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WITNESS STATEMENT OF HEATHER LEE SCULTHORPE

I, Heather Lee Sculthorpe of [REDACTED] Hobart, in the State of Tasmania, Chief Executive Officer, Tasmanian Aboriginal Centre, do solemnly and sincerely declare that:

I am authorised by the Tasmanian Aboriginal Centre (TAC) to make this statement on its behalf.

I make this statement on the basis of my own knowledge, except where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.

I have been assisted in the preparation of this statement by my colleagues from the TAC, including [REDACTED].

BACKGROUND AND QUALIFICATION

I hold the following qualifications:

Bachelor of Arts from University of Tasmania awarded in 1972;

Bachelor of Laws with Honours from University of Tasmania awarded in 1993;

Graduate Diploma of Environmental Management University of Tasmania awarded in 2013;

Graduate of the Australian Institute of Company Directors.

I have been the Chief Executive Officer of the TAC since approximately 1990 and worked in various other roles with the organisation on and off since helping to form it as an Aboriginal community organisation in 1973.

I worked in the Commonwealth public service first in the Health Department Freedom of Information Section, and then in the Parliamentary Library as a legal researcher.

I worked in the Tasmanian public service as a legal policy officer with the Justice Department.

I am the author of two reports relevant to this Inquiry. In 1980 I produced a report on the findings of an Aboriginal community research product on the social conditions of Aborigines at that time entitled, Tasmanian Aborigines: A Perspective for the 1980s. In the early 2000s I researched and wrote a report on Aboriginal child protection in Tasmania which was published in 2014. The report was entitled, Iuwutina mana-mapali krakani waranta: Keeping our children with us: report to Government

and the Aboriginal Community about changes needed to the child protection system in Tasmania. The findings of the latter report are detailed later in this statement. The Keeping Our Children With Us report is Attachment HS – 1.

I am a Tasmanian Aboriginal person whose first direct ancestor known by name to me is Tanganutura from north-east Lutruwita/Tasmania who was exiled to Wybalenna on Flinders Island and later to Putalina/Oyster Cove in the south-east where her descendants have lived for many generations.

ABOUT THE TAC

The TAC is an Aboriginal community organisation which represents the social, political and cultural aspirations of the Tasmanian Aboriginal community. The TAC was developed in the early 1970s and has been funded by the federal government since 1973. It was first known as the Aboriginal Information Service, changed its name in 1977, and became synonymous with the Aboriginal Legal Service which it operated until defunded by Senator George Brandis in 2015. The TAC was forced by then Minister Nigel Scullion to change its incorporation status in order to continue to receive significant funds from the National Indigenous Australians Agency and in accordance with the requirements of the Office of the Registrar of Indigenous Corporations gained registration as the Tasmanian Aboriginal Corporation (TAC) in 2017. The TAC then registered its business and trading name as Tasmanian Aboriginal Centre (TAC).

The TAC provides a range of services to the Tasmanian Aboriginal community and is also an advocacy organisation. I set out later in this statement the services and advocacy which the TAC provides in the areas that are within the scope of the terms of reference of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission).

The TAC is a corporation with an Aboriginal Board of Directors elected directly by Aboriginal people. It is registered with the Office of the Registrar of Indigenous Corporations established under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. Membership is open to persons aged 16 and over who are Aboriginal or Torres Strait Islander and who ordinarily reside in Tasmania.

ABORIGINAL PEOPLE IN TASMANIA

What is the significance for Aboriginal people in Tasmania of their cultural identity?

Tasmania is unique amongst Australian jurisdictions in being the only one to have claimed the original Aboriginal people of the island had become extinct. Many books and articles have been written about the Australian Frontier Wars and the devastating effect the English colonial invasion had on Aboriginal

people throughout the country. It was only in lutruwita/Tasmania that claims of total extinction were made officially. Some of this history is summarised in the Attachments to this statement.

Strong cultural affiliations were maintained throughout the periods of invasion and attempted assimilation, especially by people subject to the Cape Barren Island Reserve Act. Some circumstances meant that cultural revival was particularly sought by people separated from family and community by government relocation policies. The result was a fierce determination to maintain Aboriginal identity for many Aboriginal people in Tasmania and that momentum increased from the 1970s when the modern Aboriginal community movement was organised by the TAC.

The Aboriginal movement has been based on a determination to maintain Aboriginal culture and identity rather than succumbing to pressure to become yet another minority group or simply a disadvantaged group characterised by poverty and disadvantage. It is our Aboriginal cultural identity that unites us as a community through birthright and a common history, that guides and informs us and makes us strong in the face of adversities and government attempts to undermine our right to Aboriginal community self-determination.

The fierce determination to maintain cultural identity and respect the lives and sacrifices of the Old People and those who came after them also explains the heart ache and anger that greeted then Premier Hodgman's 'Reset Agenda' in 2016 and remains prevalent in 2022.

The 'Reset Agenda' including the Premier's Priorities are shown at Attachment HS - 2. The main Aboriginal community objection is to 'Priority 1: A new approach to Aboriginal eligibility'. It claims, falsely, that the new approach aligns the Tasmanian Government approach with that of the Commonwealth. In fact, the reverse is true.

