EMRIP Statement

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The Noongar Family Safety Wellbeing Council was established in 2015 through the shared concern of many Aboriginal Community Controlled Organisations (ACCOs) and Aboriginal advocates about the growing number of Aboriginal children being taken into care under the child protection system and the over-representation of our children in the youth justice system. The Council acts as a peak body for its ACCO members who work to support the safety and wellbeing of Aboriginal children and their families living on Noongar country.

We requested the Country visit in Year being alarmed at the increasing rates of Aboriginal children being removed from mothers and families, discriminatory and biased approached adopted by the authorities, lack of proper investment into Aboriginal led services and including early intervention and prevention.

The history of the Stolen Generations, found to be genocidal in its intent of assimilating Aboriginal children, had never ended - our state Western Australia was now recording the highest levels of child removal in the country. Aboriginal children still are 17.5 times more likely to be removed and make up 54 % of all children in the care of the state although representing only a small proportion of the population.

We thank the EMRIP and experts Professor Val Toki and Cheryl Lightfoot, as well as the Australian governments, for supporting the visit and engaging on these critical issues. Our Children are our future, their health and wellbeing should be out utmost priority. We can’t afford complacency about the serious harms of Aboriginal child removals, recognised by the EMRIP and including loss of family and cultural connection.

We still have much work to be done and urge Government to ensure the EMRIP report, as well as the 10-year Roadmap to Reform led by the national peak body for children, SNAICC, is given its due attention and responses.

We are especially heartened that EMRIP supported Aboriginal self-determination, a key principle underlining the Council’s commitment to support Aboriginal led engagement, including early intervention, prevention and service delivery, in out of home care.

Since the visit in November 2023, the state government has significantly increased investment into Aboriginal community organisations to assist with provision of out of home care services. Previously only one service, *Yorganop*, had existed, now there are four services operating in the Perth metropolitan area. This is a significant progress, but we also know that there is dire need for Aboriginal led services to support Aboriginal children and families in regional WA, where child removals are also acute and bring a potentially heightened risk of children being removed outside of country.

Importantly the EMRIP recognised the history of violence through the Stolen Generations and assimilationist policies continues to impact Aboriginal families today and that a Decolonised approach is urgently needed. We could not agree more with this assessment. There were no reparations for this widescale abuse and violence to children and families and the consequences have been disastrous for our communities. Further, our lands were colonised unlawfully without treaty and even a constitutionally entrenched Voice was defeated by majority at referendum last year.

Aboriginal people have long urged investment into culturally appropriate early intervention and prevention, for healing centres, investment into family and domestic violence and women and girl’s empowerment, AOD treatment services and housing. Yet to this day most of the government funding is directed to the system that has always discriminated against and abused Aboriginal people.

The Australian government is committed to Closing the Gap on inequality, but this commitment is failing with child removals increasing across the country. There has been a failure of the states and the commonwealth to ensure that systems and laws, policies and programs, are genuinely transformed in partnership with Indigenous peoples to keep children safe in families and protected also in their own culture.

It is well known that there are too few Aboriginal people employed in the department and the culture is often not safe or respectful to Aboriginal families. The EMRIP has recommended increase of Aboriginal staffing as well as comprehensive training in Aboriginal cultures. There is no doubt that Aboriginal child removals are not only discriminatory but also unlawful in many instances. The issue of systemic discrimination must be addressed.

Several inquiries have revealed the extent of the problem, including the NSW Inquiry ‘Family is Culture’ inquiry and recently in South Australian the Inquiry ‘Holding on to our Future’ by the Aboriginal Children’s Commissioner both showing many issues very similar to our state.

The 1997 national inquiry Bringing Them Home, into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, remains as urgent now as it was then, calling for states to ensure that jurisdiction for Aboriginal children be transferred to Aboriginal appropriate bodies. The legacy of the past policies and extent of harm was recognised, as well as the ongoing pattern of racial discrimination in contemporary child protection systems.

This has never occurred in West Australia, or indeed most states, although the recent recognition of Aboriginal Representative Organisations (ARO’s) in WA to work alongside the department, is welcomed. However, the role of the ARO cultural consultant extends only to working with families to identify suitable carers, develop cultural support plans, and provide advice and recommendations to the department.  The Decision-making responsibility regarding whether a child enters care and who a child is placed lies with the Department, which is inconsistent with Indigenous self-determination and the imperative of Decolonisation identified by the Country mission.

The Aboriginal Representative Organisations must be tasked with Aboriginal Family Led Decision Making and assessing child welfare concerns, not simply consulted after the department’s decision is made to remove children. Aboriginal Family Led Decision Making gives family an opportunity to be heard and engage on child welfare concerns - but families do not have a legal right to this process. Currently it is still only piloted in two locations. Every Aboriginal family should have the right to be heard before any decisions are made about children. This is best practice and law in two states only. The current role of the ARO is restricted and must be amended to ensure consistency with Aboriginal self-determination. Aboriginal people do not want to endorse discriminatory child welfare practices that have destroyed families and children’s lives.

At this stage the ARO’s also have only been established at two sites in the city and this leaves many Aboriginal families and children in care, in the city and wider regional, at risk of culturally insensitive and discriminatory departmental practices that place Aboriginal children at increased risk of being removed by the state. Increasingly we see child protection workers, young Australian social work graduates who exercise enormous power of Aboriginal lives, and also recruited from the UK and other countries, whom have no real knowledge of Aboriginal people, families and our history, including the Stolen Generations. This was evidenced from an internal inquiry commissioned by the department some years ago that reported a widespread lack of cultural safety.

