

**Where was Aboriginal Self-determination
in the Wood Inquiry?**

***A Policy Analysis of Child Protection 'Reforms' in NSW,
Australia***

Submitted by

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Author's declaration

This is to certify that:

- I. to the best of my knowledge, the content of this thesis is my own work.
- II. this thesis has not been submitted for any degree or other purposes.
- III. I certify that the intellectual content of this thesis is the product of my own work and that all the assistance received in preparing this thesis and sources have been acknowledged.
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Abstract

The disproportionate representation of Aboriginal children in the New South Wales child protection system, and the way successive State policies have dismissed the significance of Aboriginal self-determination in the development and implementation of child protection policy is the focus of this thesis. The study analyses how policy discourses and policy processes have shaped Aboriginal child protection business in NSW, Australia. An Aboriginal perspective is applied throughout the thesis: the concern is how Australian Aboriginal babies, children, young people, families, communities and organisations have been governed through policies and policy processes.

On the 14 November 2007, the NSW Government established the *Special Commission of Inquiry into Child Protection Services in NSW*. This Inquiry (known as the Wood Inquiry) shaped, and continues to shape, contemporary child protection. The combined recommendations from the Wood Inquiry led to major reforms in the management of child welfare in NSW. This thesis undertakes a close and detailed investigation into how the Inquiry represented Aboriginal people and issues generally, and Aboriginal families involved in the NSW child protection system, specifically. It is the first Aboriginal-centred policy analysis of these reforms to have been conducted.

The thesis engages Carol Bacchi's (2009) 'What's the Problem Represented to be' (WPR) approach to analyse the policy reforms. Conducting research through the WPR approach makes visible how the 'problem' of Aboriginal child protection is represented in three key texts and reveals the assumptions and presuppositions that lodge within them. The three texts subjected to close scrutiny are: the *Submission from the Aboriginal Child, Family and Community Care State Secretariat* to the Inquiry (referred to as the AbSec Submission); the *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (known as the Wood Report); the *Keep Them Safe - A shared approach to child wellbeing in NSW* (referred to as the Keep Them Safe Action Plan), which represents the most recent extensive policy reform in child protection service delivery in NSW.

This thesis suggests that how problems are represented in policy has contributed to the ongoing systematic control of Aboriginal people, sustaining the overrepresentation of Aboriginal babies, children and young people in the NSW child protection system. This thesis shows that the Aboriginal Child, Family and Community Care State Secretariat (AbSec) representation of the problem in the Wood policy process was very different from that in the Wood Report and the Keep Them Safe Action Plan policy text. This suggests that possibilities for Aboriginal self-determination have been dismissed or diminished, and that Aboriginal people have been constrained despite opportunities for participation in policy processes. The findings highlight the need for an Aboriginal child protection framework that, instead of constraining the participation of Aboriginal people, enables Aboriginal people to determine policies to do with NSW Aboriginal child protection business.

Dedication

I dedicate this thesis to my late sister Karen Linda Rutterman.

The love and respect my Sister and I shared will always be with me and I know that Karen would have been very proud of me, knowing that I completed my PhD. Although Karen does not have a physical presence anymore, she is forever in my memory as being my best friend; and in the way that she acknowledged my commitment to undertaking a research project concerning the challenges faced by Australian Aboriginal families.

I love you my Sister

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I have had the pleasure of working with Professor Susan Goodwin from when the decision was made to use the '*What's the problem represented to be? Analysing Policy*' research method for my PHD, through to completing my thesis. Susan, I thank you for your guidance through a very complex process that involved revisiting historical aspects to do with Australian Aboriginal people and exploring current Aboriginal child protection business policies. Your expertise and knowledge in how to support me in my PhD will forever be appreciated.

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I thank my Brother Dan for his support and encouragement during the years of doing my PhD. Dan, your words of wisdom stayed with me throughout the long hours of working on my study. You often checked to see how I was going and you were always inquisitive about my study, as you knew what was involved in the research. Dan, you never hesitated to say that you were proud of me. Thank you my Brother for being there.

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List of Abbreviations

ABS	Australian Bureau of Statistics
AbSec	Aboriginal Child, Family and Community Care Secretariat
ACCAs	Aboriginal Child Care Agencies
ACCO	Aboriginal Community Controlled Organisation
ASC	New South Wales Children's Service
ACS	NSW Aboriginal Children's Services
ACSAT	NSW Aboriginal Child Sexual Assault Taskforce
ACT	Australian Capital Territory
ACWA	Association of Children's Welfare Agencies
ACYFS	Aboriginal Child, Youth and Family Strategy
AIHW	Australian Institute of Health and Welfare
AJAC	Aboriginal Justice Advisory Committee
ALS	Aboriginal Legal Service
AMS	Aboriginal Medical Service
AMIHS	NSW Aboriginal Maternal and Infant Health Strategy
APB	Aborigines Protection Board
ARG	Aboriginal Reference Group
ASB	Aboriginal Services Branch
ASFCCS	Aboriginal State-wide Foster Carer Support Service
ASPO	Aboriginal Senior Project Officer
CALD	Culturally and Linguistically Diverse
CEO	Chief Executive Officer

COAG	Council of Australian Governments
CSC	Community Services Centre
DAA	Department of Aboriginal Affairs
DADHC	NSW Department of Disability and Home Care
DG	Director General
DoCS	NSW Department of Community Services
DSS	Department of Social Services
EI	Early Intervention
EOI	Expression of Interest
HDI	Human Development Index
HREOC	Human Rights and Equal Opportunity Commission
IFBS	Intensive Family Based Services
JIRT	Joint Investigation Response Team
KTS	Keep Them Safe – A shared approach to child wellbeing
NGO	Non-government organisation
NSW	New South Wales
NT	Northern Territory
NSW	New South Wales
NSWSPC	New South Wales Society for the Prevention of Cruelty to Children
NYSPCC	New York Society for the Prevention of Cruelty to Children
NZ	New Zealand
OOHC	Out of home care
Qld	Queensland
SNAICC	Secretariat of National Aboriginal and Islander Child Care

SPO	Senior Project Officer
SA	South Australia
TAS	Tasmania
TOR	Terms of Reference
UNCROC	United Nations Convention of the Rights of a Child
USA	United States of America
Vic	Victoria
VACCA	Victorian Aboriginal Child Care Agency
WA	Western Australia
WPR	What's the Problem Represented To Be?
YACS	Youth and Community Services

Table of Contents

Abstract	iii
Dedication	v
Acknowledgements	vi
List of Abbreviations	viii
Table of Contents	xi
List of Tables	xvi
List of Figures	xvi
Attachments	xvi
Chapter 1: Setting the Focus of the Thesis	1
Introduction	1
Positioning Myself in the Thesis	3
Research Aims and Research Questions	7
Structure of the Thesis	8
Chapter 2: History of Child Protection Policy Reform	12
Introduction	12
Child Protection Policies in Historical Context.....	12
NSW Aboriginal Child Protection Policies in Historical Context.....	14
Aboriginal and Torres Strait Islander Child and Young Person Placement Principles...	18
Aboriginal Self-Determination Defined	21
Aboriginal Self-Determined Practice Frameworks.....	25
Aboriginal Self-Determination in Child Protection Policy	28
Sustaining Cultural Identity through Aboriginal Self-Determination	32
Conclusion	36
Chapter 3: Analysing Child Protection Policy Reform	38
Introduction	38
Policy Making and Australian Aboriginal People	38
What is Policy?.....	40
Australian Policy Making Arrangements.....	41

The ‘WPR’ Policy Analysis Approach	44
Applying ‘WPR’ to NSW Child Protection Policy	48
The AbSec Submission	49
The Wood Report	49
The Keep Them Safe Action Plan.....	50
Limitations of the Research	51
Conclusion	51
Chapter 4: The 2007 Special Commission of Inquiry into Child Protection	
Services in New South Wales: The Wood Inquiry	53
Introduction	53
What is a Special Commission of Inquiry?	53
Why was the Inquiry Conducted?.....	54
Structure and Approach of the Special Commission of Inquiry into Child Protection	
Services in NSW	56
Methods of Investigation	61
Public awareness campaign	61
Public forums	62
Meetings with key agencies and individuals	65
Regional visits.....	66
Submissions	67
Correspondence and case files	69
Conclusion	70
Chapter 5: The AbSec Submission to the Special Commission of Inquiry into	
Child Protection Services in NSW	73
Introduction	73
AbSec: Historical Background.....	73
Functions of the AbSec	75
The Approach and Structure of the AbSec Submission	76
AbSec’s statement of facts	77
AbSec’s set of questions	77

AbSec’s recommendations	78
The ‘WPR’ Analysis of the AbSec Submission: Problem Representations	81
The ‘Problem’ of Disadvantage	81
The ‘Problem’ of Disadvantage as Social Disadvantage	82
The ‘Problem’ of Disadvantage as Produced by Systemic Failures of DoCS	86
The ‘Problem’ of Inadequate Funding	87
The ‘problem’ of inadequate funding: impact on AbSec	88
The ‘problem’ of inadequate funding: impact on Aboriginal children and young people in OOHC	90
The ‘Problem’ of the Absence of Aboriginal Decision-making	94
The ‘problem’ of excluding the role of AbSec	94
The ‘problem’ of excluding Aboriginal decision-making in case work practice	99
The ‘problem’ of excluding Aboriginal decision-making in the development of culturally appropriate care resources	101
Conclusion	103
Chapter 6: The Report of the Special Commission of Inquiry into Child	
Protection Services: The Wood Report	105
Introduction	105
The Approach and Structure of the Wood Report	106
The Wood Report: Principles, Goals and Recommendations.	106
The ‘WPR’ analysis of the Wood Report: Problem Representations	111
The ‘problem’ of statistical overrepresentation	111
Population data	111
Reports to the DoCS Helpline	111
Out-of-home care data	113
The ‘Problem’ of Disadvantage	116
The ‘problem’ of disadvantage as Aboriginal disadvantage	118
The ‘problem’ of NSW government agencies lack of commitment to Aboriginal child protection	120
The ‘problem’ of Aboriginal capacity	125

Conclusion	128
Chapter 7: ‘WPR’ Analysis of the Policy Entitled: Keep Them Safe: A Shared Approach to Child Wellbeing	130
Introduction	130
The Approach and Structure of the Keep Them Safe Action Plan	131
Keep Them Safe Action Plan Elements Aimed at Supporting NSW Aboriginal Children and Families.....	134
The ‘WPR’ analysis of the Keep Them Safe Aboriginal Action Plan: Problem Representations.....	134
The ‘problem’ of statistical overrepresentation caused by systemic disadvantage .	134
The ‘problem’ of Government failure to address systemic disadvantage	136
The ‘problem’ of building capacity of Aboriginal organisations	138
The ‘problem’ of the absence of Aboriginal decision-making.....	141
Problematising the Misrepresentation of the Keep Them Safe Aboriginal Action Plan.....	143
Implementation of the Aboriginal Action Plan.....	145
Conclusion	148
Chapter 8: Conclusions: How Aboriginal self-determination was excluded in the NSW Child Protection policy reform processes.....	151
Introduction	151
Key Findings.....	152
Problematising Overrepresentation.....	153
Problematising Disadvantage	154
Problematising the Capacity of Aboriginal Organisations and Communities.....	155
Problematising the Absence of Aboriginal Decision-making	157
Overview of the Chapters.....	159
Reflection and Concluding Comments.....	163
Moving Forward	165
Aboriginal Voices need to be heard and to be involved	166
Evaluation of Aboriginal child protection services	167

Aboriginal-led child protection policy framework	168
Conclusion	169
References.....	171

List of Tables

Table 4.1 <i>Wood Inquiry Timeline of Tasks and Responsibilities</i>	60
Table 4.2 <i>Wood Inquiry Public Forums by Agency and Aboriginal Representation</i>	64
Table 4.3 <i>Wood Inquiry Meetings and Aboriginal Representation</i>	66
Table 4.4 <i>Wood Inquiry Submission and Aboriginal Representation</i>	68
Table 5.1 <i>AbSec Submission Recommendations</i>	79
Table 7.1 <i>Aboriginal Action Plan approaches to include Aboriginal people in the reform</i>	146

List of Figures

<i>Figure 7.1 Identified elements for reform and corresponding chapters</i>	133
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Attachments

Attachment 1: Keep Them Safe Aboriginal Action Plan	179
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Chapter 1: Setting the Focus of the Thesis

Introduction

In Australia, since colonisation, Aboriginal babies, children and young people have been significantly over-represented in the child protection reporting, child removal, and juvenile detention systems that make up the child welfare and child protection practices of the Australian state. These practices have caused significant harm to Aboriginal families, communities and cultures, and evidence demonstrates that despite decades of research, political action and policy reform, unjust and discriminatory practices perpetuated under the banner of “child protection” and “child welfare” continues unabated. In the Australian state of New South Wales (NSW) for example, Aboriginal babies, children and young people are a tiny proportion of the whole population - under 3%. Yet they constitute 21% of all child protection reports and are 37% of all children under the care of the NSW statutory authority responsible for child welfare, the Department of Community Services (Productivity Commission, 2017). In addition, Aboriginal babies and children are 34.8% of cases placed in the NSW Out-of-Home Care (OOHC) system (NSW FACS, 2015-2016, p. 77). In addition, Aboriginal young people make up 47% of people in juvenile detention facilities or subject to juvenile justice orders (NSW Department of Justice, 2017-2018, p. 27). These statistics are increasing, not decreasing. This thesis is an attempt to intervene in this history by providing a detailed account of the recent decade of child protection policy reform, 2007-2017 in NSW, from an Aboriginal perspective.

The thesis provides an analysis of how policy discourses and policy processes have shaped Aboriginal child protection business in NSW, during this period. The analysis focuses on five key moments in child protection policy reform that are associated with a major government inquiry into child protection, known as the Wood Inquiry. The five key moments are: (i) two high profile child deaths in NSW that occurred in 2007 and which provoked community, public and media attention; (ii) the call for the Inquiry (2007); (iii) the Aboriginal child welfare peak organisation’s submission to the Inquiry (2008); (iv) the

Report of the Inquiry (2008); and (v) the new reform in child protection policy, the Keep Them Safe Action Plan (2009) that emerged out of the Inquiry and provides the guidelines for child protection service delivery in NSW. The concern throughout the analysis is with how Aboriginal babies, children, families, communities and organisations have been governed through the policies and policy processes.

This chapter begins with an account of how I came to the research through my professional experience as a person working within the NSW child protection system. This account establishes the rationale for focusing my research on policy processes and policy discourses, rather than, for example, Aboriginal family or service provider experiences. This is followed by a section on the aims of the thesis that provides the rationale for the research questions that the thesis addresses and introduces the approach to policy analysis that is deployed in the thesis. The chapter concludes with a description of the structure of the thesis, summarising each chapter.

However, it is important to clarify some of the key terms and concepts in use in the thesis at the outset, particularly those that have specific meanings in the context of this research.

Aboriginal: As a personal preference, I will be referring to “Aboriginal” rather than “Indigenous” issues, concerns and people throughout this thesis. The term “Aboriginal” as it is used here includes Torres Strait Islanders but recognises that Aboriginal people are the original inhabitants of the state of NSW.

Babies, children and young people: I use this phrase, rather than “children and young people” for a very specific reason. This is to ensure the language reflects the relevant statistics on the actual ages of the children subject to the child protection in Australia. As the Australian Institute of Family Studies (AIFS) statistical analysis shows, infants (or children under 1 year old) are the age group most likely to be ‘the subject of a substantiation¹ to be removed from their families across Australia’ (AIFS, 2016-17, p.