The 'Reset Agenda' failed to appreciate the different reasons for which Aboriginal eligibility might be relevant. It bases its approach on that of the Australian Bureau of Census and Statistics where self-identification is the only criterion. It can hardly be otherwise for the purpose of the Census of Population and Housing where a pre-written questionnaire is the only method of administering the survey.

Australian law about Aboriginal status was decided by the High Court of Australia in the Tasmanian Dams Case: *Commonwealth v Tasmania* [1983] HCA 21. The High Court decided that a 3-pronged definition applies: Aboriginal descent, self-identification, and community recognition. All 3 aspects are able to be determined for those applying for eligibility for Aboriginal services, unlike the simple self-identification applied in the Australian Census.

The Tasmanian Government implemented its Aboriginal eligibility reset process by issuing a form for completion by applicants seeking confirmation of eligibility for Aboriginal services. Without seeking the consent of organisations, the Premier's Department required Aboriginal community acceptance to be

confirmed by any “registered Aboriginal organisation”. Ancestry could be evidenced by a statutory declaration with no requirement of actual evidence of descent from any Aboriginal person.

The eligibility form is shown at Attachment HS -3.

The web site of the Office of the Registrar of Indigenous Corporations (ORIC) shows the names and details of those organisations currently registered and hence able to provide confirmation of Aboriginal community acceptance of applicants.

From the list of organisations shown on the ORIC web site, 12 have been deregistered, 4 are governed by an organisational alliance of which most members and directors are not Aboriginal, 12 are not Aboriginal, and at most 8 are governed by a majority Aboriginal Board as the ORIC governing legislation requires. A lesser number have majority Aboriginal membership. The two Furneaux Islands Aboriginal organisations are not registered with ORIC.

There is no process under the ORIC governing legislation to require local Aboriginal agreement that an organisation does indeed meet the legislative requirements before the organisation is approved and registered by ORIC nor any process to contest validity after registration

What are the ways in which Aboriginal people are presently able to maintain culture and traditions, and what are the challenges imposed by history or by current policies? Including as much information as you wish about the impact of genocide and colonisation, as well as about more recent government policies if you consider them relevant.

As Sir Ronald Wilson noted in the Bringing Them Home Report, there can be no separation of the impact of invasion and genocide from any consideration of the current day disadvantages imposed on Aboriginal people - across all domains, including health and wellbeing, employment and financial security, suicide, housing, over-representation in juvenile and criminal justice, over-representation in child protection services and the differences in life span between Aboriginal and non-Aboriginal people.

One of the many challenges faced by a community that experienced attempted genocide is an expectation that we may all be willing to explain what our culture means to us whereas white Australians face no such expectations. For many of us, our primary obligation is to our community, our ancestors and our land rather than more individualistic aspirations. This is what has ensured our survival as a people.

Intergenerational trauma remains prevalent in our community even if often unrecognised. As a community, we have a strong sense of unfinished business which goes a long way to explain why so

many in our community are very opposed to the notion of 'reconciliation' in the absence of truth telling, treaty and reparations.

The impacts of past and current Government policies are widespread and indistinguishable from the everyday existence of Tasmanian Aboriginal people. Government policies and practices have endorsed invasion and genocide. They endorsed and rewarded the killing of Tasmanian Aboriginal people and the elimination of Tasmanian Aboriginal men – a practice that has obvious and catastrophic consequences for Aboriginal youth and men in 2022.

The current government policy of enabling any person to be recognised as Aboriginal without any evidence of descent from the original people is continuing to cause great anguish in the Aboriginal community. Those people do not share a common history of dispossession and murder. They are not represented in the individual reports of the Royal Commission into Aboriginal Deaths in Custody or the Bringing Them Home report. Their claims to be a separate Aboriginal community are never explained and have no basis in fact, in my opinion.

Further insight into the matters discussed in this section are indicated in the Bringing Them Home Report extract which is Attachment HS - 4 and in briefer form, in the Stolen Generations Assessor Report at Attachment HS - 5.

THE WORK OF THE TAC

Summary of programs delivered by the TAC both generally and in specific relation to the needs of children.

TAC programs generally:

The TAC operates State-wide services in the areas of comprehensive primary health care, including GP and other health professional clinics in 5 areas of the State; paediatric clinics; a counselling service; on country culture and healing programs; land management based on returned Aboriginal land and 4 Aboriginal ranger groups; an Aboriginal language retrieval and revival program; a family support and care program; a fee for service Aboriginal Cultural Awareness Training program; palawa kipli Aboriginal food experience; a Registered Training Organisation; Aboriginal community on country camps and festivals; social and emotional wellbeing programs and groups; school holiday programs; Connected Beginnings partnerships in each of the 3 regional areas and an Aboriginal Children's Centre providing long day care in Nipaluna/Hobart.

The programs provided by the TAC for children, youth and families depend on the government funding available. In the past we have been funded to provide island programs as an alternative to youth detention. For TAC it has been a continuing struggle to maintain specific funding for young people as government preferences change. The TAC preference was and remains a holistic approach

that funds support from before birth onwards. Government demands that programs support only youth from teenage years onwards have resulted in the defunding of our programs. TAC experience is that such narrowly targeted programs do not have good outcomes especially as they fail to recognise the importance of ongoing relationships in the Aboriginal community.

