existing Aboriginal services and support the establishment of new services. These kinds of cooperative partnerships would help build the capacity of the Aboriginal out of home care sector into the future.

It is also important to strengthen the capacity of those government agencies that work with Aboriginal communities. These agencies need to recruit and retain aboriginal staff. They need to use these staff effectively and strategically. Resources need to be directed towards high-need locations, particularly in rural and remote areas. These improvements can have very important flow on effects, such as increased community confidence and participation. Failure to make these improvements will almost certainly have the opposite effect, increasing distrust and frustration with government.

A related challenge flowing from the recommendations of the Wood Commission and the resulting *Keep them Safe* framework, is the increased responsibility for child protection and child services with the non government sector. This has come about largely through changes to the mandatory reporting system. The bar has been lifted for matters that are currently reported to Community Services where the test is risk of harm to a risk of significant harm. Matters that do not meet this threshold will be handled by specialised units within government agencies, known as wellbeing units, often with the assistance of non government organisations. Wellbeing units have been established within the Departments of Health, Housing, Education and Training, Ageing and Disability and Home Care, as well as Juvenile Justice and Police.

The creation of wellbeing units is one of a number of recommended changes designed to work alongside one another. These include the creation of Regional Intake and Referral Services, renamed Family Referral Services. While the wellbeing units have been established across the State and will be up and running early in 2010, the regional intake and referral services are being trialled in only three areas for 12 months from January next year. After evaluating these trials, the government intends to establish the services across the State by the end of 2011. Introducing one without the other has the potential to impact on the support provided to children at risk.

To illustrate this risk, we only have to look at the mandatory reports provided by police. Each year, risk of harm reports by police account for approximately a third of all reports made in NSW (around 100,000 reports). From our work in child protection, as well as our work on policing domestic violence, we know that a high percentage of risk of harm reports made by police when responding to domestic violence will now be dealt with by wellbeing units.

Given the over-representation of Aboriginal women as domestic violence victims, and the fact that the highest per capita rates of recorded domestic violence incidents are in Western NSW this change, coupled with the fact that the Western region has limited services, is likely to be felt most heavily by Aboriginal communities and the already over-stretched service sector in the region.

### 3. Integrated system of service delivery

One of the major failings we have consistently identified when looking at child protection and other social issues within Aboriginal communities is the lack of effective, integrated services on the ground. Very often, we have found a whole range of disparate services being funded. However, too often these services can be inefficient and lacking in accountability. This can have a very negative effect, because services that are generally known by communities to be failing can harden the attitude of key community people against the government agencies that continue to fund them.

Looking just at Aboriginal child protection and out of home care, an integrated, effective system needs to identify and address the needs of:

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

High quality, integrated services are needed, and much will need to be done before we can boast of a fully functioning, integrated system.

In the last few years, my office has completed a number of large scale projects aimed at assessing the standard of service delivery to Aboriginal communities. We have:

- reviewed Police's implementation of their Aboriginal strategic direction
- assessed the police response to domestic violence in NSW
- looked into the level of support provided to carers looking after Aboriginal children, and
- services provided to Aboriginal people with a disability

This work has shown us interagency cooperation and information sharing are critical to effective integrated service delivery. If the right hand doesn't know what the left hand is doing, the child in the middle can slip through their fingers. This has been our experience in far too many of the child deaths we have reviewed. We have consistently over many years stressed the need for improvement in this area.

I was very pleased when the Wood Special Commission picked up on our comments around the need for improved interagency cooperation and information sharing and that the Government has finally responded with legislative changes to make it clearer when, why and how information can be exchanged in order to protect children at risk.

But there are still challenges ahead.

Our work shows us that front line staff continue to hold strong concerns around possible privacy breaches. I do not believe that the amendments will overcome this completely, as privacy legislation continues to loom large over those dealing with personal information.

Agency staff are wary of sharing information, even when it is in the best interests of the person involved. This has been the norm for a long time. We have to overcome the "because of the Privacy Act" mentality that still exists, and provide clear guidance around when, why and how it is acceptable to share information when children are at risk.