¹ ‘Substantiation rate’ is defined as the proportion of finalised investigations where abuse or neglect, or risk of abuse or neglect, was confirmed (NSW Government Services Report – 2017).

55). This pattern is even stronger in Aboriginal child removal, where the removal of newborns is, unfortunately, common. As the Australian Institute of Health and Welfare noted, across all age groups, Aboriginal children 'were more likely to be admitted to OOHC, with those under 10 years of age 10 times as likely to be admitted; and those aged under 1 were 7 times as likely as their non-Indigenous counterparts to be admitted' (AIHW, 2016-17, p. 44). Therefore, I use the term "babies" rather than even "infants" in order to make this group visible in my research.

Child protection business: This term is not one that is found in the commentary on Aboriginal child protection issues. The term is designed to be inclusive of the government agencies, laws and policies associated with child protection, but are much broader than these as well. That is, when I use this term "child protection business" I am not simply referring to the government's child protection system. "Aboriginal child protection business" includes: Aboriginal families and communities, Aboriginal organisations, Aboriginal advocacy and lobby groups, and kinship carer involvement in decision-making and finding solutions to Aboriginal child protection issues. Thus it is used within similar context to "Aboriginal Men's business" and "Aboriginal Women's Business".

Positioning Myself in the Thesis

During my 13 years as an employee of the Department of Community Services (DoCS) in regional NSW, I witnessed how child protection agencies and policies systematically rule the lives of Aboriginal people and their communities. Over the 13 years, I worked in various positions, including: Project Officer; Foster Care Support Caseworker; Aboriginal Community Program Officer; and as an Aboriginal Senior Project Officer (ASPO). The ASPO position was in the Training and Development team of the DoCS central office and was responsible for implementing a state-wide cultural competency initiative to all staff employed in NSW Community Service Centres (CSCs) in urban and regional NSW.

In NSW, Aboriginal people represent 2.9% of the population and 50.8% of Aboriginal people in NSW live in regional NSW (that is, not in urban areas). Unlike the non-

Indigenous population which is characterised as an ageing population, the Aboriginal population is skewed toward the young: 11.5% of the NSW Aboriginal population are babies and children under the age of 5; 22.8% are aged 5-14; 19.1% are 15-24; 23.5% are 25-44; 17.8% are 45-64; and only 5.3% are aged 65-75+ (Angus, 2018).

My employment as an ASPO broadened my knowledge on the inconsistent application of the *Aboriginal and Torres Strait Islander Child and Youth Placement Principle*, a crucial section of NSW child protection law, by DoCS Caseworker Managers and Caseworkers employed in the CSCs. The level of inconsistency disturbed me intensely.

The Principles are legislated provisions that set out requirements to sustain an Aboriginal baby, child or young person's cultural identity upon removal from their parents, through measures such as Aboriginal and Torres Strait Islander self-determination in decision-making, a culturally appropriate order for placement and a specified record keeping process. Notwithstanding this, in my experience the intentions of the legislation were rarely realised, and staff consistently raised concerns that they were unable to follow the general order for placement with kin or community.

In addition, my experience as an employee of DoCS broadened my understanding of, and concern about, the high number of Aboriginal children and youth involved in the NSW child protection system and with the fundamental problems of the OOHC placement system, including new procurement systems where the government outsources foster care services to non-government organisations. In my time working for DoCS, major changes in the organisation of this public sector agency occurred, as it became increasingly corporatised, and the services it provided became increasingly marketised (Meagher & Goodwin, 2015). Thus, I experienced first-hand, how decision-making procedures for Aboriginal families worked and the impacts of those decisions on Aboriginal families. As a rural DoCS worker in the child protection system, I was at the coalface of the NSW Government policy and practice regimes that shape the lives and experiences of Aboriginal families and communities.

My decision to conduct research on Aboriginal child protection business was an easy one to make; how I would do the research was the challenge for me. My interest in

conducting research was underpinned by my knowledge of what seemed an unjust service delivery platform for Aboriginal families. I knew that Aboriginal babies, children and young people led the statistical count in the NSW child protection system and that the number placed in statutory care was (and still is) hugely disproportionate compared to other children. Disproportionality within the child protection system refers to the 'proportion of children in the child protection system who are Aboriginal in comparison to other children and by the proportion of children in the targeted population who are Aboriginal in comparison to other children' (Australian Government Productivity Commission 2017 Report, section 16.7).

Rather than these patterns changing as the result of agency restructures or new policy reforms, the numbers of Aboriginal babies, children and young people subjected to the NSW child protection system continued to rise and Aboriginal families' experiences of the system continued to be unsatisfactory. My initial plan was to employ a qualitative methodology that would comprise interviewing Aboriginal parents to explore their perceptions of how they were positioned within the broader context of child protection. However, after reading relevant national and international material that focused on family experiences in the child protection system, I decided to change the research method. The material on family experiences across the globe was depressingly consistent. What appeared to be lacking, however, was research on the initial points in decision-making, the policy decisions that sat well behind families' experiences of service delivery. My work in child protection, I realised, was shaped and framed by the decisions made in policy processes, and it was these moments that impacted on family experiences. This was what directed my attention to the policies developed by the NSW Government. Thus, I shifted my focus to why and how policies were made and who was responsible for the development and implementation of those policies. Consequently, the development and implementation of child protection policies that impact on Aboriginal families and communities became my focus and challenge.

During my thesis journey, my thoughts returned to the late 19th century, when Australia was colonised by the British and child removal policies were first adopted. In NSW, the implementation of discriminatory practices commenced with the establishment of the

Aborigines Protection Board in 1883 and then the *Aborigines Protection Act* in 1909. This period was a tumultuous time for all Aboriginal Australians and most Aboriginal people today have not escaped the consequences of the era. The period saw the establishment of policies that could remove an Aboriginal child from their family and community simply because of their Aboriginality. Structural discriminatory practices and social injustices experienced by Aboriginal Australians thus started from the onset of colonisation in Australia and they continue to influence Aboriginal people's experiences of social disadvantage. From my perspective, the most powerful mechanism for retaining the divisions and inequalities in Australian society were the policies that were enacted by the colonisers. Thus, in Australia, social injustices can be traced back to the 19th century.

My reflections on the power of policy making has instilled in me the importance of moving to a new form of Aboriginal governance in Australia, in order to ensure input from Aboriginal people in policies to do with the removal of Aboriginal babies, children and young people. My reflection on my experience also highlights the importance of policies and programs that will ensure the cultural safety and care of Aboriginal children if and when they are placed in OOHC. My research on policy and policy processes has highlighted the absolute necessity of the inclusion of Aboriginal people in developing and managing Aboriginal family and child welfare policies, an idea that is linked with Aboriginal self-determination ideals. Consequently, I recognise that the issues I identified as a worker in the NSW child protection system are much broader than how parents or families experience service delivery. Instead, I regard child protection policy, and how it has been made, as having perpetuated one of the most serious problems that Aboriginal people are faced with today: lack of opportunities and structures for self-determination. I have come to the end of my study of NSW Aboriginal child protection business with the belief that child protection in Australia needs to be transitioned from a government-controlled approach to an Aboriginal governed approach.

Research Aims and Research Questions

An objective of this thesis is to offer a new perspective on Aboriginal child protection policies in NSW, Australia. Rather than focus on child protection service delivery within the context of existing legislation and organisational frameworks, I am interested in an Aboriginal self-determined child protection business more broadly.

The thesis focuses on policies to do with Aboriginal child protection business that were associated with the reform processes sparked by what is known as the Wood Inquiry. In 2007, the NSW Governor announced that a *Special Commission of Inquiry into Child Protection Services in NSW* would be undertaken. The Inquiry, which was to be led by Justice Wood, was given three issues to investigate: the safety of children in NSW; the drivers of demand on child welfare services in NSW; and how the DoCS managed that high demand. The Inquiry yielded 669 responses to the Inquiry's Terms of Reference (TOR); 24 public forums and private meetings held with relevant child welfare agencies; as well as visits by the Commissioner and Inquiry staff to a range of communities. The Inquiry operated from the 14 November 2007 and concluded on the 24 November 2008 with the delivery of The Wood Report, to the NSW Governor, Professor Marie Bashir.

The Wood Report is considered to be foundational for contemporary child protection policy reform and provided the basis for the policy implementation guidelines, or 'Action Plan' that was developed in the 2009 *Keep Them Safe: A shared approach to child wellbeing*. The Keep Them Safe Action Plan has guided the implementation of the reforms. The Wood Inquiry, and the reforms that followed it, have been subjected to critical scrutiny by child protection scholars, and numerous evaluations of the 'Action Plan' have been undertaken (NSW Government, 2010/11 and 2011/12; Uni NSW 2014; AIFS 2014; Tune, D., 2016). There has, however, been no comprehensive assessment or investigation of this set of reforms from an Aboriginal viewpoint, despite the fact that Aboriginal babies, children and young people and Aboriginal parents, families and communities were overwhelmingly the subjects of the reforms. This thesis seeks to address this gap in knowledge.

My interests in Aboriginal child protection business are reflected in the two key research questions this thesis seeks to address:

Q1 How were Aboriginal people included and represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?

Q2 How was the Aboriginal child protection problem represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?

Structure of the Thesis

Existing literature in two key areas provided background for the exploration of the research questions: the child protection policy literature; and the literature on Aboriginal self-determination in the Australian child protection arena. The literature review presented in Chapter 2 includes the historical establishment of international child protection organisations and the historical background of NSW Aboriginal child protection policies. Plus, the review provides background information on contemporary NSW child protection legislation and the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*. In addition, literature was evaluated to ascertain a definition for “Aboriginal self-determination” thus, examples of Aboriginal self-determined practice frameworks already established in NSW are included. Finally, a review on how the ideology of Aboriginal self-determination has been included within NSW child protection casework and the relevance of sustaining the cultural identity of an Aboriginal child when entering the child protection system end the chapter.

The chapter, therefore, establishes the focus of the thesis as a contribution to existing knowledge about how policy and policy procedures have shaped Aboriginal child protection business.

Chapter 3 is in two parts. It introduces policy making in both NSW and Australia, and explains the research method used in the thesis. Part one of the chapter provides background information on how 19th century polices impacted Australia’s Aboriginal people. In addition, it demonstrates how the Australian Government exerts legitimate

power through the development and implementation of policy. It explains the roles of Government in producing and reforming public policy; the role of public servants in the implementation of new public policy; and how key commentators such as those in the media and lobby groups add to conversations and influence policy reform.

The second part introduces and explains the method of policy analysis employed in the thesis. I have used Bacchi's (2009) WPR approach, which is a tool intended to facilitate 'critical interrogation of public policies' (Bacchi, 2012, p. 21). The WPR approach enables researchers to systematically analyse policy texts, through the application of a set of six interrelated questions that guide the analysis. In doing so, this form of analysis interrogates 'how the problem is represented within policies and to subject this problem representation to critical scrutiny' (Bacchi, 2012, p. 21). The WPR approach is regarded as an ideal method for investigating how the policies under scrutiny operate, not simply by setting out rules and regulations, but also by establishing the dominant ways that the Aboriginal child protection problem has been constructed, and by whom. The chapter ends with providing the sources used for the analysis, an overview of the various levels of analysis undertaken and a comment on the limitations of the research method.

As discussed above, the analysis focuses on five key moments in child protection policy reform that are associated with the Wood Inquiry. Chapter 4 discusses two of these. It describes the circumstances surrounding the call for the Wood Inquiry, and also explains the legislative and administrative dimensions of government inquiries in Australia, and in NSW specifically. The chapter introduces the NSW *Special Commissions of Inquiry Act 1983* and how the administrative procedures of the Act were applied in the implementation of the 2007 *Special Commission of Inquiry into Child Protection Services in NSW*. This chapter, therefore, explains the legislative and administrative approach taken by the NSW Government in its response to serious concerns about child safety in NSW. The chapter also scrutinises the Inquiry processes (the Terms of Reference, the appointment of Commissioner and staff to the Commission, functions and procedure of the inquiry that included: public awareness campaigns, public forums, meetings with agencies and individuals, regional visits and the process of gathering information and data), in order to explore how the Inquiry

engaged with Aboriginal people, organisations and communities throughout its duration. The chapter highlights the minimal representation of Aboriginal people in the Wood policy processes right from its initiation.

Chapters 5, 6 and 7 present the WPR analysis of three public documents that formed part of the Wood policy reform process. Chapter 5 provides an analysis of a submission to the Inquiry from AbSec, which is the recognised Aboriginal OOHC care peak body in NSW. It was the third key moment in the analysis process. AbSec is an Aboriginal community-controlled organisation (ACCO) which represented the Aboriginal voice in the thesis. The aim of the analysis was to identify the child protection issues that AbSec deemed to be problematic for them, as presented in the text of their submission. The analysis shows how AbSec represented the Aboriginal child protection problem as a problem of ineffectiveness within the NSW DoCS service delivery system and a problem of the exclusion of Aboriginal expertise from decision-making and service development.

Chapter 6 explores the representations of the Aboriginal child protection problem in the final report produced by the Inquiry, the *Report of the Special Commission of Inquiry into NSW Child Protection Services*. It was the fourth key moment in child protection reform for the thesis. This chapter describes how Aboriginal child protection business is positioned within the Report, that is, through an exploration of the language and logics that appear in the text, as they relate to representations of Aboriginal child protection. The analysis shows that the Wood Report represented the Aboriginal child protection problem as a problem of the statistical over-representation of Aboriginal children which was linked to Aboriginal disadvantage and a problem of the exclusion of Aboriginal people in organisations and service delivery, which could be addressed through the concept of Aboriginal capacity building.

Chapter 7 provides a close examination of the 2009 Keep Them Safe Action Plan policy text for the reform of NSW child protection service delivery. It problematises how Aboriginal issues were positioned following the Wood Report. This document is an essential component of the Wood policy reform processes, in that it set out how the final recommendations of the Wood Report were to be translated in NSW organisations reforms and services. It is this document that shapes current Aboriginal child protection

service delivery in NSW. The WPR analysis shows that the Keep Them Safe Action Plan repeats some of the problem representations found in the Wood Report (e.g. statistical overrepresentation, systemic disadvantage, Aboriginal capacity building) but the set of recommendations in the 'Plan' related to Aboriginal child protection business show that the Keep Them Safe Action Plan is concerned with a raft of issues other than these problems. For example, actions to address Aboriginal inclusion are limited to engagement; consultation; and training of Aboriginal people. In addition, the Keep Them Safe Action Plan produces the overrepresentation of Aboriginal children in the child protection system as a service system problem: many of the actions are directed at government agency restructuring, such as a whole-of-government approach to service delivery.

Chapter 8 concludes the thesis. It provides a brief summary on background information to the 2007 *Special Commission of Inquiry into Child Protection Services in NSW* and presents an overview of the problem representations that were identified in all three documents. A summary of each chapter informs the structure of the thesis and it concludes with a section that reflects on how this thesis has contributed to previous research in finding solutions to determining how an Aboriginal self-determined child protection policy management framework is the best way forward in policy reform for Aboriginal families involved in the NSW child protection system.