Programs for children in out of home care:

The activities of the TAC Families Teams funded primarily by the Tasmanian Government include mentoring for individual young people; inclusion in small youth activity groups; social support for young people including assistance with obtaining and retaining government benefits and licences for vehicles in particular; representation and advocacy; support for access visits with family; representation at Child Safety Service meetings on request.

TAC involvement is not as widespread as it could be if there was a properly funded program for that purpose and the Department as formal guardian would allow or encourage such assistance.

Requests for TAC involvement with children and young people in out of home care may come from the children and young people themselves, schools, carers, the department, community members, GPs, counsellors, child welfare agencies from other States.

Support for carers including kinship carers:

TAC involvement is limited as there is no funded worker or program. Support is provided wherever possible upon request. In the past, TAC has provided training for potential foster, respite, and kinship carers. A lack of acceptance by government departments of the role of TAC in this area has been the main reason for limited activity.

An important role for TAC has remained providing informal opportunities for cultural and family connections at Aboriginal community meetings, festivals, and other events. This has often been the main means of families and carers connecting with each other and with community.

Support for families:

TAC is funded by the State government for an Intensive Family Engagement Service (IFES) for children considered by the department to be at medium to high risk of being removed from family and community; and fee for service block funding to support parents into services.

TAC support is provided at the request of the family or child. It may take the form of negotiation or advocacy with services such as the Child Safety Service, housing, Centrelink, schools and courts.

Another major function is to link children and families into Aboriginal services ensuring they are aware of the services and supports available to them particularly in relation to health and culture. TAC workers were very active providing food and other requirements during COVID lock down.

Advocacy for the interests of children:

TAC workers advocate and represent children at Child Safety Service Care Team meetings upon invitation. This may include advocating for the child to spend more time with family and community. TAC workers also provide advocacy for children and young people with courts, schools and Centrelink. This may include advocacy for lesser sentencing, more hours at school and/ or support to obtain leaving home payments. Referrals and support to obtain government funding support upon leaving out of home care are also provided.

Any specific programs related to child sexual abuse or harmful sexual behaviours:

TAC youth groups include discussion in informal settings of issues such as consent. In previous years more formal presentations have included Family Planning Tasmania educators talking about healthy relationships and contraceptive options.

TAC workers have been trained to identify grooming practices and in how best to respond to disclosures of sexual assault, including believing the discloser, not expressing shock or horror, explaining options, and making appropriate referrals.

TAC operated a children's protective behaviour program for many years including the production of booklets titled Palawa Kids Can Say No, and Family Violence is not OK for Palawa Kids. The booklets are at Attachment HS - 6.

When disclosures of sexual abuse have been made, children and families are supported to access professional and specialised counselling from Sexual Assault Support services. More recently TAC has employed counsellors and psychologists with specialist experience in sexual assault treatment. Referrals are also made to the TAC's GPs. The TAC Families Team is able to explain other options including the involvement of Tasmania Police.

Does the TAC work directly with government? What is your experience of how consultative or collaborative the Department of Communities or any other department is?

The TAC has worked directly with government, through both public servants and Ministers of the Crown, since our inception in the early 1970s. Following Aboriginal community meetings in the late 1960s and early 1970s, our first task was to make governments realise that the Aboriginal community still existed and that our people continued to suffer disadvantage.

TAC advocacy from the start centred on poor health and housing, especially for those families moved from the ex-Aboriginal reserve on Cape Barren Island to substandard housing in Launceston, Burnie and Hobart. More generally, in the TAC study of 93 Aboriginal households published in 1980 and referred to towards the start of this statement, it was apparent that poor health and racial discrimination were major issues confronting the community.

For the most part, TAC interaction with government has been initiated by the organisation. Advocacy for the Aboriginal community rather than partnerships has been the general rule. There has been little change over the years despite the new emphasis on partnerships under the Close the Gap campaign.

In recent years under the stewardship of Professor Michael Pervan the Department of Communities has developed welcome initiatives that have redirected funds and other resources from policing children and families into providing direct financial supports that have been effective in keeping Aboriginal children and families out of the child protection system.

It is ironic but in the TAC experience not surprising, that just as closer working relationships are being forged, there is yet another government reorganisation of its agencies which sees the merger of the Department of Communities with other government departments. As in previous years, our experience is that effective staff and programs are moved before their full potential is realised.

The TAC over its many years working with the Aboriginal community throughout lutruwita/Tasmania is the stable and consistent voice of Aboriginal children, family and community to address government inability to care for our children.

Departmental failings over the years include decision-makers ignoring warnings of suspected sexual abuse and neglect by foster carers. Even when our warnings have been confirmed there has been a lack of accountability and transparency about why those warnings were not acted upon and what decision-making processes were followed

Another departmental failure has been the occasions when children in out of home care have been moved to different placements without notification to TAC and even a refusal to advise TAC workers of the new address of Aboriginal children in case. Some children have thereby been lost to the community, at least for the time being.

The separation of siblings has been a particular problem in large family groups. In addition to the trauma of being separated from family, some children have been lost in the system and it has taken many years for some to find their way back to the community.