Another challenge is making sure communities actually know what services they are entitled to, and making sure they can access them. There is no point in having services in place if they are not reaching the people who need them, either because of lack of resources or lack of knowledge. It is also important that when Aboriginal people come into contact with government agencies the experience is a good one otherwise they are unlikely to want to engage with them again.

During our review of foster carers looking after aboriginal children, we heard story after story of carers doing the best they could with what they had, not knowing they had the right to more support and assistance. Others told of situations where Community Services made little or no contact with them, and offered only minimal support. These are people performing a difficult, often thankless, but essential role in our community.

One carer told us how they agreed to take an emergency placement. It turned out to be a four-year-old autistic boy. He was dropped off at six on a Friday night. They were just given the paperwork and a school bag. He was in nappies, but the carers were given no extra nappies, or any information on how to deal with an autistic child. They did not have a visit from a caseworker in 18 months. The little boy was supposed to stay the weekend but he ended up staying for 2 ½ years. The carers told us at one stage they were about to pull out of the placement but didn't, because they felt sorry for the young boy who had already been through a number of earlier placements.

Another couple told us about their experience looking after a young child with cerebral palsy. They requested a walking frame; it took 18 months to arrive. It took one year to get the child's Medicare card from the Department. The carers requested a bath in late 2005 and were told in early 2007 that they would be given a hob-less shower. They submitted a travel claim, because the child needed to be fitted for ankle and boot supports. 18 months on, they had not received payment.

Policies in place in government departments say these sorts of things should not happen, but they did, and these were but two of many similar stories.

Recently, we completed a review of the Department of Ageing Disability and Home Care's Aboriginal Policy Framework and Aboriginal Consultation Strategy. Once again we found good intentions, committed workers and policies that looked great on paper. But despite this, we still found many in Aboriginal communities did not know what the Department did, let alone what services they were entitled to. One mother whose son has a disability told us:

*In all the years my son attended school I knew nothing about DADHC or any of its programs. It wasn't until my son was in year 12 and about to leave school, that a woman came to the school to conduct a workplace assessment of my son. I have not had any contact from DADHC in relation to my son and I wouldn't even know where the local office is.*

*I have been working in the public sector for over 15 years and am well connected within my community, both socially and professionally but I still do not know much about DADHC or its programs. I often worry about my people who don't have the skills to voice an opinion around the lack of services.*

What does this tell us? It says that agencies have to do a much better job of getting out into communities and making sure people know about the services they offer, and people are helped to feel comfortable to come forward and ask for help.

Without a doubt, the relationships my office has managed to build with Aboriginal communities have been the key to the success of our work. We respond to the needs of communities.

Responsive service delivery to Aboriginal people involves meeting identified needs and providing choices that take into account cultural and individual considerations. Our work has shown us communities want a flexible approach, built largely around face-to-face contact.

To know what is going on in communities, as well as what needs to be done to solve problems, you have to go and take the time to sit down and talk. You need to develop trust, as well as credibility. You have to show that you can and will actually do something, rather than just saying the right thing at the right time. Visits can't be one-off, whistle-stop tours. This is one of the more challenging aspects of our Aboriginal Unit's work, particularly in a time of a tight budget and stretched resources. But regular return visits are vital to showing we are not government "blow-ins". We come back, and we work hard to achieve results.

While I regularly stress that my office is not a community advocate, I believe that the work we do with Aboriginal communities should be viewed a little differently. The strong relationships and partnerships we develop with the community and agencies mean we can act as a go between, an honest broker, helping people to understand what is happening, working to avoid the confusion and frustration that can develop between agencies and communities.

Government departments and service providers must also work at developing a real relationship with and a real understanding of communities. Not having such a relationship can mean a policy or approach that works well on paper but never achieves its aims.

We see examples in all our work of what can happen without such a relationship. This includes our work around Aboriginal child protection and out of home care. For example, how will Community Services make a decision under the Aboriginal Child Placement Principles if they don't have an adequate understanding of a child's broader community? I don't just mean an understanding of the file, but the actual people involved. This lack of a connection in some areas has led to lost opportunities.