Chapter 2: History of Child Protection Policy Reform

Introduction

This chapter reviews the literature directly related to the key focus areas of the thesis. It establishes how policy gives shape to Aboriginal child protection business and how policies govern Aboriginal families involved in the NSW child protection system. Therefore, Chapter 2 includes a review of the historical establishment of international child protection organisations and it also demonstrates the historical background of NSW Aboriginal child protection policies. In addition, contemporary NSW child protection legislation and the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*, adopted in 1987 and amended in 1998, are explained. The chapter introduces the concept and definition of Aboriginal self-determination with examples of established NSW Aboriginal Community Organisations (ACCOs). The inclusion of this focus area broadens the literature review into examining how the ideology of Aboriginal self-determination has been included in NSW DoCS casework practice and the significance of the cultural identity of an Aboriginal baby, child or young person once removed from their parents and placed in the NSW OOHC system.

Child Protection Policies in Historical Context

Defined as the 'first wave' by Lamont and Bromfield (2010, p. 1), the movement to protect children became a global issue in the late 19th century. In 1875 in the United States of America (USA), The New York Society for the Prevention of Cruelty to Children (NYSPCC) was established. The establishment of the NYSPCC has been recognised as the first child protection agency in the world (NYSPCC, 2000; Van Krieken, 1992). Thereafter, in 1889, Britain established the United Kingdom's Liverpool Society for the Prevention of Cruelty to Children Services. The colonisation of Australia by the British brought with it British ideas and values (Fogarty, 2008, p. 56) thus, following the establishment of the United Kingdom's 'cruelty to children society', in 1890, the NSW

Society for the Prevention of Cruelty to Children (NSWSPCC) emerged (Lamont & Bromfield, 2010, p. 2).

Specific child protection laws and associated administrative agencies also emerged during this time. In 1901, Australia became a Federation and, as a federation, the Australian states remained responsible for child protection laws and policies with the exception of the Northern Territory (NT) and the Australian Capital Territory (ACT). Overall, child protection policies were adopted by NSW in 1892; Victoria (Vic) in 1894; Queensland (Qld) in 1896; South Australia (SA) in 1899; and WA in 1906. In Tasmania (TAS) a 'Children's Charter' was adopted in 1918. The ACT and the NT were governed by the Commonwealth Government until the late 20th century and in 1938 the 'child welfare ordinance' was passed in the Australian Capital Territory (ACT) and in 1958 in the NT, (Swain, 2014, pp. 38-72). In addition, Children's Courts were established to deal with child protection matters from the 'late 19th century in 1895 in SA; NSW 1904; TAS 1905 and 1918; Qld 1907; WA 1907 NT 1957' (Swain, 2014, p. 20). Lamont and Bromfield argue that these government actions were designed to protect children from the more 'obvious forms of child maltreatment, such as severe physical abuse' (Tomison, as cited in Lamont & Bromfield 2010, p. 2).

There was a shift in the momentum to secure child protection policies when, in the 1920s, child protection became the focus of international organisations and international interventions. For example, when 'through the Red Cross, the *Save the Children International Union*, presented a draft for the 'first declaration on the rights of the child which was adopted by the *League of Nations* in 1924' (Fogarty, 2008, p. 59). The 'second wave' of the child protection movement, however, did not unfold until the late 1950s and 1960s (Lamont and Bromfield, 2010, p. 2) where a new discourse concerning children's rights and children's interests emerged. It was during this time that international recognition of the protection of children was developed, further leading to the *Declaration of the Right of the Child* in 1959 and the *Convention of the Rights of the Child* in 1990' (Fogarty 2008, p. 59). Australia ratified and became obligated to comply with the *Convention of the Rights of the Child* in December 1990 (Lock, 1997, p. 162).

However, whilst at the level of international organisations a global platform to recognise the need for children to be protected from mistreatment and abuse and a universal approach to ensuring the rights of all children emerged during the late nineteenth and twentieth centuries, separate child protection reform policies were being developed and adopted specifically for Aboriginal people in Australia. The policies, laws and provisions for Indigenous children were not in line with the ideals being developed for non-Indigenous children.

NSW Aboriginal Child Protection Policies in Historical Context

In 1883 the NSW Government established the *Board for the Protection of Aborigines* (Parbury 1988, p. 86; Wilson 1997, p. 46). Colonial powers were aggressive in how they introduced laws and policies that adopted a dual child welfare system for Aboriginal and non-Aboriginal families. The *Board for the Protection of Aborigines* was initially designed to provide Aboriginal Australians with food and a place to live after they were displaced from their homelands and forced to live in confined sections of land, described as reserves (Parbury 1988, p. 51). However, there had been a general trend in NSW government approaches to distance Aboriginal children from their families. For example, in 1814 the Native Institution [school] at Parramatta opened, though quickly boycotted by Indigenous families and closed in 1820 (Wilson, 1997, p. 39). Thereafter, the NSW government had implemented removal policies stipulating that Aboriginal children were to be 'trained and indentured as apprenticed domestic servants' (Goodall 1996, p. 120) in training homes 'established in 1893 at Warangesda Station, located in the Murrumbidgee region' (Parbury, 1988, p. 88).

In 1909 a shift in the responsibilities of the *Board for the Protection of Aborigines* occurred when it was granted 'control and custody of Aboriginal children, if they were found by a magistrate to be neglected' (Read 1981; State Records NSW; Goodall 1996; Lock 1997), through provisions of the *Aborigines Protection Act 1909*, Section (s.) 11 (1) of the Act stated:

(1) The Board may, in accordance with and subject to the provisions of the Apprentices Act, 1901, by indenture bind or cause to be bound the child of any

aborigine, or the neglected child of any person apparently having an admixture of aboriginal blood in his veins, to be apprenticed to any master, and may collect and institute proceedings for the recovery of any wages payable under such indenture, and may expend the same as the board may think fit in the interest of the child.

Every child so apprenticed shall be under the supervision of the board, or of such person as may be authorised in that behalf by the regulations.

Any such child so apprenticed shall be liable to be proceeded against and punished for absconding, or for other misconduct, in the same way as any child apprenticed by his father with such child's consent (Aborigines Protection Act, No. 25, 1909, p. 146)

In 1911, the Cootamundra Girls Home was established as a result of the *Aborigines Protection Act*, and became one of the main training venues for Aboriginal girls. From '1915 to 1939 any station master or policeman could take children from their parents' (Parbury 1988, p. 88). Thus, in 1924, the Kinchela Boys Home [Kempsey NSW] opened and authorities had targeted Aboriginal boys for removal (Parbury 1988, p. 88; Wilson, 1997, p. 44). These policy reforms also removed parental responsibility from Aboriginal people, as the *Board for the Protection of Aborigines* was authorised to 'stand in loco parentis, or to take the place of the parents (Parbury 1988; Goodall 1996; Wilson 1997; Lock 1997). Goodall (1996) further explains:

The Board stated quite openly in its reports and minutes that it intended to reduce the birth rate of the Aboriginal population by taking adolescent girls away from their communities. Then it intended that the young people taken in this way would never be allowed to return to their homes or to any other Aboriginal community. The 'apprenticeship' policy was aimed quite explicitly at reducing the numbers of identifying Aboriginal people in the State. (p. 120)

An early point of contention for the *Board for the Protection of Aborigines* was that it did not have the necessary or comprehensive legal powers to remove Aboriginal children (for example, without the approval of a court) and in 1915 the Board successfully

achieved an amendment to the *Aborigines Protection Act 1909*. This amendment 'gave it total power to separate children from their families without having to establish in court that they were neglected' (Wilson 1997, p. 41). Aboriginal children could be assessed as being uncontrollable, for example, if they did not attend school, thus removed from their family. The injustice of this power is evident in the fact that, in 'NSW, up until 1972 school principals could and did exclude Aboriginal children from attending school because of home conditions or 'substantial [community] opposition' (Wilson, 1997, p. 47).

Colonisation in Australia placed Aboriginal families in a precarious situation, because not only did they have to deal with the loss of their land, they had to contend with new laws and policies developed specifically for the removal of their children. It was a time of mass destruction of Aboriginal cultural family life and violation of the right of Australia's original inhabitants to be responsible for the care of their children. The combined adoption of policies related to the *Board for the Protection of Aborigines* and the *Aborigines Protection Act 1909* seriously destabilised Aboriginal family units and traumatised Aboriginal children, their parents and extended family members, as the removal of Aboriginal babies, children and young people became a regular occurrence.

Resistance to the policies of the *Board for the Protection of Aborigines* gained momentum when, in 1925, the Australian Aborigines Progressive Association was established. The Association 'immediately called for an end to the forcible removal of Aboriginal from their families' (Markus 1990, cited in Wilson 1997, p. 45). Likewise, in 1927 Fred Maynard contacted the Premier of NSW and demanded that the 'family life of Aboriginal people shall be held sacred and free from invasion and interference and that the children shall be left in the control of their parents' (Wilson 1997, p. 45). Thus, resistance from Aboriginal leaders was quite prominent within Aboriginal communities, but at the same time, it proved very difficult to stop the removals from happening.

This Aboriginal resistance continued through to the late 1930s, and on 26 January 1938 John Patten from La Perouse NSW and William Ferguson from Dubbo NSW published a manifesto entitled: *Aborigines Claim Citizen Rights*, which called for 'full citizenship and equality for Aboriginal people' (Parbury, 1988, pp. 106-112; Horner, 1994, p. 56; Wilson,

1997, pp. 45-46). In 1940, the *Board for the Protection of Aborigines* was renamed the *Aborigines Welfare Board* and in 1969 the Board was abolished leaving up to '1,000 Aboriginal children in institutional or family care'. Consequently, the responsibility of care was transferred to the *Department for Child Welfare and Social Welfare* (Wilson, 1997, p. 49).

Advocacy and reform in the late 1970s saw the recruitment of Aboriginal caseworkers and further lobbying for change in legislation to try to improve practices around the care of Aboriginal babies, children and young people after removal from their parents. Protests regarding the removal of Aboriginal children continued from the Maynard, Patten and Ferguson era, when the organisation Link-Up (NSW) commenced lobbying the NSW Government to adopt specific provisions for Aboriginal children placed in statutory care (Wilson, 1997, p. 51). Established in 1980, Link-Up (NSW) works at the coalface with Aboriginal people who are searching for their family after spending years separated through government removal policies (Parbury, 1988, p. 145). Furthermore, in 1983, a conference attended by Aboriginal Community Workers maintained a focus on Aboriginal children in care, thus prompting the need for a preferred option of placement, as described below. Thus, in 1985-86 the NSW Department of Welfare recognised the importance of the sustainment of the cultural identity of Aboriginal children after removal. This happened in 1987 through an amendment to the *Children (Care and Protection) Act 1987* (Wilson, 1997, p. 51).

The current NSW legislation for child protection is the *Children and Young Persons (Care and Protection) Act 1998*. Accordingly, the 1998 Act provides for 'the care and protection of, and the provision of services to, children and young persons; and for other purposes (Children and Young Persons Care and Protection Act, 1998 p. 19). The main objective of the Act is to guide the administrative process for all children and young persons in NSW, to 'receive such care and protection as is necessary for their safety, welfare and well-being' (Children and Young Persons Care and Protection Act, 1998).

The placement of children and young people is governed by s. 135 of the Act, which defines OOHC as the 'residential care and control of a child or young person', (Children and Young Person Care and Protection Act, 1998). Furthermore:

The care of the child or young person who is in the parental responsibility of the Minister, or a non-related person, residing at a place other than their usual home, and by a person other than their parent, as a result of a Children's Court order that lasts for more than 14 days, or because they are a protected person. (Wood, 2008, p. 1066)

Bromfield and Holzer (2008, p. vii) and Hutt and Clarke (2012, p. 76) extend the meaning of OOHC to include a system of alternative placement with other families or it may include a kinship care arrangement and mostly in accordance with a court Order. Therefore, the ideal that Aboriginal babies, children and young people should not be removed from their kinship groups, culture or communities was first flagged in the *Children (Care and Protection) Act 1987* and then extended through the preferred placement option process, which was further specified in s. 13 of the *Children and Young Persons (Care and Protection) Act 1998*.

Aboriginal and Torres Strait Islander Child and Young Person Placement Principles.

New approaches to the placement of Aboriginal children removed from their parents were adopted by the NSW Government through amendments to child protection legislation in 1987 and 1998. In 1987, the NSW Government amended the *Children (Care and Protection) Act 1987*, to include Care of Aboriginal Children: s. 87 (a-d). The inclusions set out 'a preferred order of placement' (Wilson, 1997, p. 439), after the removal of Aboriginal children from their parents. The purpose of including s. 87 (a-d) was twofold: first, it recognised the problem of removal from an Aboriginal environment and placement within a *non*-Aboriginal environment; second it identified that the geographical placement had the potential for Aboriginal children to lose traditions and cultures (Lock, 1997, pp. 94-95).

The 1997 Human Rights and Equal Opportunity Commission's (HREOC) Report of the 1997 *National Inquiry into the Separation of Aboriginal Torres Strait Islander Children from Their Families* (known as *Bringing Them Home*), was the outcome of an inquiry into 'past laws, practices and policies which resulted in the separation of Aboriginal and

Torres Strait Islander children from their families by compulsion, duress or under influence, and the effects of those laws, practices and policies' (Lavarch, 1997). The Inquiry was established in 1995 by the Hon. Michael Lavarch MP, the Federal Attorney General; and the inquiry process was led by the HREOC President, Sir Ronald Wilson and the National Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson. The Inquiry process examined 777 pieces of evidence, which included 535 shared experiences of forced removal from Australian Aboriginal people (Wilson, 1997, p. 15). In the Report it stated that the 'most significant change affecting welfare practice since the 1970s has been the acceptance of the Aboriginal Child Placement Principle' (Wilson, 1997, p. 437), into s. 87 (a-d) of the NSW Children (Care and Protection) Act 1987. However, although s. 87 was commended in *Bringing Them Home*, it also emphasised that 'Indigenous children continue to be separated from their families at a disproportionate rate and continue to be placed into non-Indigenous environments' (Wilson, 1997, p. 431). In other words, the legislative changes were not reflected in practice. This finding motivated responses to *Bringing Them Home* with all States and Territories tabling 'a formal apology and acknowledgement for the hurt and trauma caused by past forcible removable policies' (Ministerial Council of Aboriginal and Torres Strait Islander Affairs, Commonwealth Government, 2003). NSW was the first State or Territory to formally apologise (NSW Lock, 1997).

In *Bringing Them Home*, **Recommendations 51a-51e** was particularly significant, in terms of outlining what should be in the Aboriginal Child Placement Principle. Thus, outlining the preference of placement with kin, or local Aboriginal community people, or registered Aboriginal carers. This inspired the Secretariat of National Aboriginal and Islander Child Care, (SNAICC), the national peak body in Aboriginal child protection, and Link-Up (NSW), to lobby States and Territories for the amendments. The amendments were adopted and became Sections 11-14 of the *Children and Young Persons (Care and Protection) Act 1998*, (Wilson, 1997, p. 36).

The Aboriginal Child Placement Principle initially referred only to "Aboriginal children", however, when the amendment was adopted in the 1998 amendment to the *Children and Young Persons (Care and Protection) Act*, it extended the placement preference

and was renamed the Aboriginal and Torres Strait Islander Child and Youth Placement Principles to include “Torres Strait Islander”. The amendments aimed to: recognise self-determination within the context of Aboriginal and Torres Strait Islander people participating in the care and protection of their children and young persons; second, that extended family and local Aboriginal and Torres Strait Islander community members could participate in the decision-making process, after the removal of Aboriginal and Torres Strait Islander children and youth from their parents; third, it aimed to maintain the identity, culture and heritage of each child and young person removed from his or her parents, and fourth, it provided an administrative guide to keeping records of placement on an Aboriginal and Torres Strait Islander child (Lock 1997).