TAC has well-developed policies and procedures for avoiding that outcome with special attention to providing opportunities for children and young people to use the many services TAC provides and to participate in Aboriginal community events. The success of these measures depends on the willingness of departmental decision-makers to enable or require such participation, and that willingness has been variable.

There has also been a failure to develop Aboriginal cultural care plans for children in out of home care, despite frequent calls for this to occur and offers to assist.

Inconsistency in practice and attitude between the three geographical regions of the State have been noticeable to TAC workers with most problems arising in the north-west of the State.

TAC has been successful in finding placements with extended family members, sometimes after considerable searching and ingenuity. Where departmental staff have been amenable to such community-driven solutions, there have been successful outcomes.

Separation of families across multiple carers have lifelong implications, and the cycle of removal and Departmental care continues.

Departmental outsourcing of out of home care services has resulted in less oversight of our children placed in the NGO sector. There is no requirement on services to include TAC in the planning for and care of our children. This is inconsistent with the partnership approach required of governments under the National Agreement on Closing the Gap.

Despite the obligations accepted by governments under the National Agreement on Closing the Gap, the Tasmanian government continues to permit or encourage NGOs with limited or no connection to the Aboriginal community to enter the child safety system with high potential to provide inappropriate services to our community, and with no prior Aboriginal community consultation. NGOs such as Save The Children, Bapcare, Mission Australia, Red Cross, Centacare, Anglicare, Key Assets, Australian Childhood Foundation, Colony 47 are active in local service provision with highly variable outcomes.

The TAC Families Team has daily contact with the Department of Communities, and recommends that:

- All Child Safety Service workers and managers participate in cultural education and meet cultural standards as interactions are too often culturally unsafe for children, families and workers;
- Budget based block funding be reintroduced to avoid the high administrative burden now required by over-frequent reporting to the Department which takes time and energy away from working directly with children and families;

- The Department provide funds to enable a specific, dedicated out of home care workforce and commit to providing access to departmental files and Care Team meetings;
- The Department find practical ways to show their understanding that the TAC workforce has the capability to provide support services for the Aboriginal community.

THE NEEDS OF ABORIGINAL CHILDREN

The Commission has been told that Aboriginal children are overrepresented in the cohort of children who are under the guardianship of the Secretary. This is consistent with the TAC's experience. What in your view are the reasons and influences which have led to Aboriginal children being overrepresented in the out of home care system?

The TAC has found it impossible to obtain accurate data and information about the number and status of Aboriginal children in the child protection system. The number of families referred to TAC by State agencies indicates to us that self identification or identification by those who refer is often an overstatement of Aboriginality and in other cases TAC believes there is an understatement. TAC needs to have more information to improve certainty about Aboriginal status and that information has not been forthcoming.

TAC disinclination to accept referrals from State agencies for families not known to the Aboriginal community is based on our view that the Aboriginal framework we adopt in our work is the reason why we can help keep Aboriginal children out of State care rather than any philosophical objection.

The most recent data on Aboriginal child protection illustrates the difficulties in getting a true picture of the national situation and the situation in Lutruwita/Tasmania in particular. The most recent Annual Report of the Department of Communities does not give specific information about Aboriginal children in the child protection system in Lutruwita/Tasmania. The data collected nationally by the Australian Institute of Health and Welfare has so many caveats on reliability that it seems misleading to even publish the data.

What the data shows is that Lutruwita/Tasmania is doing much better than most other jurisdictions in Australia. This statistical finding does not help the Aboriginal community be assured that the State is doing better in keeping Aboriginal children out of State care as we know it takes only a few child removals to cause a big impact on the small Aboriginal community in this State. Nor has it resulted in State agencies being keen to learn from the success of our efforts.

The TAC experience is that every level of the child safety system has reinforced stereotypes about Aboriginal families, especially those families with previous experience of the child welfare and child protection systems. This has been exacerbated by the existence of ever-more comprehensive government information systems which record every aspect of people's lives.

In some cases the community nature of child rearing has been misinterpreted as parental neglect of children. The difference in child rearing practices was especially prevalent in areas which suffered the highest rate of child removals as recorded in the Bringing Them Home Report. There has been a failure of child welfare authorities to recognise the strengths of Aboriginal family and community rather than concentrating solely on deficits. Of most relevance are the close connections within Aboriginal families that result in informal shared care of children, close community connections of Aboriginal families, intangibles such as humour and storytelling, a priority accorded to culture and community over personal advancement.

The nature of the government child welfare workforce where middle class university graduates are employed ahead of people with a more diverse background have resulted in a continuation of the view that Aboriginal children in challenged circumstances would be better off removed to families where they can be assimilated into non-Aboriginal society.

Despite lip-service having been paid to Tasmanian government implementation of the Aboriginal Child Placement Principle, there has never been any actual implementation of that Principle, either in legislation or in practice.

The ongoing challenges of the child welfare system in lutruwita/Tasmania have been well documented and are demonstrated in the ongoing attempts to reform the system. The most recent attempts to reform the system are taking the direction we support but the failure to give special attention to the needs of the Aboriginal community most at risk cause grave concern. The reforms are indicated at Attachment HS – 7.

What are the key considerations for government in establishing or funding programs which are intended for Aboriginal children and families? In particular, what is the role of culture?

