

## Australian Human Rights Commission Submission – Children’s Rights

My name is [REDACTED] and I am currently studying Aboriginal Studies as part of my HSC year [REDACTED]. Over the last 8 months I have researched, interviewed and conducted surveys about the Stolen Generations and the status for Indigenous children in Australia. Through this process I have become increasingly concerned about the alarming rates of the removal of Indigenous children from their families. I am writing to express my views on whether Australia is fulfilling its requirements as a signatory to the United Nations Convention on the Rights of the Child (1989) in relation to Indigenous children who are removed from their families and placed in out of home care (OOHC) environments. I have considered the 2012 *Concluding Observations* report by the committee on the Rights of the Child and the Cluster of Articles outlined below in making these submission:

- General principles - best interest of the child (art. 3); respect for the views of the child;
- Civil rights and freedoms -preservation of identity (art. 8)
- Family environment and alternative care -family reunification (art. 10); children deprived of family environment (art. 20)
- Education, leisure and cultural activities -cultural rights of children belonging to Indigenous and minority groups (art. 30)
- Special protection measures -children belonging to a minority or an Indigenous group (art. 30)

It has become apparent that despite the recommendations in the 2012 *Concluding Observations* report by the Committee on the Rights of the Child, Australia has failed to successfully implement appropriate measures for the protection of Indigenous children being placed in out of home care as well as ensuring a child’s right to culture and identity whilst in care. As a young non-Indigenous Australian, I am astounded at the continual breaches of Indigenous children’s rights and in particular the increased numbers and over representation of Indigenous children in out of home care. It appears that there is a repeat of the Stolen Generations.

Ten years ago, in 2008 Kevin Rudd made an Apology to Indigenous Australians, as part of the Apology he said: “*To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.*” Since then, as a Nation we have only travelled backwards. The number of Indigenous children being removed from their families and communities has increased dramatically from 9,054 in 2007 to 16,816 in 2016. This is a new and accelerated Stolen Generation and if measures are not taken to make change for these children and families by the year 2035 this number will triple.

It is concerning that there remains a disproportionate number of children in OOHC that are Aboriginal and Torres Strait Islanders. The Australian Institute of Health and Welfare in 2017 recorded the national rate being almost 10 times the rate for non-Indigenous children. Whilst it is acknowledged that there are a number of circumstances that lead to children being placed in out of home care including exposure to significant risk of harm from physical, sexual or emotional abuse and neglect, parents’ poor mental health, drug and alcohol misuse or domestic violence, for Indigenous children neglect appears to be the prominent

reason for removal and there is very little consultation with the families or communities before Indigenous children are removed.

The United Nations Convention on the Rights of the Child (1989), provides that a child has the right to maintain their identity, their culture, to be heard and participate in decisions that affect them and if they are deprived of their family then to be placed in culturally appropriate placements and it is in a child's best interest to do so (article 3, 8,12, 20 and 30). However, for many Indigenous children in Australia who are removed from their parents, this often does not occur and they find themselves in placements which includes motels with 24- hour supervision from workers, residential care or foster families who are not Indigenous. Whilst I recognise that the current child protection system faces many challenges due to limited resourcing, difficulties recruiting and retaining foster carers and challenges in providing adequate support for relative and kinship carers, this does not abdicate the States responsibility to ensure that Indigenous children's cultural needs and identity are at the forefront of decision making. Of concerns, although the data on the number of Aboriginal and Torres Strait Islander children in residential care across jurisdictions is not available, research indicates they are also over-represented in this form of care, despite the fact that there are very few examples of residential care models specifically developed for Aboriginal and Torres Strait Islander children.

I understand that in some situations children may be in circumstances that they are not safe and therefore may need to be removed from their parents, however, this does not mean they should be isolated from their extended family and denied their cultural identity. Although in many States across Australia the law provides that Aboriginal and Torres Strait Islander Child and Young Person Placement Principles must be followed and it is paramount that a child should first be placed with a child's extended family or kinship group, then other members of the child's community, followed by people from another community but near the child's home and the last resort being non-Indigenous families, it appears from the current statistics that this is not what always happens. As one children's rights lawyer stated: *"As a child advocate I have to fight very hard to ensure a child is placed with family or community or to have appropriate contact and this does not always happen and culturally planning by the State does not always involve consultation with family and community or is not always reflective of a child's culture."*