Five years after the adoption of the 1998 *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*, the SNAICC organisation highlighted inadequacies in the application of Aboriginal self-determination in s. 11 of the Act. For example, the SNAICC claimed that the regulated care system ‘fails to keep Aboriginal children within their communities and does not reflect an active commitment to the Aboriginal Child Placement Principle’ (Cadd, 2002, p. 5). In addition, social welfare researchers have consistently raised questions about the ambiguity of s.13, which contained directives on the general order of placement. There were also concerns that the principle of Aboriginal self-determination had rarely occurred (McMahon, Reck & Walker, 2007; Green & Baldry, 2008; Ban, 2010; Long & Sephton, 2011; Libesman, 2011) and this work further emphasised that there were ‘serious shortfalls in implementing this aspect of the placement principle’ (Libesman, 2011, p.55). Therefore the implementation of the Placement Principle went against **Recommendation 43** that was included in *Bringing Them Home*.

Many years of planning, developing and strategising for the best way forward in implementing the Principle has occurred since the initial inclusion of the Principle in the (Care and Protection) Act 1987. For example, since its inception the SNAICC organisation has maintained its commitment to ‘adopt a broader charter that consistently challenges the system of child welfare that continues to operate throughout Australia’ (Briskman, 2003, p. 65) and one of the key areas of concern for SNAICC has

been the implementation process of the Aboriginal Placement Principle. To alleviate misinterpretations and mishandling of the Principle, the national lead agency in Aboriginal child protection recommended that 'it must be conceptualised in broader terms that recognise and protect the rights of Aboriginal families; increase the level of self-determination; and reduce the removal rate of Aboriginal children (AIFS, 2015, p. 5). To do this, SNAICC, in conjunction with the COAG's (Coalition of Australian Governments) *National Framework for Protecting Australia's Children 2009-2020*, targeted five key areas of the managing framework of the Principle for all States in Australia that would enable child protection services, in particular OOHC services, to adhere to applying the Principle in casework practice. The five key areas are: prevention; connection; partnership; placement; and participation (SNAICC, 2018, p. 3). Thus, SNAICC's vision was not only strategic in broadening the meaning of the Principle, but also broadened the concept of the Principle to encompass how to prevent removal from an Aboriginal child's community; to ensure that Aboriginal children remain connected to their community whilst in OOHC; to include a partnership approach between the statutory agency and key Aboriginal stakeholders; to ensure that rigorous procedures are followed when placing an Aboriginal child after removal to ensure placement with family, or community members; and to respect the participation of Aboriginal family in decision-making processes regarding Aboriginal babies, children and young people removed from their parents (SNAICC, 2018, pp. 4-5). The five key elements were endorsed by all States of Australia and included in the fourth action plan for the period 2018-2020, which is informed by the *National Framework for Protecting Australia's Children 2009-2020* (DSS, 2018, p.12; Lewis, 2018, p. 7).

Aboriginal Self-Determination Defined

In the following, I demonstrate why it is important for Aboriginal people to self-determine the policies and procedures in Aboriginal child protection issues. Support for Aboriginal self-determination and decision-making in Australian governance gained momentum after the Commonwealth Government's 1967 referendum to change s. 51 and the repeal of s. 127 in the Australian Federal Government's Constitution, two 'clauses that

discriminated against Aborigines² (Bandler & Fox, 1983, pp. 113-114). The referendum brought the problem of racism and the absence of Aboriginal decision-making to the public's attention.

The outcomes of the referendum resulted in the adoption of amendments to the Australian Constitution by the Federal Government, firstly, to include Aboriginal people in the national Census and secondly, to give the Commonwealth the legal power to develop policies relating to Aboriginal people, which at that time only the States had the legal jurisdiction to do. Consequently, policies to do with Aboriginal employment, health and housing were implemented at the Commonwealth level from 1977 (Department of Employment and Industrial Relations, 1985). Hence the results of the 1967 referendum provided the impetus for shifting the decision-making process from government, to an Aboriginal controlled process. Consequently, the foundation for the concept of Aboriginal self-determination commenced at this time, well before the much needed amendments to the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*, and became sections 11, 12 and 13 of the *Children and Young Persons (Care and Protection) Act 1998*.

The Commonwealth Labor Government (led by Gough Whitlam) 'adopted self-determination as the key term that underscored Australian Indigenous affairs policies in late 1972' (Sanders, 2002, p. 1) and provided a policy reform platform which proffered the inspiration for Aboriginal people to self-determine their lives. It brought to the forefront the concept of Aboriginal governance – a system that would see Aboriginal people self-determining a future based on a governance system managed by Aboriginal people for Aboriginal people. Whitlam's adoption of the concept 'alluded to recent developments in international law that was recognised in the *United Nations Charter of*

² The two clauses in the Australian Constitution which were altered by the 1967 referendum were s. 51 (xxvi), "The Parliament shall, subject to the Constitution, have powers to make laws for the order and good government of the Commonwealth with respect to: the people of any race, other than the Aboriginal race in any State, for whom it is deemed necessary to make special laws", and s. 127, "In reckoning the numbers of the people of the Commonwealth or of a State, or other part of the Commonwealth, Aboriginal natives shall not be counted". The referendum was for the elimination of s. 127 and the words "other than the Aboriginal race in any State" in s. 51 (xxvi) - (Bandler & Fox, 1983, pp. 113-114).

1945; the UN General Assembly Declaration on the *Granting of Independence to Colonial Countries of 1960*; and the *UN International Covenants on Civil and Political Rights and Economic, Social and Cultural rights of 1966*' (Sanders 2002, p. 1). Also Whitlam had acknowledged that Australia had failed to 'meet its fundamental international obligations to end racial discrimination and to meet its domestic responsibilities' (Hocking, 2018, p. 7), in accordance with the above international declarations.

As stated above, self-determination was adopted as a policy instrument for Aboriginal people in Australia after the Referendum. Adding to Whitlam's vigour in recognising this concept, in 1979 a study undertaken over a 3-year period by Coombs, Brandl, and Snowdon (1983) had investigated state and federal program delivery operating in North and Central Australia. The project was underpinned by the same principles and the original ideas of Whitlam oriented to empowering Aboriginal people to manage their business within their communities. Coombs et.al (1983) used phrases such as 'programs should be compatible with Aboriginality' and the entitlement to 'determine what they incorporate from [*non-Aboriginal*] society and the rate of change which they can accommodate' consequently, this discourse accorded with the principles of self-determination. Thus, there was a robust commentary on Aboriginal self-determination that held that Aboriginal self-determination empowers Aboriginal people (Read, 1981; Coombes et.al., 1983; Parbury, 1988; Wilson, 1997; Ah Kee & Tilbury, 1999; Sanders 2002; Bamblett & Lewis, 2010; Libesman, 2015/2016).

Furthermore, the *Bringing Them Home* Report included a discourse of autonomy, self-rule, freedom and independence that went beyond simply participating, consulting and being part of the decision-making process. The rationale given for attention to inclusion in governance was to emphasise the 'enjoyment and exercise of the full range of freedoms and human rights of Indigenous peoples' (Wilson, 1997, p.320). For example, Mick Dodson, in his submission to the HREOC Inquiry, stated that 'the right of self-determination is the right to make decisions for Aboriginal people to determine and control their lives through having input to the design, implementation, management and control of service delivery for and by Aboriginal people' (Wilson, 1997, p. 276). The

Report recommended (see **Recommendations 43b-43c**) ‘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’ (Wilson, 1997, p. 580).

Aboriginal leader Patrick Dodson, in his delivery of the 1999 Fourth Vincent Lingiari Memorial Lecture, stated ‘Aboriginal Peoples have the right to self-determination, a right to negotiate our political status and to pursue economic, social and cultural development’ (cited in Behrendt, 2003, p. 90). The SNAICC Chief Executive Officer, Professor Muriel Bamblett, also provided clear definition of “self-determination”, with a focus on human rights and empowering Aboriginal Australians:

Self-determination is the over-arching right of Indigenous peoples to exercise control over the decisions that affect their lives. It is both the source of the right to participate in decision-making and the realisation of full empowerment to participate in public decision-making. Self-determination includes subsidiary rights to strong forms of participation, including free pursuit of economic, social and cultural development and autonomy and self-governance in internal and local affairs. Thus, enabling increased participation of Indigenous peoples in decision-making promotes their self-determination. (Bamblett, 2013, p. 10)

Further emphasising, Professor Bamblett stated that ‘when we are making decisions about community people, their present and future, to do that in the absence of community or family you are not doing a service’ (Bamblett, 2013, p.47).

Robust conversations and recommendations have been put forward by many advocates, including AbSec; Linkup NSW and SNAICC, seeking change in how policy practices and procedures impact on service delivery and access to services for Aboriginal people. SNAICC, the national representative in Aboriginal child protection, and OOHC have led the challenge for change in incorporating a culturally appropriate systematic approach to working with Aboriginal families. Finding ways to implement a fair and equitable support system led by Aboriginal people, has become an entrenched

motif in advocacy from organisations' dialogue on this issue. For example, Bamblett (2018) stated 'the answer lies in empowering Aboriginal and Torres Strait Islander families and communities to drive their own solutions (p. 21). Thus, for many years key Aboriginal child safety and family wellbeing organisations have advocated for more involvement of Aboriginal people in the decision-making process. A key point in discussions of self-determination is that it is critical for Aboriginal people to be involved in decision-making, in providing input into policy and to be part of relevant procedures to do with that policy. However, to do this requires the development of Aboriginal organisations that would provide a base for all such processes. To change the problem, Aboriginal services require appropriate funding to sustain the ongoing pursuit of an Aboriginal decision-making service delivery model. However, the resourcing of Aboriginal organisations has hindered the progress of developing and implementing a legitimate system of Aboriginal self-determination. Bamblett and Lewis (2010), for example, have linked the demise of building a solid foundation to sustain the fundamentals of Aboriginal controlled self-determination to 'policy rhetoric' (p. 8) that has not been acted upon by subsequent governments.

The key objective of self-determination, therefore, is for Aboriginal people to self-determine by managing and controlling the decision-making process around issues specifically to do with Aboriginal people. In understanding how the key fundamentals of an Aboriginal self-determined approach could be incorporated into Aboriginal child protection business, the following section explains what an Aboriginal self-determination framework looks like in practice.

Aboriginal Self-Determined Practice Frameworks

A key element of the self-determination approach as it developed in Australia was that Aboriginal organisations and individual Aboriginal people would control the decision-making in key focus areas identified by them, and thus would also develop key strategies to achieve their identified outcomes. Such strategies included development at the national level of the *National Aboriginal Consultative Committee* 1973-1977; the *National Aboriginal Conference* 1977-1985; and the *Aboriginal Development*

Commission in 1980. In 1989 the *Aboriginal and Torres Strait Islander Commission* was established as another policy instrument for managing Aboriginal affairs across the nation (Sanders, 1993, p.1). This organisation 'encouraged community based organisations to take on service delivery, asset holding and representation roles' (Sanders, 2018, p. 113). It was disbanded in 2004-2005 and since this time; in 2015 the national *Referendum Council* was established to coordinate discussions with Aboriginal communities, thus delivering the *Uluru Statement of the Heart* to the Commonwealth Government and is currently an ongoing conversation between the Council and the Government (Sanders, 2018, pp. 113-126).

Prior to 1989, examples of Aboriginal self-determination in action in NSW began in 1970 in Redfern NSW when the Aboriginal Legal Service (ALS) was established, and the following year the Aboriginal Medical Service (AMS). A short time after, other organisations such as the Aboriginal Islander Dance Theatre and Murawina Pre-school commenced operating (Parbury 1988, pp. 141-145). In 1975, specialist Aboriginal organisations set the precedent for Aboriginal child welfare agencies to be established, such as the NSW Aboriginal Children's Service (ACS). This service was a 'community based Aboriginal-controlled, Aboriginal staffed child care agency' (Lock, 1997, p. 74). The governance structure consisted only of Aboriginal people. The aim of the service was to place Aboriginal children with family or extended family members. The key objective was to provide a culturally appropriate childcare support agency for those Aboriginal families having contact with child protection authorities. In 1975, the Australian Catholic Relief organisation funded the ACS and later, financial assistance was provided by the Commonwealth and State governments. It was funded by the NSW Department of Community Services until 2008 (Wilson, 1997; Lock, 1997; Community Services Commission, 2000).

Aboriginal-led developments in Aboriginal child welfare expanded 'rapidly from the early 1980s' (Pocock, 2008, p. 1). The Link-Up (NSW) Aboriginal Corporation became a trailblazer in Aboriginal family reunification across NSW. The aim of the organisation was to find family for Aboriginal people who had been removed from their parents during what is now known as the 'stolen generation era' (Parbury, 1988, p. 88; Wilson, 1997, p.

205). The Link-Up (NSW) organisation is an initiative that is underpinned by the concept of self-determination.

In a similar context to that of Link-Up (NSW), the SNAICC (the national Aboriginal child welfare advocacy organisation) functions independently from government. It has a secretariat responsibility and is the national advocate for Aboriginal child welfare issues in States and Territories and Aboriginal Child Care Agencies (ACCAs). The organisation commenced operating in 1981 and was formed as a 'national umbrella' (Wilson, 1997, p. 30; Lock, 1997, p. 74; Briskman, 2003, p. 64) organisation for all ACCAs in Australia. Since its establishment, SNAICC has adopted a 'broad charter that consistently challenges the system of child welfare that continues to operate throughout Australia' (Briskman, 2003, p. 65). Other key advocacy roles (as previously mentioned), have included input to the *National Inquiry into the Separations of Aboriginal and Torres Strait Islander Children from Their Families* and lobbying with other Aboriginal organisations such as Link-Up (NSW), to amend the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles* in the *Children and Young Person's (Care and Protection) Act 1988*. In addition, AbSec was established in 2003. This organisation operates within a framework of Aboriginal self-determination that is governed by an Aboriginal Committee. The main function of this organisation is Aboriginal child protection welfare at the NSW State level. A more detailed account of AbSec is included in Chapter 5 of this thesis.

The importance of Aboriginal controlled organisations has been strongly emphasised by Aboriginal organisations and advocates (SNAICC 2018; Herring, S. & Spangaro, 2019). For example, SNAICC has for many years advocated for an increase in Aboriginal controlled child welfare organisations to supervise the care of Aboriginal babies, children and youth. In addition, it has lobbied relevant government agencies to recognise the significance of culturally appropriate control of Aboriginal child welfare services that would 'work with, strengthen and support a child's family of origin after the child has been removed to maintain connection to their family and hopefully be reunited with them' (Pocock, 2008, p. 4). The organisation has also advocated for partnerships between 'Aboriginal and Torres Strait Islander organisations, and mainstream service providers to

provide opportunities for mutual capacity building benefits' (Hytten, 2012, p. 12). However, whilst mainstream organisations have a role to play, SNAICC stated 'they cannot replicate the benefits of community-led and culturally appropriate service provision through Aboriginal community-controlled organisations' (Hytten, 2012, p. 12).

Thus, Aboriginal self-determined services provided by the NSW Aboriginal Children's Service, ALSs and AMSs, Link-Up (NSW), SNAICC and AbSec fit the key attributes of self-determination, as defined by the Whitlam government (Coombes, 1983; Parbury, 1988; Sanders, 2002; Mick Dodson, 1997, as cited in *Bringing Them Home*, Wilson 1997; Ah Kee & Tilbury, 1999; Bamblett and Lewis, 2010; Hytten, 2012). This era of change brought with it a focus on specific policy development and implementation by and for Aboriginal people in Australia. The historian Nigel Parbury, in his historical account of *A History of Aboriginal life in NSW* (1988), stated that the 'success of these and other Aboriginal enterprises meant a turning point in the policy of assimilation' (p. 142).