Recognition of the continuing importance of Aboriginal culture is a primary consideration. The Stolen Generations Assessor, the former Tasmanian Liberal Premier Ray Groom, came to understand this and articulated it clearly. He said:

“Throughout the year I have had many very personal meetings with applicants and discussed with them the most intimate details of their family backgrounds, childhoods and adult lives. Most of these meetings were heart rending and emotional. Quite frankly it would not have been possible to conclude the task without the generous cooperation of applicants and their families and the wonderful support of staff in the Office of the Stolen Generations Assessor and others.

One of the conclusions I have reached following this year of meetings, discussions and reading personal records and histories is that in this the 21st century, some 204 years after

the European settlement of Tasmania, **there remain many proud Aboriginal people living in this State. For this special group of people their Aboriginality and Aboriginal culture is central to their lives.** (my emphasis).

Theirs is a truly remarkable story of resilience, strength and survival after the near annihilation, within a few decades of European settlement, of the ancient civilisation of Aboriginal people of Tasmania.”

Successful programs require Aboriginal decision making in the context of Aboriginal community control. The Aboriginal community has previously expressed a wish to have Aboriginal welfare and child safety services transferred to an Aboriginal jurisdiction. That service would need to be funded by government as part of a reparations package for dispossession. This course of action would endorse and act on the recommendations in the *luwutina mana-mapali krakani waranta Report 2014*.

The basis of the overriding need for Aboriginal community control was well explained by the Royal Commission into Aboriginal Deaths in Custody:

1.7.6 But running through all the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.

A fuller extract from the Royal Commission into Aboriginal Deaths in Custody giving the context for this conclusion is at Attachment HS-8.

The Tasmanian Government has shown its failure to grasp the meaning of Aboriginal self determination and empowerment. In its response to the review by Deloitte Access Economics of the implementation of the Royal Commission recommendations in 2018 (<https://www.niaa.gov.au/resource-centre/indigenous-affairs/review-implementation-royal-commission-aboriginal-deaths-custody>). It said:

“The Tasmania Government has addressed the principle of self-determination through the Reset agenda. This agenda has driven increased engagement between the Government and the Aboriginal community to facilitate stronger participation by individuals and organisations in matters relating to Aboriginal Affairs. Tasmania has

also implemented anti-discrimination measures through cross-cultural training and activities led by the Office of the Anti-Discrimination Commissioner". (Page xxiii)

This witness statement has explained why the TAC believes the Reset agenda has hindered rather than helped Aboriginal self determination and empowerment.

The Bringing Them Home report reached a similar conclusion about the need for Aboriginal self determination and made detailed recommendations for the introduction of national framework legislation:

Self-determination

43a. That the Council of Australian Governments negotiate with [[national Aboriginal bodies] national legislation establishing a framework for negotiations at community and regional levels for the implementation of self-determination in relation to the well-being of Indigenous children and young people (national framework legislation).

Paragraphs 43 to 52 in particular of the Bringing Them Home Report recommendations set out a detailed blueprint for how Aboriginal jurisdiction can be achieved by those regional communities which desire it.

Thinking about the issue of child sexual abuse, are there factors or circumstances which affect how vulnerable Aboriginal children are to being victims of that abuse in schools, hospitals, out of home care or youth detention? Do you see any solution to those factors or circumstances?

In my view the circumstance that most affects the vulnerability of Aboriginal children to being victims of child sexual abuse is their over-representation in out of home care and other institutional settings. This is a system-wide issue that has long required the State to implement solutions, especially those that have been suggested to it by TAC and other Aboriginal bodies.

The Family Matters Report 2020 (<https://www.familymatters.org.au/map-of-australia/tasmania/>) painted a stark picture of Tasmanian government failings in child welfare. The Report said:

Aboriginal children in Tasmania are 4.7 times more likely to be removed from their families by child protection services than non-Indigenous children, the lowest rate of out-of-home care over-representation.

The [Family Matters Report 2020](#) shows that Tasmania, in comparison with other states and territories has:

- the second highest rate of Aboriginal children on track against all 5 AEDC domains (37%)
- a proportion of expenditure on family support services below the national average (12.8%)
- by far lowest rate of placement of Aboriginal children with Aboriginal carers (13%)
- no Aboriginal peak, few formal and funded roles for ACCOs, and no model for family or ACCO participation in child protection case decisions
- no dedicated commissioner or peak body for Aboriginal children or formal system leadership roles for independent Aboriginal representatives
- no dedicated and monitored strategy to address Aboriginal over-representation.

In my opinion, the Family Matters Report 2020 downplays the very significant role that the TAC and its Families Team play in the welfare of Aboriginal children and families, particularly those in contact with the State's child safety system. TAC undertakes the role of the Statewide peak body for Aboriginal families and children in the child protection system although it is not funded specifically for that role. The TAC is also hampered in that role by the State failure to provide data and information to enable proper monitoring of the effectiveness of current approaches.

As an Aboriginal Community Controlled Organisation (ACCHO) the TAC is able to ensure that Aboriginal culture takes a central role in ensuring the safety of Aboriginal children. Culture is fundamental to every Aboriginal child and young person. Culture can play a significant role in keeping Tasmanian Aboriginal children safe and preventing future child sexual abuse.

Cultural connections allow us to know which children are or may be at risk and put in place measures to support the child and their family and work towards ensuring safety measures are in place.