It appears under the current system the majority of Indigenous children are placed immediately with non-Indigenous carers that are sometimes several hundred kilometres from their home under the misconception that this is 'better for the child'. Instead their new "home" is of increased trauma through the loss of cultural identity and connection with family and culture and sometimes being exposed to further abuse. One mother said: *"They took my boy when he was little, I was a victim of violence they didn't help me they just took him, they put him with a white family where he was sexually abused, they would only let me see him monthly and for Naidoc week which was one of my monthly visits I got to see him for a few hours, I didn't give up and after 6 years I have him home, but he has lots of problems now and I am trying to teach him about our tribe."* A Girl removed at 13 years of age in the short film "After the Apology" stated: *"They put me with this family and the man of the house would come down and use me whenever he wanted to."*

I spoke to a children's rights lawyer who spent a month working pro bono in central Australia and Arnhem land who stated: *"I spoke to many grandmothers who said their grandchildren were taken and not returned to their family, kin or country. I observed a contact visit during Naidoc week where the grandmothers were able to see their grandchildren at the event, the worker supervising was in her early 20's and was looking after 10 children and offering them lollies to stay with her, the grandmothers were only able to walk around with them during the event in the vicinity of where the supervisor was, there no opportunities for them to talk with their grandchildren about the family, their culture or even participate in cultural activities at the event. One grandmother said to me: "I have no problems and they won't let me have my grandson and I can't talk to those white people as they won't even listen."* When a child is removed from their family it deprives them of the fundamental needs safety and security, health, education and an adequate standard of living through the trauma of removal, loss of cultural identity and often very limited contact with their extended family which is often in an artificial setting or a setting that does not provide for any one on one interaction that is meaningful. It is imperative in these circumstances that Indigenous children remain connected to their culture and have significant and meaningful contact with their family.

As a young person, who has researched the current removal of Indigenous children in depth. I say ***Enough is Enough***. It is time that as a Nation we move forward in reducing the removal of Indigenous children from their families, their culture and identity. It is my view that the for Indigenous children in Australia a lot more work needs to be undertaken to ensure that their right in accordance with the United Convention on the Rights of the Child are upheld and promoted. With the successful implementation of the following recommendations, there would be more hope that Australia will move forward together with both Indigenous and non-Indigenous peoples to cease the unnecessary removal of children and where children are removed as a last resort that appropriate cultural planning and connection with their family, kin and community is maintained.

I propose that the following recommendations are implemented to ensure that Indigenous children's rights are maintained in accordance with the United Nations Convention on the Rights of the Child.

### **Recommendation 1**

The first recommendation is to implement in all circumstances where Indigenous children are removed the 'Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making.' This document was created by the Grandmothers Against Removals to establish and guide the working relationships for individual communities and FACS District offices in New South Wales. The 'Guiding Principles' exhibit four action points to encourage the incorporation of the Aboriginal community in the decision making of placement for Indigenous children. These action points are:

- ensure Aboriginal community participation in decision making regarding the care and protection of Aboriginal children, as required under the Act and ACIF;
- support Aboriginal families and reduce the number of forced removals of Aboriginal children from their immediate and extended families;
- improve the access by Aboriginal people to local services and supports, and where required, interagency cooperation; and
- develop pathways of family restoration for Aboriginal children currently in OOHC

**Recommendation 2**

The second recommendation is the implementation of early intervention strategies that are culturally appropriate, services such as 'Centre Care Indigenous Family Program'. Whilst I recognise that there are early intervention programs, majority of these programs are not facilitated by Indigenous communities or are culturally appropriate. Instead of removing children from their culture, identity and family, early intervention programs that are culturally appropriate and developed by Indigenous communities would assist in children remaining with their families and help ensure better outcomes.

**Recommendation 3**

The third recommendation is where all avenues have been exhausted and Indigenous children are placed in out of home care that contact is at the forefront. Meaningful contact should be arranged not limited to monthly to six time a year visits in artificial settings. This contact needs to consider cultural connections and learning for children which does not just occur by arranging visits for NAIDOC week, Children's Day or Sorry Day.

**Recommendation 4**

The fourth recommendation is to ensure that cultural planning for children in out of home care is undertaken by the family and local Indigenous community so that it is meaningful and reflects the child's cultural needs.

**Recommendation 5**

The fifth recommendation is to ensure that cultural competency training is provided to all Ministers and Politician's in Parliament so that they are aware of cultural sensitivities and develop a more comprehensive understanding of culture, as until cultural proficiency is achieved it is difficult to implement changes to improve services based upon cultural needs of Indigenous Australians. This statement is reinforced by members of the Indigenous community and a CEO of an Aboriginal Land Council who I had the opportunity to speak with at the screening of 'After the Apology'.

It is imperative all Australian's need to work together on the implementation of the recommendations in a meaningful way to reduce the removal of Indigenous children and ensure that Indigenous children always remain connected to their family, community and culture. As a Nation, we need to immediately reduce the removal of Indigenous children and I stand with many other young people and speak out to say that ENOUGH IS ENOUGH.

Kind regards,