One key driver of change in what can be considered a westernised bureaucratic monopoly has been the promotion of the governance and incorporation of relevant ACCOs, such as Link-Up (NSW); AbSec and SNAICC. The most pivotal objective of AbSec and SNAICC is the significance of recognising the rights of Aboriginal people self-determining the cultural care of Aboriginal children that are placed in statutory care. Therefore, existing literature has provided evidence that examples of Aboriginal self-determined governance have already been established and implemented. How self-determination has been included in caring for Aboriginal children is illustrated in the next section.

Aboriginal Self-Determination in Child Protection Policy

As mentioned previously, the *Aborigines Welfare Board* was abolished in 1969 and up to 1,000 Aboriginal children foster and institutional care records were transferred from the *Aborigines Welfare Board* to the *Department of Child Welfare and Social Welfare*, the now NSW Community Services (Community Services Commission, 2000; Lock, 1997, Wilson, 1997). By this stage a British system of policy reform was entrenched

into Australian forms of governance and the management systems for Aboriginal children. For example, in 1983 (100 years after the establishment of the *Aborigines Protection Board*) at Redfern NSW the management system included an initiative to employ Aboriginal people at the NSW Youth and Community Services (YACS) in the Gullama Aboriginal Services Centre. The key objective of the handover of files was 'to re-establish contact between Aboriginal wards and ex-wards with natural families and to ensure Aboriginal input regarding decisions affecting the placement of Aboriginal children' (Community Services Commission, 2000). Indeed, it was similar to the aims and objectives of the NSW Children's Service and Link-Up NSW. However, rather than increase the development of Aboriginal controlled services, the establishment of Gullama by YACS as a government-controlled service actually enabled the continuation of government systemic control of Aboriginal child protection business, just as had happened with past policies and practices that were responsible for the development and implementation of the *Board for the Protection of Aborigines* in 1883.

Gullama was the start of the reassertion of government control of Aboriginal child protection business with the implementation of more Aboriginal focused initiatives from within the NSW DoCS system. For example, in 2003 the government increased the number of Aboriginal caseworkers (Wood, 2008, pp. 49 & 770) and established the NSW Community Services Aboriginal Services Branch (ASB). In 2010 Aboriginal Child and Family Centres were developed as a result of a partnership approach between State and Commonwealth Governments (NSW FACS 2011/12). More recently, initiatives such as cultural care plans were included in casework practice to provide an 'opportunity to build a nurturing network' (Libesman, 2011, p. 23) and not necessarily from within the child protection framework but rather that 'communities need more support to look after their own children' (Libesman, 2015/16, p. 53). The AbSec emphasised that a cultural care plan is 'aimed at maintaining a child's cultural identity, connection and sense of belonging to family and community while they are in OOHC' (AbSec, 2011, p. 31). In addition, a myriad of government prevention and early intervention (EI) programs aimed at improving the welfare of Aboriginal children have been introduced to lessen the number of Aboriginal children removed. For example, the Intensive Family Based Services (IFBS) offers intensive support within a 12-week timeframe to Aboriginal

families on the verge of having their child taken away permanently. There are currently seven IFBS programs functioning throughout the state (NSW FACS, 2011/12).

Another government initiative was the development of a collaborative approach between the NSW Health maternal and infant health clinicians and NSW Community Services. This initiative involves targeting Aboriginal parents of newborn children. Those identified by the maternal and infant health support worker as needing support for the baby, are provided extra support for the family, such as referral to the DoCS Brighter Futures EI program for intensive family support (NSW FACS, 2011/12). Furthermore, millions of dollars have been spent on programs within the Government's Aboriginal Child, Youth and Family Strategy (ACYFS) policy framework, and on funding for the establishment of Aboriginal foster care agencies across the state (NSW FACS, 2011/12).

In addition, once separated from parents, Aboriginal children are confronted with a westernised system of casework practice, despite the development of alternatives. For example, McMahon et al. (2007) describe a casework framework that integrates Aboriginal self-determination within casework practice for Aboriginal children and young persons. This framework includes considering social indicators, such as maintaining: 'family contact' for the child'; 'living skills for the parents'; and cultural indicators such as, 'knowledge of country'; 'language and family traditions' (pp. 16-18). Furthermore Ban (2011) cites family conferencing as a tool that recognises the inclusion of family members in the decision-making process relating it to cultural appropriateness, in the placement of a child (p. 390). Family conferencing originated in New Zealand (NZ) and Ban acknowledged the positive aspect of this initiative, stating that 'family decision-making, through family group conferences, has tapped into aspects of social work practice that value community development strategies of empowerment as an effective form of problem solving' (Ban, 2011, p. 390). Furthermore, Ban (2010) emphasised that family group conferencing is a process of decision-making that 'transfers the power and authority of decision-making into the hands of the people' (p. 390). But, as Green and Baldry (2008) claim, this type of 'transformation of power relations between workers and community; may be difficult for authorities to accept' (p. 393).

Another example of integrating a government-managed Aboriginal self-determined

casework practice framework is the participation of Aboriginal parents and carers in what is known as “Aboriginal care circles”. This initiative centres on combining the legal procedure involving parents and carers. It is an approach whereby parents have the option to participate on a voluntary basis and it is facilitated within a forum comprising a ‘Children’s Court Magistrate, Project Officer, Manager and Caseworker, the child’s parents and their legal representative, the child’s legal representative and three community members’ (Best 2011, p. 8³). The NSW Attorney General described the implementation of Aboriginal Care Circles in NSW as:

The NSW Government’s commitment to improving the well-being of Aboriginal families... based on an alternative Dispute Resolution model that attempts to engage with Aboriginal people in care proceedings before the Children’s Court to be part of decision-making and care plans for Aboriginal children in care. (NSW Attorney General, 2011, p. 3)

Consequently, there has been a proliferation of government policies and provisions for Aboriginal children removed from their families and these are systematically entrenched within the NSW child protection system. In other words, the government management of Aboriginal child protection business has expanded significantly. Therefore, although there is evidence to suggest that in practice Aboriginal determined governance can be successful (such as with the ALS, AMS, Linkup NSW, SNAICC and AbSec); it is not an ongoing feature of Aboriginal service delivery, nor is it a well-resourced approach to Aboriginal child protection service business in NSW. Previous studies have identified that for an Aboriginal child who has experienced separation from their parents and community, their cultural wellbeing and identity is one of the crucial aspects that should be maintained. Indeed, the most significant findings from the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* related to the trauma, the loneliness, and the inner feeling of loss about self-identity suffered by Aboriginal people as a result of cultural separation. Emphasis was also placed on the

³ Best is a senior executive member of NSW Community Services and delivered this paper at the Australasian Institute of Judicial Administration Conference on Child Protection in Australia and New Zealand in Brisbane, 2011.

significance of an Aboriginal self-determined delivery of Aboriginal child protection business. Thus, in this thesis, two components of what is already known about policies and practices are highlighted and recognised: first, that Aboriginal people have thoroughly established their capacity to self-determine Aboriginal child protection business policy, and second, that the ongoing sustainment of an Aboriginal child's cultural identity after the separation from family, is essential. The following provides an overview of the existing research on the importance of these two elements.

Sustaining Cultural Identity through Aboriginal Self-Determination

Ah Kee and Tilbury (1999) defined child welfare self-determination as 'having the means and decision-making powers to look after our own children' (p. 5). Cadd (2002) emphasised that change in the delivery of child welfare services to Aboriginal families must include 'the development of well-funded and strong Indigenous agencies' (p. 1) to provide support programs to Aboriginal families involved in the child protection system. This type of Aboriginal child protection framework would provide culturally appropriate care and decision-making frameworks that will decrease the placement of Aboriginal babies, children and young people into the care of non-Aboriginal carers and empower Aboriginal communities to control Aboriginal child safety service delivery. That is, it brings into the conversation the recognition of Aboriginal people's capacity to determine the care of Aboriginal children after removal from their parents. Thus, to do this requires the development of necessary policies by Aboriginal people for Aboriginal people.

Unfortunately, evidence also suggests that consideration of a child's cultural background is placed in a precarious situation because these values are applied to case management procedures. For example, Yeo (2003) argued that westernised assessments of Aboriginal family 'bonding and attachment of Aboriginal children have provided an ethnocentric view based on Anglo-Celtic values' (p. 293). Long and Sephton (2011) described the ways that Aboriginal families experience a child protection system whereby a different 'cultural lens' (p. 107) is applied to casework practice of their children, supposedly through the concept of the best interest of the child. In other research, interviews with carers of Aboriginal children substantiated the

problems of inexperienced caseworkers with 'Anglo-centric values in casework practice' (Higgins, Bromfield, D, Higgins, J. & Richardson 2006) however and emphasised the 'importance of connection to family, community and culture, in policies and services to Aboriginal and Torres Strait Islander families' (p. 48). Thus further identifying the impact of how culturally inappropriate casework management is developed and managed within the child protection system.

Adding to the above, Williams, Thorpe and Westerhuis (2007) conducted an interview-based study with 29 Aboriginal and Torres Strait Islander foster carers in the Mackay/Whitsunday areas of Queensland from 2000 to 2004. The research linked past policies from the stolen generation era and Aboriginal carers. A common theme was the significance of the continuity of an Aboriginal child's cultural identity and well-being, something that has been completely lost in the care of an Aboriginal child, once separated from their parents, their community and their traditional land. Another study identified that being able to evaluate the level of well-being, 'involves mapping the whole of life, and considering each life event or social context that has the potential to affect the quality of individual lives, or the cohesion of society' (McMahon et al. 2007, p. 15). This study highlighted that key attributes of well-being include; physical, emotional, psychological and spiritual aspects of life (p.15). Furthermore, the study found that if appropriate indicators of a child's identity are not recognised and not included in case planning, there is a 'fear that they will grow up knowing little about their culture and family background' (p. 19); such as was revealed in the 1997 *Bringing Them Home* investigation.

Following the 10-year anniversary of the release of the 1997 HREOC Report of the 1997 *National Inquiry into the Separation of Aboriginal Torres Strait Islander Children from Their Families*, Libesman (2008) identified two things: first, the need for a 'human rights framework' that was centred on the wellbeing of an Aboriginal child before and after separation from their parents; and second, the need to address the structural and social disadvantage through Aboriginal self-determined solutions to Aboriginal child welfare issues. A human rights approach 'addresses the structural inequality and poverty experienced by Aboriginal people... in addition to recognising the cultural

identity of an Aboriginal child placed in statutory care' (Libesman, 2008, pp. 68-73). Indeed, for Indigenous children, Article 30 of the *United Nations Convention of the Rights of a Child* (UNCROC) stipulates an Indigenous child's right to 'enjoy his or her culture' and Article 20 refers to the 'temporary or permanent deprivation of a child's culture not being allowed' (p. 164).

Consequently, sustaining the cultural identity of an Aboriginal child relies on the ongoing involvement of an Aboriginal culturally defined care service delivery that includes Aboriginal people in their lives. Similar to **Recommendations 43a – 43c** of the 1997 *National Inquiry into the Separation of Aboriginal Torres Strait Islander Children from Their Families*, Professor Bamblett, the Chief Executive Officer (CEO) of the SNAICC organisation, argues strongly for an amended approach to include self-determined Aboriginal models of service provision, stating that 'to do otherwise is to ignore the basic human rights of Aboriginal Australians which is recognised through the UNCROC and the *United Nations Declaration on the Rights of Indigenous Peoples*' (Bamblett, 2013, pp. 6-7). Furthermore, that the right to sustain the cultural identity of Aboriginal children is a 'commitment to human rights, culture and self-determination' (p. 7).

The human rights framework is a holistic method of achieving identified outcomes for Aboriginal families. For example, within the delivery of Aboriginal child protection services, the involvement of Aboriginal people in controlling the decisions made about their children, would be at the forefront because it 'foregrounds the cultural rights and best interests of an Aboriginal child' (pp. 68-72). Libesman (2008), also questioned the viability of the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*, stating that 'while it is a great achievement to have legislative recognition ... there is still a long way to go before the Principle is in fact achieved' (p. 72). Thus, if a self-determining human rights based welfare system for Aboriginal families were applied to Aboriginal child protection service delivery, then systemic poverty and inequality would be addressed along with positioning the sustainment of cultural identity of Aboriginal children as a priority in child protection service delivery (pp. 68-73). Consequently, the belief that an Aboriginal child's cultural identity must be contained

within a holistic Aboriginal self-determined process of Aboriginal people controlling the care of their children, is paramount for the cultural wellbeing and recognition of basic human rights for Aboriginal children involved in the child protection system.

Bamblett and Lewis (2010) also focused on the strength of culture within a self-determining 'human rights as social investment for Indigenous children and families' (p. 6). They linked the impact of colonisation to creating the 'conditions for social and economic dysfunction' (p. 7). Bamblett and Lewis argued that 're-investment in an Aboriginal self-determination service system is premised on Aboriginal cultural child and family principles' (p.9). Thus, central to a social investment service delivery is the 'embedding of cultural identity in any given service practice that is provided to Aboriginal children, families and communities (p. 9). This approach is geared toward the aspiration that 'Indigenous children have a better future and will participate positively in Australian society without forfeiting cultural identity and integrity' (p. 6). Bamblett and Lewis (2010) further claimed that government generally had 'dis-invested' (p.7) in Aboriginal communities and have not provided the financial resources so that Aboriginal communities can sustain the principles of self-determination or to enable Aboriginal people 'to take and action responsibilities' (Bamblett & Lewis, 2010, pp. 7-9). Thus, a major shift in funding to Aboriginal organisations is required to achieve positive and relevant outcomes for Aboriginal families. This requires the government to enable the rights of Aboriginal people to determine their future.

Adding to the proposals for a human rights-based service delivery format, Libesman (2015/2016) linked the 'lack of commitment to implement principles of self-determination', to the rise of a 'neoliberal moral framework of personal responsibility' (p. 55). That is, welfare reforms are driven by 'personal moral failings rather than systemic inequality founded in historic experiences' (p. 46); totally ignoring the impact of past policies and practices and totally ignoring that the best outcomes are achieved through an Aboriginal self-determined framework. In practice, neoliberalism operates from within a 'super structure' (p. 55), that reduces expenditure for social welfare, controls who provides services and concentrates on personal responsibility through linking personal blame to social disadvantage, for example, health, poverty, unemployment, drug and

alcohol dependency. This logic, or rationality, creates an individualised focus in social welfare. What is problematic for Aboriginal families is that a neoliberal framework 'codifies the personal deficits' (p. 55), caused by historically sustained disadvantage, rather than accept a more holistic way of determining the best way forward in finding solutions to decreasing, for example, the overrepresentation of Aboriginal people in the NSW child protection system, or implementing culturally appropriate casework management practices for Aboriginal children in care. In addition, Bamblett (2018) in her overview of the significance of SNAICC in shaping child welfare politics, also draws attention to the way the organisation championed Aboriginal self-determination and control stating that, 'the answer lies in empowering Aboriginal and Torres Strait Islander families and communities to drive their own solutions (p. 21). In this way, Libesman's (2015/16) and Bamblett (2018) analyses provides insight into how the hard-fought-for recognition of Aboriginal self-determination, from *Bringing Them Home* and beyond, was legitimised in practice, so soon after it had been adopted.