Cultural connections are about being connected to extended Aboriginal family and Community networks which are known safety factors. There is a need to build on these not take them away from children who are at risk.

Cultural connections can address perceptions that Aboriginal people don't care about their children and address stereotypes and prejudices that enable poor work practices related to the care and safety of Aboriginal children: for example, 'they aren't really Aboriginal'; 'there isn't any such thing as Aboriginal culture anymore', 'these kids are the same as all other kids', 'I am not going to treat these kids or their family any differently to any others, 'I can't do that because others will criticise me if they think I am giving them preferential treatment' 'I am not involving the TAC because they just cause more problems and make my life difficult'.

Connections with other Aboriginal people, and Aboriginal community organisations and services provides a range of safe and supportive opportunities for education, health care and mental health and wellbeing support.

Involvement in cultural programs provided for Aboriginal children provide numerous and sometimes targeted opportunities for Aboriginal children to talk, discuss any issues or worries they may have and report any concerns they may have.

ACCOs assist the process of ensuring that schools, hospitals, police, child safety workers and others are made accountable for not responding appropriately and in a timely manner to any issues that may result in Aboriginal children feeling vulnerable due to racism, discrimination, prejudices, bullying, bullying because of being a 'welfare kid'.

LUWUTINA MANA-MAPALI KRAKANI WARANTA

The Keeping the Children with Us report referred to early in this statement arose because of a lack of progress in reducing the rate of child protection substantiations and in particular of Aboriginal child removals. TAC programs worked tirelessly to ensure the safety of Aboriginal children perceived to be at risk and to convince government child protection officers that removal was neither justified nor useful to ensure the wellbeing of the child.

There was also a failure of government agencies to place removed children in accordance with the Aboriginal Child Placement Principles with Tasmania being statistically the worst jurisdiction in Australia for failing to place children in accordance with the Principles. Government bodies placed blame for that consequence on the lack of Aboriginal people willing to become respite or foster carers.

The history of Aboriginal child removals indicates that the ready availability of foster carers would result in even greater rates of Aboriginal child removals but with no improved outcomes for the children. The experience of our community was that removal of children from family and community was more likely to damage than to improve future prospects for removed children. Every State and national enquiry over the last several decades has confirmed that conclusion.

The direct experience of TAC programs and outcomes of TAC research projects was that every effort had to be made to keep Aboriginal children safe within their family and/or community. With limited resources available, any other preoccupation such as foster carer training was likely to result in an even higher rate of Aboriginal child removals. Evidence of that outcome could be found easily in data and reports from other Australian jurisdictions.

The reports into child protection systems throughout Australia provided evidence also that out of home care for Aboriginal children resulted too often in death and abuse, including sexual abuse, rather than the safe upbringing no doubt sought by the decision-makers who approved the removal from family and community. That finding required ever-more careful consideration of the balance between removal and the allocation of resources to improve the likelihood of safety within the home.

The Keeping the Children With Us Report made ten recommendations. The recommendations were:

Recommendation 1:

That the Tasmanian Government accept the wish of the Aboriginal community in Tasmania for the transfer of jurisdiction over child welfare and child protection to the Aboriginal community.

Recommendation 2:

That the Tasmanian Government amend the *Children, Young People and Their Families Act 1997* to enable Aborigines to opt to have their child protection matters dealt with under Aboriginal jurisdiction rather than under the State system.

Recommendation 3:

That the Tasmanian Government fund the exercise of Aboriginal jurisdiction in forms to be negotiated and to at least the same rate as that funded for non-Aboriginal children.

Recommendation 4:

That the form in which Aboriginal jurisdiction is transferred also recognise a rebuttable presumption that the best interest of the Aboriginal child is inextricably linked to the best interests of the Aboriginal community, and the best interest of both lies in keeping Aboriginal children within that community.

Recommendation 5:

That in both Tasmanian and Aboriginal jurisdictions, there be recognition that the initial decision to remove a child from his or her family and community is the decision of greatest consequence and should require the decision maker to be satisfied beyond reasonable doubt that the safety and wellbeing of the child requires it.

Recommendation 6:

That pending implementation of the measures specified above, the Minister declare the TAC as a "recognised Aboriginal organisation" in order to reduce the delays and technicalities currently experienced in trying to make Aboriginal voices heard in the Tasmanian child protection system.

Recommendation 7:

That upon the Government's acceptance of the Report, they require the Department to enter into immediate negotiations with the TAC for the transfer of responsibility for out of home care for Aboriginal children to the TAC with an accompanying transfer of finances currently available for those children.

Recommendation 8:

That the Government investigate the model adopted in Victoria of creating a statutory office for an appropriately experienced Aboriginal person of an Aboriginal Children's Commissioner to oversee the implementation of child welfare and child protection services for Aboriginal children in Tasmania.

Recommendation 9:

That the *Family Violence Act 2004* be amended to require some degree of actual danger to the physical safety of a child for that child to be considered an "affected child" rather than the mere requirement of a child being a person whose psychological wellbeing or interests may be affected by violence (as defined) between partners.

Recommendation 10:

That the Tasmanian Government take the Australian lead in reducing the administrative and operational costs involved in recording, investigating and reporting on child concerns that fail to meet threshold tests for State intervention, by abandoning mandatory notification in favour of investment in the public health model of child protection.