Some years ago, the WA government engaged SNAICC, the national peak body, to develop a 10-year Roadmap to Reform. The report was based on statewide consultations and engagement, made very important recommendations and finalised over 12 months ago but there has been no progress since. We cannot afford such delays and while the Minister reportedly is supportive, this must be actioned.

Too many Aboriginal children are suffering in silence, unheard through the process of child removals with traumatic consequences. The Noongar community was deeply shocked and saddened in April this year as a 10-year-old child recently removed committed suicide, he’d not seen his parents in some months. This is happening across Australia, children’s pain from being deprived family and cultural connection now the subject of coronial inquiries that recognise too late the grave harm done.

The Council and Aboriginal people across the state have advised government that regional and a statewide dedicated Children’s peak body are urgently needed to ensure Aboriginal involvement and leadership in out of home care. These bodies will work with the state to address the over-representation of Aboriginal children in care as well as the overwhelmingly negative experiences of families and children in the care system.

As the Roadmap to Reform recommended over a year ago, an interim Aboriginal leadership group must be established to guide and assess the roadmap whilst the establishment of regional and peak bodies is in progress. There should be a formal Aboriginal led process to lead and appoint the group.

There has been an unequal playing field for far too long. The poor outcomes of children in care, including abuse in care, discrimination to mothers and families, the failure to reunify Aboriginal children with their families, the lack of compliance with the Aboriginal Child Placement Principle, and the removals of infants at birth from their mothers, cannot be accepted any longer. These are serious violations of the *UN Convention on the Rights of the Child* and the *Declaration on the Rights of Indigenous Peoples*.

More than 20 years ago a watershed inquiry into Aboriginal family violence, the Gordon Inquiry, recommended that the state appoint an Aboriginal dedicated Children’s Commissioner to advocate and improve systemic issues facing Aboriginal children. This was also supported by EMRIP in their report who said that recommendations of an Aboriginal Children’s Commissioner should be binding on the department.

More than 20 years after this critical recommendation was made, and supported also by several UN treaty bodies, we call on the West Australian government to commit to a dedicated Aboriginal Children’s Commissioner to lead reforms in out of home care and address the mistreatment of Aboriginal children in the criminal justice system, many of whom are also under the guardianship of the state.

We welcome the recent federal commitment to a national Children’s Commissioner and consider that this must be underpinned by state and territory Commissioners, which have been established now across Australia in most jurisdictions.

Today violence against women is a national priority, with the federal government actioning Aboriginal women’s call for a separate national action plan of violence. Yet Aboriginal mothers and children are punished for being victims of family violence, and for being homeless when the state fails to ensure housing, for being poor and experiencing trauma from generations of discriminatory government policies and laws. Services are non-existent to overwhelmed, coping with insecure government funding and a legal system that continues to engage in stereotyping and discrimination against Aboriginal women. In our state, an Aboriginal mother is 17.5 times more likely to be a victim of homicide than non-Aboriginal women, and yet government responses continue to underinvest and neglect Aboriginal community led responses.

The legal system and the laws remain heavily weighted against parents. Under the former native welfare policies all children of mixed descent were automatically placed under the guardianship of the Native Protector. Today, as the EMRIP visit highlighted, Aboriginal children can be subject to court processes in the absence of family and without legal representation. EMRIP recommends increased funding to Aboriginal legal services, to immediately address this issue and consider that ex parte court processes should only be used in the most serious circumstances, not routinely whereby families are taken by surprise without even any warning.

The Noongar Family Safety and Wellbeing Council also supports the recognition of the specialised Children’s Court program Danjoo Bidiak as a more welcoming court environment for Aboriginal families and endorses its call for increased resources and appointment of Aboriginal magistrates. The court is an example of an emerging trend in Australia to establish dedicated court lists for child protection matters involving First Nations children. These lists involve procedural and physical changes to the mainstream Court, and improving cultural safety, inclusion of the family in Court decision-making, and greater accountability of the child protection department. The evidence is clear that when these lists are grounded in cultural safety and self-determination, they generate better outcomes for Aboriginal and Torres Strait Islander children and their families such as more families staying together.

The Council unfortunately also advises the EMRIP it misunderstood the Noongar Indigenous Land Use Agreement by suggesting it is a Treaty with great potential for Aboriginal self-determination in child welfare. The Southwest Land and Sea Council has no mandate in this respect and does not envisage any future role in child protection. The agreement negotiated under threat of extinguishment and funds granted for the extinguishment of native title are bound up in trust companies and unable to be utilised for at least another decade. It did not include self-governance in the manner of Canadian modern treaty agreements and will not extend into child protection.

Finally, we wish to highlight to EMRIP that the Australian government remains in breach of the UN Convention on the Rights of the Child through its refusal to sign the Optional Protocol to the Convention, and that this situation directly relates to the violation of the rights of Indigenous children in Australia. Aboriginal children are the most vulnerable children in the country today and experiencing severe human rights violations at the hands of the state, including in out of home care. The refusal to sign the Optional Protocol evidence a serious lack of commitment to the Convention and calls into question the integrity of the national prohibition of race discrimination. A commitment to Aboriginal children’s human rights is needed to overcoming child removals, and yet still not forthcoming. We respectfully request EMRIP to continue to assist us to ensure this important issue and the report are progressed and implemented for the future of our children and family’s safety and wellbeing.

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