Conclusion

The previous chapter provided a summary of the shocking statistics on the removal rates of Aboriginal children in Australia. This chapter has shown that, despite policy changes over time, government-controlled child protection and family initiatives and services do not stop removal, thus do not reduce the overrepresentation of Aboriginal children in the NSW child protection system. Indeed, the government recognises the concept of Aboriginal self-determination within the operational framework of NSW Community Services, rather than external involvement of the Aboriginal community; a system that has unfortunately continued since the *Board for the Protection of Aborigines* was established in 1883, thereafter when the NSW Government legislated the *Aborigines Protection Act* in 1909, the Board controlled every aspect of the lives of Aboriginal people through the development and implementation of policies. This chapter has demonstrated the ways that government control has continued into 21st century Aboriginal child protection policies. Therefore, it must be considered that all policies to

do with Aboriginal people be closely scrutinised and closely analysed. The following chapter describes the approach taken to analysing NSW child protection policy processes and reforms.

Chapter 3: Analysing Child Protection Policy Reform

Introduction

This chapter adds to the aim of the thesis to contribute to current research from the perspective of the impact of policy and problems concerning Aboriginal child protection business. It is presented in two parts. First, it presents the power and control of policy within the context of how late 19th century policies impacted Australia's Aboriginal people. In addition, it introduces policy making and explains the role of government, public servants, media, pressure groups and individuals. It cites various definitions of policy and explains the process of policy making that informs the governance system of Australia. The second part introduces the research method for the thesis; the WPR analysing policy approach developed by Bacchi (2009). It explains the analytical framework that guided the analysis of key public documents for the thesis, thus introducing the texts selected for analysis. This chapter ends with a brief overview of the levels of interrogation of texts and a comment on the limitations of the research method.

Policy Making and Australian Aboriginal People

Policies are instruments of governing that shape the lives of all populations, but they have a particularly profound effect on the lives of Aboriginal Australians. Since the onset of colonisation in Australia, government decision-making has inhibited the lives and freedoms of Aboriginal people through the design and implementation of policy. Patrick and Moodie (2016) direct attention to the series of well-organised policies specifically developed for Australia's Aboriginal people by Australian State Governments since colonisation that have accumulated into 'historical eras of policy' (p. 167). These eras of policy have been described in terms of protection policies; assimilation policies and integrationist policies, the contours of which are described below.

Policy reform during the protection era (1883-1937) included increasing the authority of the *Board for Protection of Aborigines* through an amendment to the *Aborigines Protection Act* in 1909 which provided authority to remove an Aboriginal child without parental consent and/or court order. Policy reform occurred again when assimilationist policies (1937-1969) were adopted. During this era there was an expectation that Aboriginal people would assimilate within white/settler colonial society (Parbury, 1988; Goodall, 1996; Lock, 1997; Wilson, 1997). However, it has been argued that assimilationist ideals were impossible to achieve in the context of the continuation of protectionist values and practices. Goodall (1998), for example, stated 'the irony of the Welfare Board's assimilation policy was that while it tried to disperse families to anonymity, it needed ever-increasing control over as yet unassimilated people to hold them within its re-education stations or under the surveillance of the DWOs [District Welfare Officer]' (p. 305). Therefore, Aboriginal people had no choice but to succumb to an authoritarian lifestyle that was delivered under the pretense of Aboriginal people having an opportunity to live as other Australians. The integration era which followed assimilation, promoted the expectation that Aboriginal people would integrate. This period represented what was an attempt to recognise Aboriginal culture and the basic human right to sustain language and recognise traditional country through policy, while not putting into practice the objective of Aboriginal self-determination (Patrick and Moodie, 2016, p. 168).

In the late 1960s Aboriginal self-determination was introduced into the political arena as a collaborative communicative system between the government and Aboriginal people; briefly interrupting the flow of a previous one-sided view of policy management whereby *non-Aboriginal* decisions were made for and about Aboriginal people. It was a time when Aboriginal people demanded the freedom to make choices and decisions about how they were governed. Nevertheless, fast track to the 21st century and governments still use policy to monitor, regulate and shape the lives of Aboriginal Australians as a sub-section of the broader population. The most recent example is the *Commonwealth Government's Closing the Gap* initiative which monitors statistical records of all areas of service delivery to Aboriginal people, including mortality and morbidity in health, education, employment and housing (Patrick & Moodie, 2016, p. 168).

Therefore, previous research undertaken by historians and policy analysts for example, suggests that policies that have been generated by government in respect to Aboriginal people have been mechanisms for the control of Aboriginal people. Often framed as attempts to reduce disparities in outcomes between Aboriginal people and other Australians, policy in Australia has always been informed by and controlled from the government level, rather than from the Aboriginal community. It is for these reasons that policy and policymaking has quite distinctive meaning for Aboriginal people: policy is neither neutral nor democratic.

To further understand the prevailing effect of policy, the next section discusses contemporary mainstream views about public policy.

What is Policy?

Many policy analysts have evaluated Australian policy systems to understand such things as: the functions of policy; the policy development process; the implementation procedure, and who is responsible for facilitating new and reformed policies. Fenna 2004 describes policy as being about 'what governments do, why and with what consequences' (p.3) and further suggests that public policy is generally understood as being developed to 'deal with problems' (p.6). Althous, Bridgman and Davis (2007), suggest policy can be understood also as an 'authoritative response to a public issue or problem' (p. 6), as well as being a 'course of action by government designed to attain certain results' (p. 8). Colebatch (2009) defines it is an 'idea that we use in both the analysis and the practice of the way we are governed' (p. 1).

In broadening the meaning of policy, Maddison and Denniss (2009) describe policy as 'governments making decisions with a focus on purpose, whilst considering both ends and means through a procedure that may involve action or inaction and applying a consistent approach to a situation' (p. 5). Goodwin (2010) argues policy refers to the 'principles and practices of pursuit by government of social, political and economic outcomes' (p.168). Others argue that policy involves 'values, interests and resources that are mediated by politics' (Davis, Wanna, Warhurst & Weller, 1993, p. 15) and that policy and public policy is an institutionalised process that is 'inherently and unavoidably

political' (Maddison & Dennis, 2009, p. 6). Thus, the term "policy" incorporates a range of meanings that are linked to the roles of government and authoritative responses to issues of concern for the community.

The legitimacy of the power of government policy has also been analysed by relevant policy analysts. For example, Davis et. al (1993) associated policy with the Commonwealth of Australia Act 1901, suggesting that it is 'woven into the fabric of the national institution created by the Constitution' (pp. 49-50). In a similar way, Fenna (2004) describes policy as an 'exercise of the sovereign power of government, backed by legitimate force and is a deliberate action covering any area of government authority' (p. 5). Consequently, policies are bound by regulated processes, are authoritative and operate within an institutionalised governance framework.

This thesis draws heavily on the understandings of policy provided by Bacchi (2009). Bacchi (2009) uses the term "policy" broadly, associating it with a 'program, a course of action', explaining that 'public policy is the term used to describe government programs' (2009, p. ix). However, Bacchi (2009) adds some important new ways of thinking about policy by recasting the field of policy studies in terms of differentiating between 'problem-solving' approaches and 'problem questioning' approaches (Goodwin, 2012). Bacchi (2009) argues that most 'conventional approaches propose to solve problems' (pp. ix-x) and proposes that it is important not to assume that policies are simply solutions to pre-existing problems. Bacchi (2009) puts forward the idea that policy is also involved in *creating* problems, challenging 'the commonplace view that policy is the government's best attempt to deal with problems' (p. 1). As has been demonstrated in this thesis so far, the impacts of Australian policymaking on Aboriginal people suggest that rather than continue to imagine that problems can be solved by policy and government programs, it may be timely to embark on more problem questioning.

Australian Policy Making Arrangements

The process of policy making in Australia is grounded on 'colonial traditions, British concepts of responsible government and American models of federalism' (Althous, et.al 2007, p. 14). In addition,

Australia is a liberal democracy that exerts authority and legitimacy through the electoral system and disciplined from a set of key activities working towards a responsible government process that include the making of laws through legislation; the power instilled in relevant political party executive members; and the judicial system of the courts'. (pp. 12-13)

Furthermore, the administrative arm of the Australian Government includes a federal 'division of powers with a representative of the British Monarch to perform in accordance with the federal parliament executive' (p. 14).

Politicians are empowered through legislation and Acts of Parliament to make policy, rather than implement policies (Davis et.al, 1993, p. 190). The policy process has adopted means that ensure the delivery of policy remains in a specific field of responsibility and those involved are referred to as 'policy actors' (Maddison & Denniss, 2009, p. 102), as such with differentiated roles from politicians. For example, ministerial staff 'provide a firewall around Ministers within Parliament' (Walter 2006, cited by Althous et.al, 2007, p. 16) and senior public servants 'manage policies positioned external to Parliament thereafter' (Althous et.al, 2007; see also, Maddison & Denniss, 2009) to be delivered to the public domain and implement policies adopted by the government. Consequently, the policy process includes the implementation of policy production that is underscored by an ordered procedure to reach the implementation stage of an adopted policy.

A unique group of public servants work directly with not only policy, but clients and the public as well. Lipsky (1980) refers to this core group as 'street-level bureaucrats' (p.3), who abide by and implement relevant previous, amended and new policies that align with their specific field of service delivery. They include for example, teachers, police, doctors, social workers, public lawyers, health workers and government workers such as those employed at Centrelink⁴. Key public service employees are a link between Australian citizens to the bureaucratic domains of the political arena (p. 4).

⁴ The Australian Government Department of Human Services deliver Centrelink social security payments and services to Australians. (<https://www.humanservices.gov.au/individuals/centrelink>)

Consequently, street level bureaucrats 'exercise discretion; develop strategies to align with the local community needs; and must be equitable in service delivery to the public (Davis et.al., 1993, pp. 191-192). Therefore, the process of government policy involves the 'intersection of a wide range of participants' (Colebatch, 2018, p. 312) each driven with separate ideals on a given issue, making the policy process a complex and competitive system. At the same time they remain within the domain of a given political agenda.

Other key actors in policy processes are positioned externally to the formalities of policy-making, beyond politicians, public servants and street-level bureaucrats. For example, pressure groups and interested persons who can influence public discussion, at most times via the media, add to discussion and sometimes the decisions made about policy. Davis et.al (1993) identified that since the establishment of the Aboriginal Tent Embassy in 1972 in Canberra, 'many pressure groups use the doors of the Commonwealth Government's parliament as a point of entry to gain publicity for their opinions and policy demands' (p. 152). Larissa Behrendt (2003) added another dimension to the establishment of the Tent Embassy in that it creates political awareness about issues to do with Aboriginal people. Another perspective on externally driven policy-making is to be found in the 1997 *National Inquiry into the Separation of Aboriginal Torres Strait Islander Children from Their Families*, which disclosed the shared stories of Aboriginal adults who were removed from their families, communities and traditional country when they were babies, children or young people. These stories influenced key recommendations in the Report and public discussion for change to legislation associated with the placement of an Aboriginal child after removal and other significant issues such as Aboriginal self-determination.

Furthermore, when there is opportunity to influence policy, groups such as non-government organisations (NGO); volunteers and community people can 'contribute to the development, implementation and evaluation of policies' (Althous et.al., 2007, p. 18). The abovementioned 'groups can use the media to influence policy' (Maddison & Denniss, 2009, p. 181) such as employing 'media advisors' (p. 191) to create awareness about a problem. Therefore, the media can be either a manipulative tool in policy

making, or it can influence the decision-making process regarding the final adoption of an amendment to a previous policy or new policy. Consequently, the media can be a very 'powerful framer of political action' (Althous et.al. 2007, p. 19).

Overall, policy making is the exertion of legitimate power (or governmental force) tied to the responsibilities of elected government officials in the liberal democratic system. Policy making involves the input of politicians, ministerial staff, and senior public servants who have the authority to lead the implementation process for new and amended policy. Furthermore, external actors in the policy making process, can be lobby or pressure groups, and individuals who work to persuade and promote public interests that are of concern. In this sense, while policy authority is centralised, policy power is dispersed. This thesis is concerned with precisely how it is (or isn't) dispersed.

The following section introduces how Bacchi's (2009) WPR policy analysis framework is used in this thesis.

The 'WPR' Policy Analysis Approach

Bacchi (2009) introduced an analysis tool into the field of policy analysis in order to 'direct attention to the ways in which particular representation of problems play a central role in how we are governed' (Bacchi, 2009, p. xi). As discussed above, she argues that rather than addressing 'problems', policies 'give shape to problems' (pp. x-1). The WPR is an analytical strategy that enables researchers to probe the conceptual underpinnings of policies (Goodwin, 2011). The approach can be applied to a range of practical texts such as a 'program or policy proposal, policy statements, public addresses, parliamentary debates, government reports, pieces of legislation, court decisions' (2009 p. 54). As such, the analysis framework was considered to be appropriate for analysing how Aboriginal people and Aboriginal child protection was represented in the policy documents that formed the NSW child protection policy reform processes that this thesis is concerned with. The WPR approach is grounded in Foucauldian-inspired poststructural ideas. Bacchi (2009) follows Foucault's suggestion that 'policies are prescriptive texts or practical texts since they tell us what to do' (Bacchi, p. 31) and are therefore open to scrutiny or interrogation (p. 34). Key terms

used in Bacchi's (2009) policy analysis framework are "problematization" (how something is put forward as a problem) and "problem representation" (the implied problem/s), (p. 277). The approach does not 'involve a conventional form of policy evaluation, instead it establishes a platform to question the problem representations or, the taken-for-granted assumptions that lodge in government policies and policy proposals' (Bacchi, 2009, p. 5), by interrogating, or problematising the language (or discourses) used in policy texts. This approach enables analysts to closely scrutinise and question both the making of government policy and what government policy makes or produces.

A key feature of the approach is the presumption that policy fixes problems, therefore, 'by their very nature; they assume the existence of a problem that needs fixing' (Bacchi, 2009, p. xi). However, in contrast, the WPR approach suggests that 'in order to understand how we are governed, we need to examine the problem representations that lodge within policies and policy proposals' (p. xiii). Any given policy can be complex and can combine a range of ways of representing the problem/s in need of fixing; as such, problem representations can 'nest, or can be embedded with each other' (p. 21). Thus, 'more than one problem representation' (p. 4) can exist within the parameters of a problematisation. The approach argues that problems represented can affect different groups in different ways and it is crucial to be able to identify 'which aspects of problem representations have deleterious effects for which groups, hence may need to be rethought' (p. 18). The approach considers the implications of 'how the issue is thought about and for how the people involved are treated and are evoked to think about themselves' (p.1).

The WPR approach provides a conceptual checklist that guides the analytic process of texts in the form of a tool comprising six questions that is capable of questioning policy ideas and discourses in policy documents and texts. The six interrelated questions that can be used to probe how problems are represented in policies are:

Question 1: What's the 'problem represented to be in a specific policy? (Bacchi, 2009, p. 2).

Question 1 is primarily a 'clarification exercise' (Bacchi, 2009, p. 2). It is a starting point of an analysis and the objective is to 'identify implied problem representation in specific policies or policy proposals' (p. 4). The WPR is 'not on the intentional shaping of issues' (p. xix), rather it concentrates on implicit 'problems' that exist within policy. Working with each text separately, the first task is to identify the problem representations. At this point the WPR analysis supported my intention to identify the problem represented to 'understand how an issue is being understood' (p. xi), as stated in the texts.

Question 2: What presuppositions or assumptions underlie this representation of the 'problem?' (Bacchi, 2009, p. 2).