Which recommendation were the most important at the time? Which ones would you consider most necessary in 2022, and why?

All the recommendations are important in order to achieve the transfer of Aboriginal child welfare and safety to Aboriginal community control which is the principal recommendation.

It would not be productive to create a new Commissioner for Aboriginal Children position as indicated in recommendation 8 without making a fundamental change to the processes that currently exclude Aboriginal community decision making about the safety of Aboriginal children.

Similarly the recommendation that there be recognition that the initial decision to remove a child from his or her family and community is the decision of greatest consequence and should require the decision maker to be satisfied beyond reasonable doubt that the safety and wellbeing of the child requires it (recommendation HS - 5) is an attempt to make sure decisions makers really do treat removal as a "measure of last resort". In the absence of total prohibition on the removal of an Aboriginal child, a preferable solution may be to identify factors that decision makers must consider before making a decision to remove and to have some oversight or penalty mechanism to ensure that occurs. I believe this is the approach adopted in some American jurisdictions.

In support of the previous recommendation, I point to the recent amendment proposed to Tasmanian legislation about strip searching of young Aboriginal people in detention. Although the Aboriginal community has long advocated for a total prohibition on the practice, the Tasmanian Attorney General Elise Archer MP introduced a legislative amendment recently that enables strip searches to be made

if the decision maker has “reasonable grounds” for considering it necessary. Such terms have been found repeatedly to be ineffective in achieving the legislative purpose.

None of the recommendations of the Keeping Our Children With Us report were accepted by the Tasmanian Government and TAC did not receive any formal advice about the reason for non-acceptance. There have been many discussions with departmental officers and many funding applications have been made to implement Aboriginal controlled children and youth services. The usual response is to require us to provide further information or no response at all, and hence our proposals especially for a new approach to Aboriginal children and to at-risk youth programs State-wide have sat unanswered or ignored for nearly a decade.

The senior managers responsible for these omissions have been further promoted or moved sideways, the most recent being [REDACTED] Deputy Secretary, Children and Youth Services in Department of Communities; [REDACTED] Director, Youth and Family Violence Services, Department of Communities; [REDACTED] was a senior case worker and team leader in the Child Safety Service [REDACTED]

[REDACTED] Secretary of the Department of Justice [REDACTED]

In my opinion, the lack of progress in improving outcomes for Aborigines has not had the consequences required if the State of Tasmania is to be held accountable for outcomes. Ultimately the responsibility for this failure rests with the Tasmanian Minister for Aboriginal Affairs and the Tasmanian Government rather than the individual public servants involved.

IMPORTANCE OF AN ABORIGINAL FRAMEWORK

In my opinion any systems designed to work for Aboriginal children need to use an Aboriginal framework to have the best chance of improving welfare and safety outcomes.

An Aboriginal framework requires treating Aboriginal children and families as Aboriginal people rather than merely as people in poverty, in need of education, or other government assistance. It respects Aboriginal community and culture and comes from a place of respect, self-determination and empowerment. It adopts a holistic approach to the child, the family and the community.

An Aboriginal framework would be about:

- Caring, respect and truth
- Collective responsibilities, obligations and expectations
- Strong connection and collective strengths
- Layers of care and support to match the needs of individual families and children
- People led decision-making not Government led.

Our view of an Aboriginal framework for dealing with child safety is based on the recognition that:

- Our children are our future – they will be the holders of our cultural knowledge, our cultural practices, the carers of our Country and our links to our ancestors
- Collective care and protection arrangements
- We are a ‘village’, a Community, and together we are better able to care and protect our children as opposed to any Government service provider
- Birthing children into and up in an environment that celebrate togetherness, connectedness, joint and collaborative caring responsibilities, obligations and expectations
- Transparent accountability – there isn’t much we don’t know about each other which allows us to identify and respond to potential issues early
- Culture connects us and defines us all, including children and young people. This is recognised as fundamental to children’s self-esteem, sense of belonging; their physical, emotional and psychological development, health and wellbeing and their capacity to grow up strong.

SPECIFIC CONCERNS

The TAC has made recommendations over many years to try to achieve improvements in the child protection and out of home care systems. Our experience has been that our recommendations are not acted on and that outcomes have not improved significantly for our children.

Some of the specific concerns of the TAC include:

- Failure of the Tasmanian Government to provide funds to ensure an Aboriginal community-controlled response to the over-representation of Aboriginal children and youth in the child protection and juvenile justice systems;
- Failure of senior managers to ensure a culturally safe system of Aboriginal child protection;
- Failure by senior child safety practitioners and managers, [REDACTED] [REDACTED] to act on our detailed concerns about the safety of Aboriginal children in care;
- Failure of the State Government and State Service to impose consequences for State agencies that do not reach agreed improvements for Aboriginal people;
- Failure of the Minister for Aboriginal Affairs and senior managers to take advice on the detrimental consequences to young people of being sent to the Northern Territory Brahmny

program, at great cost to the Tasmanian taxpayer, especially after the State defunded an alternative to Ashley program operated by TAC on the grounds of lack of adequate participation and minimally funded at around \$140,000 per annum;