In our foster carer report, we challenged the percentage - 85% - given by the Department for placements adhering to the Principles. The Special Commission's final report echoed our concerns, observing that *"The presence of a mark placed by a caseworker on the file is not a sufficient basis for a claim that Aboriginal Placement Principles have been met."* This is an area where greater involvement by organisations such as AbSec has the potential to make a real difference, by giving the Department many more real connections within communities.

How will we know if systems are truly effective? While statistics and data are one part of the story, it is important to talk directly with communities about what works and what doesn't.

We have long commented on the lack of accurate information about the success or otherwise of programs and initiatives. The Special Commission noted that such information was only ever collected in relation to a particular action or event, often a single pilot program. All those involved have to work to improve the standard of information collected, as this is the only way we will know what works and what doesn't. We worked with Police to collect similar information as part of our review of the implementation of their Aboriginal strategic direction. Police have moved on since then, and continue to improve their own information gathering, making considered decisions about what will work in certain communities. I believe the human services sector is now at the stage police were when we began our audit in 2002.

## 4. The practical application of the principle of self determination

It is only with respect for and an understanding of aboriginal culture and community that we can move forward.

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 Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young people with as much self-determination as is possible”. I think we would all agree that we are yet to properly give effect to this principle. Without true partnerships, child protection intervention in communities will still look and feel like the welfare practices of the past.

We need to give effect to the principle of self determination not just symbolically but by ensuring that Aboriginal communities and service providers are encouraged to lead the design and delivery of child and family support services – rather than imposing service models on communities. The very title of this conference (40,000+ years of caring for our kids) makes the point better than anything I could say.

But it is not just the responsibility of government to bring about this change. There needs to be a greater focus on child protection within the communities themselves. Most importantly, there needs to be a greater willingness to come forward and report problems, ask for assistance and work alongside government and non-government organisations to bring about change. No amount of good policy and money will make a real difference if the community is not on board and committed to whatever approach is taken.

This is why it is vital Aboriginal communities are involved in the planning, development and implementation of any programs that are put in place. This is an aspect of the recent government direction that I find particularly promising. But again, these statements need to be put into practice, because if communities do not accept and own the change, nothing will come of it.

This involves Aboriginal people and communities making decisions on the future of their children and delivering the outcomes required. The partnership agreement announced today is an important step by government in laying down a process by which genuine partnerships, in a range of contexts, can be worked out.

On Friday, Deputy Ombudsman Steve Kinmond is going to discuss in more detail the work we have done with the Lightning ridge community and the department to develop a partnership approach to decision making about child protection about child protection decisions involving local Aboriginal children, and our work with the Brewarrina community and the department to establish a child safe place and associated support services within the community.

Until such time as we understand and give effect to real partnerships between agencies and communities around child protection and child wellbeing, we will still be focusing on what is broken, rather than make ground on fixing the problems.

We have to stop designing programs in Sydney that are then imposed on communities.

## 5. Conclusion

I would like to end by discussing a real opportunity for change. The Special Commission in recognising our strong work with Aboriginal communities, recommended we be tasked with auditing the implementation of the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities. The Attorney General introduced amending legislation in Parliament a week ago that will allow us to get the information we need easily and quickly from a broad range of agencies. This will be a three year project, and at the end of 2012 a final report of our findings will be tabled in Parliament.

This audit will be one of the most challenging projects our office has taken on during my time as Ombudsman, as it is an extraordinarily broad plan. It deals with policing, child protection, early intervention and prevention, and community leadership and support. It is impossible to begin to tackle child sexual assault without also examining these areas, and where the community is actively involved and engaged in the planning and delivery of service responses.

Without a genuine partnership between local communities and government agencies, victims and their families are unlikely to seek help and report sexual assaults and broader child protection concerns. Trust and respect between government agencies and Aboriginal communities is pivotal to change. I have committed my office to this work – it is work that we all need to share if we are to turn opportunities into reality and offer a brighter, safer future for our children.

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