Question 2 moves into deliberating on 'what is assumed? Or what is taken-for-granted? and what is not questioned?' (p. 5). A key task involves drawing on the 'epistemological and ontological assumptions and/or presuppositions that lodge within problem representations' (p. 5). Rather than accepting a problem as it is presented by policy makers, I see it as 'stepping inside' the actual identified problem and utilising Bacchi's (2009) approach to clarify 'what underpins identified problem representations' (p. 5). It consists of being aware of the uses of key concepts and categories within a policy and moving beyond that to explore what can also be proposed in a problem representation. Question 2 allows an analyst to further scrutinise a problem representation.

Question 3: How has this representation of the problem come about? (Bacchi, 2009, p. 2).

Question 3 involves the historical aspect of an identified problem representation. The inclusion of this question is to 'highlight the conditions that allow a particular problem representation to take shape and to assume dominance' (Bacchi, 2009, p. 11). For example, Question 3 provides the opportunity to question the use of statistics as a conventional way of providing a 'defence for a particular policy' (p. 11) as is the case in many policies concerning Aboriginal populations. Consequently, this step comprises a shift in accepting what is implied in the policy documents, to how the problematisation or problem representation has come about.

Question 4: What is left unproblematic in this problem representation? Where are the silences? Can the problem be thought about differently? (Bacchi, 2009, p. 2).

Question 4 expands the analytical process even further. This question opens an analysis to 'explore the critical potential of a WPR approach' (p. 12). It introduces 'issues and perspectives silenced in identified problem representations' (p. 13). Question 4 therefore, releases the 'constraints and tensions in problem representations' (p.13) and it has the ability to explore the silences in a stated problem. For example, identifying the failure to recognise what has been omitted in policy reform offers an alternative perspective on policy development. It provides a focus on identifying gaps in policy and how it impacts on the outcomes of a given policy.

Question 5: What effects are produced by this representation of the problem? (Bacchi, 2009, p. 2).

Question 5 'identifies the effects of specific problem representations so that they can be critically assessed' (p. 15). It focuses on 'which aspects of a problem representation have deleterious effects for which groups' (p. 18). Question 5 introduces pushback to further motivate the analyst to investigate the impacts of policy reform on people. To do this, the WPR approach draws on three kinds of effects of problem representations: discursive effects – 'limits what can be thought or said'; subjectification effects – 'how subjects are constituted within problem representations' and lived effects – involves the 'notion in which policies create representations of problems that have effects in the real by materially affecting our lives' (pp.15-18). Bacchi (2009) proposes that all three overlap and are 'subtle in their influence' (p. 15) in creating difficulties for some groups in society to be mindful of the effects of the representation of the problem in respect to what causes a problem that has been identified.

Question 6: How/where has this representation of the 'problem been produced, disseminated and defended? How could it be questioned, disrupted and replaced? (Bacchi, 2009, p. 2).

Question 6 has two parts. First it is a reminder to 'pay attention to both the means through which some problem representations become dominant and second to

challenge problem representations that are judged to be harmful' (Bacchi, 2009 p. 19). The question allows for exploration into how the representation of the problem came about. The media for example, may play a role in sustaining an interest in a specific problem, so could have the potential to become a dominant problem representation. Therefore, this WPR question, involves exploring the most dominant and to consider contesting views.

Consequently, the WPR six question analytic framework is a research method that allows an analyst to 'read off' (p. 32) or peel back the layers of a problem representation and to consider what the effects of particular problem representations may be for those on the receiving end of policy. The method provided the "tools" (6 interrelated WPR questions) to scrutinise two of the key research questions that this thesis addressed to understand the impact of the reforms in NSW child protection service delivery for Aboriginal families. Thus, I applied Question 1 of the WPR policy analysis approach to identify the problem representations; Question 2 to deliberate on the underlying premises or what is taken for granted in the problem representation; Question 3 to think about how the problem representations may have come about; Question 4 to prompt consideration of the silences and gaps in the problem representations; Question 5 to identify what the impacts and effects of the policy are and how policy creates more problems; and Question 6 to identify the entry points that could be deployed to dispute the more dominant aspect of policies that in fact can ignore the major effect of policy outcomes for Aboriginal families and community. As Goodwin (2011) explains, the WPR approach is not 'concerned with providing a series of pre-defined steps through the research process, but instead provides a conceptual checklist that guides the analytic process' (p, 170).

Applying 'WPR' to NSW Child Protection Policy

In this thesis, the WPR approach was applied to three key public documents that provide insights into the ways that Aboriginal people and the Aboriginal child protection problem was represented in the NSW child protection policy reform processes (2007-2017). The WPR questions assisted in clarifying how Aboriginal perspectives were

constituted in policies and how the strategic directions in Aboriginal child welfare policies were constructed. A WPR analysis was applied to the AbSec Submission to the Wood Inquiry; the final report of the Inquiry – the Wood Report, and the policy implementation strategy - Keep Them Safe Action Plan. The following describes these documents:

The AbSec Submission

The 2007 Wood Inquiry received 669 submissions, one of which has been selected for detailed analysis. This is the submission from one Aboriginal NGO, the AbSec. The aim of the analysis was to identify the Aboriginal child protection issues that AbSec deemed to be problematic and to explore how these problems are constituted in the AbSec Submission document. The Submission introduced an Aboriginal perspective on policies to do with the reform into the NSW child protection services. The interrogation of an Aboriginal perspective ensures that the thesis offers more than a government view on where Aboriginal families are positioned within the development and implementation of child protection policy and service reforms in NSW. Thus, it was an opportunity to scrutinise the ways in which AbSec, the peak body in NSW Aboriginal OOHC, represented Aboriginal child protection issues in this policy making process.

The Wood Report

The Wood Report (2008) anchored the reform proposals for child protection services in NSW that remain in place today. It was a three-volume report, with Chapter 18 of Volume Three devoted to Aboriginal overrepresentation in child protection. The Report includes a comprehensive set of recommendations that informed the NSW Government on how to manage and deliver child protection services. The key objective of the WPR analysis was to explore how Aboriginal child protection issues were positioned and constructed within the Report. Consequently, the analysis of the Wood Report involved taking a step back from the Report and using WPR to scrutinise not only what was said but the strategies used in the Report to make authoritative statements about the ‘problem’ of Aboriginal babies, children and young people and about their families,

communities and organisations. The Wood Report set the directions for the NSW Government to reform child protection policies and services in NSW, and thus was the pinnacle in the processes and procedures involved in delivering the NSW Government's Action Plan.

The Keep Them Safe action plan

The 2009 policy for NSW child protection was entitled: Keep Them Safe: A shared approach to child wellbeing, which is the "Action Plan" that guides the implementation of the reform in child protection service delivery in NSW. It provides an overview of how the NSW Government acted on the recommendations from the Wood Report. Chapter 5 of the document is devoted to Aboriginal child protection issues and includes an *Aboriginal Action Plan* that outlines the reform in Aboriginal child protection service delivery. As with the other documents, The WPR analysis enabled the interrogation of the Keep Them Safe Action Plan as a whole, and the *Aboriginal Action Plan* in detail.

The analysis of these three policy documents, or texts, involved a number of different stages or levels of interrogation. Level 1 included multiple readings of each text. Each reading focused on attempting to identify discourses and discursive practices relating to Aboriginal people, families and their children from within the text. The identification of key concepts, categories, binary distinctions and even verbs or doing words (for example, Aboriginal communities; capacity building; consulting; and engaging etc.) grounded the engagement of the WPR policy analysis approach. Level 2 required differentiating between stand-alone implicit 'problem representations' and those nested together in each text. The process involved a close analysis of the problem representations in the arguments for policy reform for Aboriginal child protection business in NSW. This level of exploration shifted from the first reading of basic understanding to scrutinising specific problem representations using the WPR questions. Level 3 was a comparative exercise: it compared the differences and similarities of the identified problem representations between the three documents.

Limitations of the Research

As with other textual and discourse-analysis techniques, the WPR approach deployed in this thesis will always be open to claims about partiality in the selection of texts (see Marston, 2004). As Goodwin (2011) explains 'Policy analysts are involved in an interpretive process of marking off and marking out territory for analysis. In the WPR approach, this involves making decisions about which text or texts will be the objects of analysis' (p. 172). The decision to focus on the Wood Report and the Keep Them Safe Action Plan policy documents was relatively straightforward: both were public documents that informed the policies for the reform in child protection services in NSW. Consequently, the inclusion of these two documents was an essential part of the analysis for the thesis. I acknowledge that the 2007 Wood Inquiry had received 669 submissions and from this I selected only one submission for detailed analysis – the one submission from an Aboriginal NGO; the NSW AbSec. The decision to select the AbSec Submission was based on the depth of the organisation's knowledge of Aboriginal and mainstream child protection systems. Selecting this text was a deliberate strategy to ensure the inclusion of Aboriginal voice that brought with it significant perspectives on issues that impact on policy procedures and practices for Aboriginal families involved in the NSW child protection system. In this sense, what may be seen as a limitation of the thesis – partiality – instead exposes the ways that supposedly impartial processes, such as Commissions of Inquiry need to be rethought.

Conclusion

This chapter was divided into two parts. The first part problematised the concept "policy" itself, by showing how policies have affected the lives of Australia's Aboriginal people since colonisation. The chapter presented definitions of policy and explained how policy-making is developed and implemented through a form of governance that legitimates the management of policies, programs and populations by Australian Federal and State governments. It explained the role of public servants in the implementation process of policy and the involvement of key commentators and advocates in policy making, such as the media and lobby groups.

The second part introduced the methodology that was used in the thesis. The analysis of documents was central to answering the Research Questions posed in the thesis that related to how Aboriginal people and the Aboriginal Child protection problem were represented in NSW child protection policy reforms processes. Bacchi's WPR policy analysis approach will be deployed to analyse key documents associated with the reform in NSW child protection services from 2007-2009. The purpose for using the WPR approach was to interrogate the problems represented within the reform for child protection service delivery in NSW generally; with detailed attention given to Aboriginal child protection issues. The chapter explained the six-interrelated WPR questions that are applied when analysing policy and included a brief summary of the three public documents selected for analysis, which represented various stages of the analysis and the reform process. These included the 2007 Submission from the AbSec organisation; the 2008 Wood Report, which represented the outcomes of the inquiry into child protection service delivery in NSW, and the 2009 response from the NSW Government, was represented by the *Keep Them Safe – A shared approach to child wellbeing*.

The following chapter sets the scene for the WPR analyses provided in Chapters 5, 6 and 7: it describes the circumstances surrounding the instigation of the Wood Inquiry and also explains the legislative and administrative approach that a 'Special Commission of Inquiry' entails. The careful analysis of who was included and excluded from the Wood inquiry processes and how the Commission undertook its business, provides important background for the analysis of the three policy documents.

Chapter 4: The 2007 Special Commission of Inquiry into Child Protection Services in New South Wales: The Wood Inquiry

Introduction

As described in Chapter 1, in 2007 the NSW Governor announced that a *Special Commission of Inquiry into Child Protection Services in NSW* (Wood Inquiry) would be undertaken to investigate the safety of children in NSW; the drivers of demand on child welfare services; and how the DoCS managed that high demand. This chapter provides an account of the Wood Inquiry processes and practices. The chapter is presented in three parts. The first part defines the Special Commission of Inquiry Act 1983 and demonstrates how specific sections of the Act were applied to the 2007 Wood Inquiry. The second part outlines why the Inquiry was called for, drawing on Ministerial press releases and news media reports. It shows that two high profile child deaths in NSW provoked community, public and media attention. By moving beyond the formalities of a Government inquiry, the account provided here shows the connections between policy processes and the lived experiences of families who endured the trauma of the death of a child and the seriousness of public, media and relevant government personnel concerns in relation to child safety. The third part demonstrates how the Inquiry actually functioned and describes the mechanisms to publicise the Inquiry; and the methods of investigation - the forums, meetings and the examination of relevant case files and submissions presented to the Commission. The account provided here draws from the archives of publicly available material, but also from my own knowledge and professional experiences in Aboriginal services.

What is a Special Commission of Inquiry?

The Special Commissions of Inquiry Act is 'an Act to provide for the establishment and function of a Special Commission of Inquiry' (New South Wales Special Commissions of Inquiry Act 1983 No 90). This Act is legislatively governed by the NSW Government and it states that 'under the authority of this Act a Special Commission of Inquiry is approved

by the Governor of NSW, who has responsibility to commission Letters Patent to establishing a Special Commission of Inquiry for that purpose' (pp. 1-3); Therefore 'Commissions of inquiry are established by Governments to investigate a particular issue or policy area' (Duffy, 2006, pp. 62-63).⁵

To show how this works in practice, an example of the powers of Part 3 Division 1, s. 7 and s. 10 of the Act are linked to comments made in relation to the *Special Commission of Inquiry into Child Protection Services in NSW*:

The inquiry has the power to hold a hearing, whether in public or private...it will be exhaustive and the fact of my appointment under the Special Commissions of Inquiry Act, with a responsibility to report to the governor, assures my independence and I will be recommending that the report be released to the public. (Morello & Ralston, 2007; Family Law Web Guide, 2007)

Why was the Inquiry Conducted?

Establishing a special inquiry in response to publicity concerning policy issues is common practice in Australia. Duffy, for example, writing about the use of inquiries in general, argues 'that public pressure may have a major influence on the government's decision to hold an inquiry' (Duffy, 2006, pp. 62-63). Consequently, inquiries may be undertaken because of the heightened concerns raised in the media. This is certainly true in the case of the 2007 Wood Inquiry. The decision to have this Inquiry was precipitated by several factors:

First, the stated problem was that the NSW child protection system was overburdened and unable to cope with increasing demand for services (Wood, 2008, p. 3). The overarching purpose of the Inquiry was to determine what changes needed to occur 'to

⁵ Examples of other Special Commissions of Inquiry undertaken in NSW includes: The 2004 *Special Commission of Inquiry into Medical Research and Compensation Foundations* (Jackson, 2004) and the more recent 2016 *Special Commission of Inquiry into the Greyhound Industry* (Durkin, 2017), both were conducted under the *NSW Special Commissions of Inquiry Act 1983*.

cope with future levels of demand once the current reforms⁶ to that system were completed' (Wood, 2008, p. 3). Data on the increases in child protection notifications and data on the child protection workforce promoted a view of a dysfunctional system (Smith, 2007; Morello & Ralston, 2007). The statistics revealed that 'child protection reports received by DoCS had increased by 62.3% from 176,271 in 2002/03; to 286,033 in 2006/07, suggesting an average of 5,501 reports made to DoCS each week' (NSW DoCS, 2006/07, p.5-11).

The second stated 'problem' was that child protection issues had become highly visible in public debate. Media reports on child deaths had revealed the high number of child deaths in NSW as unacceptable. For example, the media coverage of a child aged 2 years and 7 months who died on the 17 October 2007, (Smith, 2007; Kennedy & Moore, 2007; McDonald, 2007; Shared Parenting Council of Australia⁷, 2008; Wood, 2008, p.3, Barbour, 2009) and another child aged 7 years who died shortly after, on the 3 November 2007 (McDonald, 2007; Smith, 2007; Proudman & Smith, 2007; McDonald, 2007; Wood, p.3, 2008; Strachan, 2009; Barbour, 2009) were provided as significant examples of system failure. In one of these cases, family members publicly criticised the DoCS⁸ claiming they 'failed to act, despite being told of the family's concerns for the child's welfare' (Smith, 2007; Kennedy & Moore, 2007). Indeed, Smith argues that the establishment of the Wood Inquiry can be directly attributed to the deaths of these two children (Smith, 2007).