- Failure of successive reforms of the family support system to act on the advice they received that general services such as gateway programs outsourced to the white non-government sector do not meet the needs of the Aboriginal community and require specific funding for the well-developed Aboriginal community sector. This includes the various reviews conducted by [REDACTED];
- Failure of head of child protection services and later Commissioner for Children [REDACTED] to support and secure funds for a specific Aboriginal referral and advice service when the gateway services were funded;
- Failure of successive Commissioners for Children to persuade government Ministers that distinct, Aboriginal controlled services must be funded if outcomes are to improve;
- Failure of State funding to adequately recompense the front-line Aboriginal workers who achieve so much more to preserve the integrity of Aboriginal families and community than the many layers of highly paid public servants who fail to achieve outcomes;
- Failure of the State to reduce the over-representation of Aboriginal children in out of home care despite the many years they have known of this failure;
- Failure of the State government to acknowledge the impact of racism and racial discrimination in the provision of welfare and protective services to Aborigines;
- Failure of the revolving door of family support and child protection reforms to address adequately the need for Aboriginal community control of Aboriginal child safety;
- Absence of reliable data presents a problem with the ever-changing definitions and lack of nationally agreed approaches to data collection; but the TAC position is that this lack of uniformity does not justify reallocation of resources to data at the expense of increasing and improving front line services to the Aboriginal community.

Failure of reforms

Reform processes have been dismissive of the need for Aboriginal led decision-making. Reforms should have been focused on exploring opportunities for 'real' change – keeping in mind that there are many different child rearing practices and child safety initiatives that could be considered rather than reform being based on paying huge sums to purchase mainland models and frameworks that do not respond to the needs of Tasmanian Aboriginal children, young people and their families and are skewed toward the care and safety of white children and families.

The Many Colours One Direction program

We failed in every attempt we made to convince politicians and bureaucrats that this program was inappropriate. We were not consulted before young people were sent to the program; our own youth diversion program was defunded while a vastly larger sum of money was spent to send young people interstate; and there have been no reports of improved outcomes for participants. It was so clearly

inappropriate to send Aboriginal youth onto the lands of an Aboriginal group far removed from their own and the lack of consultation made it even worse. The evidence points to the leader of the program being a white man pretending to be Aboriginal for commercial purposes which compounds the problem.

OTHER COMMENTS

In my opinion, recent measures to implement the recommendations of the national Royal Commission into Institutional Responses to Child Sexual Abuse are further evidence that one size does not fit all in the area of Aboriginal child safety. In particular, more layers of regulation and bureaucracy are not the answer in small close-knit communities like the Aboriginal community in Lutruwita/Tasmania.

TAC is conscious of the danger of intense State regulation resulting in reduced community and family responsibility for child safety. Advocates of the population health approach to child safety like Dr Dorothy Scott and Dr Maria Harries have alerted family support services to this dangerous and unintended consequence.

The Royal Commission into Institutional Responses to Child Sexual Abuse produced a vast literature and so many recommendations that many have not been implemented a decade later. At the same time there appears to be a much greater government commitment to implementing the Royal Commission recommendations than there has been to implementing the recommendations of the Bringing Them Home inquiry into the stolen generations of Aboriginal children.

I am aware that the Royal Commission recommended things like a Reportable Conduct Scheme, Working with Children checks and more layers of bureaucracy imposing more requirements on front line services and their managers. There is a real danger that the sheer volume of new regulations likely to be required under the child safe organisations regimes will reduce attention to the protection of children in practice.

There is no readily available evidence on which to base factual assessments of changes such as the requirement for Working with Vulnerable People's registration and police checks. In the absence of such evidence these requirements seem to us to be government measures to protect themselves from future liability rather than measures to protect children.

This is particularly the case in small jurisdictions such as Lutruwita/Tasmania. Such measures cause detriment to members of the Aboriginal community where a disproportionate number of people have criminal records often of a minor nature whereas paedophiles are able to continue unhindered as an absence of convictions gives the public a false sense of security about their suitability to work with children.

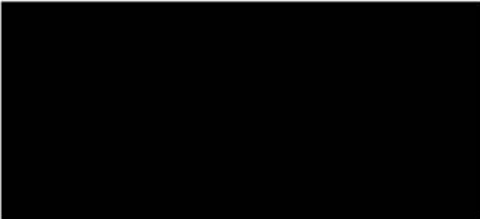
Ostracism and denial of opportunities to Aboriginal people, especially youth, because of a police record are already evident in this State. ACCHOs such as TAC are confident of their ability to manage risks whilst providing protection for vulnerable people and enabling Aboriginal community members to have employment opportunities now denied to them.

There is a vast difference between a report to an organisation from a person directly affected or their family of actual or threatened sexual misconduct which may be the case under the proposed Reportable Conduct Scheme and the broad terms of current child protection legislation which makes it an offense for anyone, including a volunteer, to fail to report a suspicion that a child may be at risk of abuse. It is impossible for broad schemes to capture the full range of possibilities that will ensure the protection of children. It is for that reason that TAC has generally favoured the public health approach to protecting children which promotes a holistic approach to the advancement of our community rather than concentrating on specific targeted behaviours which are almost invariably already the subject of criminal law responses.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at Hobart

on [date]



Before me