In addition, the two deaths also brought other incidents to the public's attention. For example, in 2009, the NSW Ombudsman, Bruce Barbour, released a review of the deaths of 162 children in NSW, Australia in 2007. In this report, attention was drawn to the deaths of 50 of those children 'who had no child protection history and who died

⁶ The reference to current reforms in the TOR was to the existing DoCS Child Protection Plan, which had commenced in 2002, and was to be completed by 2008 (the year the Wood Inquiry commenced).

⁷ The Shared Parenting Council of Australia is the peak shared parenting organisation in Australia working to educate and increase the prevalence of shared parenting for children and their parents after separation or divorce (www.sPCA.com.au)

⁸ DoCS is the lead Government authority on child protection in NSW

during the 5 years from 2003 to 2007 due to abuse or neglect, or in suspicious circumstances' (Barbour, 2009; Morello, & Ralston, 2007). Consequently, the deaths of children further exacerbated existing concerns about child safety and provided the catalyst for having an 'independent review' (Morello & Ralston, 2007).

The third stated 'problem' concerned DoCS. At the time of the first of the two high profile deaths, the NSW Premier, Hon. Morris Iemma, stated that 'I think it's about time DoCS and the government get their act together (Kennedy & Moore, 2007). Following the second death, the Premier's concern was reiterated in the statement: 'We're a prosperous state... I know there are pockets of severe disadvantage, but I shake my head that a child dies, allegedly, through starvation' (Proudman & Smith, 2007). Similar concerns were repeated in the views of the NSW Ombudsman, who suggested: 'the Department was still failing children but...it had made small improvements...notwithstanding this work, the child protection system in NSW is not as effective as it could or should be' (Smith, 2007). Therefore, the above factors that exposed the need for an inquiry were intensified by increasing data, deaths of children and acknowledgement by the Premier, the Ombudsman and the media that something had to be done about the NSW child protection system.

Structure and Approach of the Special Commission of Inquiry into Child Protection Services in NSW

On the 14 November 2007 the NSW Government's Executive Council, pursuant to the *Special Commissions of Inquiry Act 1983*, issued authorisation for the *Special Commission of Inquiry into Child Protection Services in NSW*, and on the 7 December 2007, the Terms of Reference (TOR) were endorsed by the Director General, Department of Premier and Cabinet. Following that process, on the 17 December 2007 the Attorney General's Department established a website at www.lawlink.nsw.gov.au/cpsinquiry (Wood, 2008, p. 1080), to ensure key information such as the TOR was available to the public. The TOR consisted of:

- i. The **system for reporting of child abuse and neglect** including, inter alia: mandatory reporting, reporting thresholds and feedback to reporters

- ii. **Management of reports**, including the adequacy and efficiency of systems and processes for intake, assessment, prioritisation, investigation and decision-making;
- iii. **Management of cases** requiring ongoing work, including referrals for services and monitoring and supervision of families;
- iv. **Recording of essential information** and capacity to collate and utilise data about the child protection system to target resources efficiently;
- v. **Professional capacity** and professional **supervision** of the **casework** and **allied staff**;
- vi. The **adequacy of the current statutory framework** for child protection including roles and responsibilities of mandatory reporters, DoCS, the courts and the oversight agencies;
- vii. The adequacy of arrangements for **inter-agency cooperation** in child protection cases;
- viii. The adequacy of arrangements for children in **out of home care**;
- ix. The adequacy of **resources in the child protection system** and establish a Special Commission of Inquiry for that purpose. (Lawlink NSW, Australia 2007)

Highlighted in bold print above are the key elements that governed the *Special Commission of Inquiry into Child Protection Services* in NSW.

Furthermore it was identified that 'the TOR are exceedingly wide and encompass virtually every aspect of the child protection system including the arrangement for responding to child abuse and neglect, interagency cooperation and out-of-home-care' (Lawlink NSW, Australia, 2007). One criticism from those submitting a response to the Commission is that without the actual mention of Aboriginal children in the TOR, there may have been a lost opportunity for a more focused view on this group.

Powers of the *Special Commissions of Inquiry Act 1983*, are subjected to an appointment of a qualified person to 'inquire into and report to the Governor on any matter specified in the commission' (Special Commission of Inquiry Act, 1983, p. 3), who is referred to as a Commissioner which 'means the person to whom a commission is issued under this Act' (p. 2). A Commissioner must be 'qualified to be appointed as a

Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia' (p. 3).

The NSW Governor General issued Letters Patent under the authority of the *Special Commission of Inquiry Act 1983*, to commission the Honourable James Wood AO QC, to conduct an Inquiry 'to determine what changes within the child protection system are required to cope with future levels of demand' (Wood, 2008, p. 1070). His experience and skills were representative of his role as a 'full-time Commissioner of the NSW Law Reform Commission from 1982 to 1984; as Commissioner for the Royal Commission into Police Corruption 1994 to 1997; Chief Judge at Common Law of the NSW Supreme Court 1998 to 2005; Inspector of Police Integrity Commission 2005 to 2006; current Chairperson of the Sentencing Council of NSW since 2006 and appointed Chairperson of NSW Commissioners in 2006' (Hennessy, 2007-2008, p. 6). On the same day as the establishment of the Inquiry's webpage, Commissioner Wood clarified the role that the *Special Commission of Inquiry into Child Protection Services* in NSW would have:

What we are about is examining management practices and possible strategies that could achieve a coordinated, compassionate and effective system that brings together the combined skills of the several agencies and individuals that potentially play a part in the child protection system. The inquiry would not just be confined to DoCS with the role of other state and federal bodies, the courts, non-government bodies and private organisations to be examined. (Lawlink NSW, Australia, 2007).

Indeed, the main observation made by Commissioner Wood regarding the distinctiveness of the Inquiry from the 2002 Reform Package⁹, was that a more collaborative approach involving other government and non-government agencies was required (Wood, 2008, p.1).

⁹ The 2002 DoCS Reform package focused on early intervention to deal with the volume of reports made and the OOHC system – (see Volume1 of the Report of the *Special Commission of Inquiry into Child Protection Services in NSW*).

Under Part 3, Division 1, s. 13 of the Act the Commission commenced appointing relevant staff to investigate the NSW child protection system. For example, 'Counsel assisting the Commissioner, Gail Furness, was appointed, as well as other key personnel who were seconded from various NSW government agencies with expertise in NSW child protection (Wood, 2008, p.1078). Consequently, 'two senior officers who had significant experience in and knowledge of the child protection system' were seconded from the DoCS (p. 1078). The Inquiry acknowledged that without the DoCS employees, the other team members 'would not have been able to understand the complexities of that system as quickly or as thoroughly as it did' (p. 1078). Other individuals with expertise were seconded from 'the Police Integrity Commission, Roads and Traffic Authority, Office of the Protection Commissioner, Department of Health, Department of Premier and Cabinet and Crown Solicitor's Office, a retired Family Court Judge and representatives from the NSW Privacy Commissioner University of Sydney assisted the Inquiry as well' (p. 1079). Notwithstanding the invaluable skills set of staff recruited, it does not state that Aboriginal people were recruited and/or seconded to the Commission in the staff recruitment process.¹⁰

The above process can best be shown under three headings. Below is an overview of when staff conducted the tasks, the task to be undertaken and by whom.

¹⁰. The names of all seconded officers appear in the Wood report but participants are not identified by personal cultural identity.

Table 4.1

Wood Inquiry Timeline of Tasks and Responsibilities

Date	Task	Tasks Undertaken By
14 November 2007	Completion of the TOR	Authorised by the Director General, department of Premier and Cabinet
17 December 2007	Public announcement regarding the preamble to the Inquiry	Commissioner Wood
11 February 2008	Public Awareness mediums	Inquiry Team
February 2008	Visits to non-government organisations	Inquiry Team
February – May 2008	Public Forums	Inquiry Team
February – May 2008	Meetings with Key Agencies and Individuals	Inquiry Team
March – May 2008	Regional Visits	Inquiry Team
May 2008	Visits to non-government organisations	Inquiry Team
July 2008	Melbourne	Inquiry Team
Mid November	Submissions accepted until mid-November	Inquiry Team
24 November 2008	Final Report to the Governor of NSW	Commissioner Wood

(The 'tasks undertaken by column' denotes the sole responsibility of Commissioner Wood and the Inquiry Team which includes the Commissioner and other staff)

Part 3, Division 1 (General) s. 10 of the Special Commission of Inquiry Act 1983, refers to the Letters Patent which charged Commissioner Wood with the responsibility to 'complete the Commission's report on or before the '31 December 2008' (Wood, 2008, p. 1078) in accordance with the Inquiry's TOR. (The completion date was changed from the 30 June 2008, to the 30 September 2008 and changed again to, on or before the 31 December 2008). The Inquiry took approximately 12 months from when the TOR was endorsed to when the final report was completed and presented to the Governor of NSW.

Methods of Investigation

Identifying problems and finding solutions is the core responsibility of a Special Commission of Inquiry, because the information is analysed and used to inform the recommendations. Consequently, Commissioner Wood was empowered by Part 3, Division 1, s. 10 (3) of the Act, to lead the procedures that were relevant to the above for the final recommendations, that would form the basis of the Inquiry's Report for the NSW Government. To do this, the rollout of the investigation covered every region in NSW. The Inquiry team met with senior staff in relevant agencies, facilitated forums in Sydney and in the regions. In addition, the team visited Melbourne and met with the Victorian Department of Human Services and key non-government agencies including the 'Centre for Excellence in Child and Family Welfare and the Victoria Aboriginal Child Care Agency Cooperative Limited' (Wood, 2008, p. 1084). While the above was happening, submissions were presented to the Inquiry. Overall, there were '669 responses to the Inquiry's TOR from government agencies, non-government agencies, other organisations and members of the public' (p. 1081) submitted. Descriptions about how the investigation occurred in practice are below.

Public awareness campaign

The authority of the *Special Commission of Inquiry Act 1983*, permitted the Inquiry to hold 'public sittings to announce the terms of reference and to outline the processes to be followed by the Inquiry' (p. 1078). As mentioned previously, the Commission established a website via NSW Lawlink and 'hosted by the Attorney General's

Department' (p. 1080), for communicating to the public the details about the Inquiry's TOR, fact sheets, agendas for city and regional public forums and ongoing updates for the duration of the Inquiry. Included also was an open invitation to key stakeholders to submit information that would establish a plan for future child welfare needs for children and young people in NSW. Further awareness consisted of events advertised in newspapers and radio interviews, 'including one with Gadigal Koori Radio, and one with ABC Radio State-wide Drive' (p. 1080).

Public forums

Under Part 3, Division 1, s. 7 (1) of the Special Commission of Inquiry Act 1983, Commissioner Wood was authorised to hold nine public forums in Sydney, 15 regional forums and meetings with individuals and organisations. From February 2008 until May 2008 the Inquiry gathered evidence from nine public forums or hearings held in Courtroom 8A at the John Maddison Tower in Goulburn Street, Sydney, and facilitated by Commissioner Wood (Lawlink NSW, Australia, 2007). The forums comprised a panel of experts and discussions concentrated on nine 'specific issues of relevance to the Terms of Reference' (Wood, 2008, p. 1082). The nine issues included: (i) mandatory reporting; (ii) the role of court in the child protection system; (iii) Out-of-Home Care; (iv) the role of oversight agencies in the child protection system; (v) interagency cooperation; (vi) health and disability; (vii) assessment models and processes; (viii) Aboriginal communities; and (ix) early intervention' (p. 1082). Panel members represented government and non-government agencies.

As previously stated, this thesis is centred on Aboriginal children and families. The next section discusses the involvement of Aboriginal people in the Inquiry.

Fact sheets that refer to information about the above-listed public forums were available on the Lawlink NSW, Australia *Special Commission of Inquiry into Child Protection Services* in NSW website and now stored on <http://pandora.nla.gov.au/tep/88067>. Table 2 below illustrates the representation of Aboriginal participation in the Aboriginal Communities Public Forum. The Inquiry explicitly focused on the safety of Aboriginal children and young people and strategic direction for this group. Therefore, this forum

provided the Inquiry team with an opportunity to discuss the ‘problem representations’ in: (i) Aboriginal workforce strategies; (ii) Aboriginal services provided by Aboriginal organisations; (iii) the implementation of the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*; (iv) OOHC practice for Aboriginal children and carers; (v) how agencies were addressing the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities (2006-2011) Implementation Plan (vi) the Toomelah-Boggabilla Strategy; and (vii) the Care Circles. (Lawlink NSW, Australia, 2007).

Aboriginal representatives from government agencies and NGOs had participated in the public forum panels that included: Aboriginal Communities; Role of Courts; and the Out-of-Home Care. Representatives from the NSW Department of Aboriginal Affairs¹¹ (DAA) attended the Aboriginal Communities panel; met privately with the Commission; and participated in regional NSW forums. Other organisations involved in the public forum panels included a government appointed committee; the NSW Aboriginal Justice Advisory Council, (AJAC) which participated in the Aboriginal Communities panel and three non-government peak Aboriginal agencies: AbSec, the peak body for NSW Aboriginal OOHC which had participated on the Aboriginal Communities and the Out-of-Home Care public forum panels; the Aboriginal Legal Services Children’s Care and Protection Law Unit which is the peak representative body for Aboriginal legal issues, had participated in the Aboriginal Communities and the Role of Courts public forum panel; and the SNAICC, which is the national peak body for Aboriginal child welfare agency, had participated in the Aboriginal Communities public forum panel.

The Aboriginal Communities public forum panel not only had Aboriginal organisations represented, it also had delegates from four government agencies and one non-government agency. These government agencies included: (i) the Department of Community Services; (ii) the Department of Health; (iii) the NSW Police Force; (iv) the Attorney General’s Department; and the non-government agency was the Uniting Care

¹¹ NSW DAA is the lead government agency for Aboriginal concerns in NSW.

Burnside. Table 4.2 below provides a summary of the logistics involved in the nine Public Forum Panel sessions:

Table 4.2

Wood Inquiry Public Forums by Agency and Aboriginal Representation

Public Forum Topic	Number of Agencies	Aboriginal Representation
Mandatory reporting panel representatives	12	0
Role of courts	10	1
Out-of-Home Care	14	1
Oversight Agencies	7	0
Interagency cooperation	10	0
Health and disability	12	0
Assessment model practitioners	9	0
Aboriginal communities	10	5
Early intervention	15	0

(Wood Report, 2008, Appendix 7 *Public Forums* Vol 3, pp.1097 – 1101)

The above section is a review of the public forums conducted by the Wood Inquiry and included is a focus on Aboriginal participation. Table 4.2 demonstrates that 99 government and non-government agencies participated in the panels. In terms of Aboriginal representation, from the 99 agencies, seven Aboriginal agencies (or 6.9%) were represented on the panels and most of these were concentrated in the forum about Aboriginal communities. However, for other forums, this representation certainly does not reflect the overrepresentation of Aboriginal children in the NSW OOHC system

(as previously mentioned in this chapter). It seems that Aboriginal representation was considered by the Wood Inquiry however, it is not reflected in the makeup of the panels and forums (Table 4.2).

The absence of Aboriginal representation in Table 4.2 indicates two significant gaps. First there was a gap in opportunity for Aboriginal input to key decision-making across the whole spectrum of fundamental child safety responsibility in NSW. Second, this rather contradictory result may be due to a gap in the employment of senior Aboriginal people in the above areas that are relevant to the forums undertaken.

Meetings with key agencies and individuals

Part 3 Division 1, s. 1 of the *Special Commission of Inquiry Act 1983* provided authority for the Commissioner to meet with relevant representatives 'concerned in the care and protection system, or in the delivery of service to children and young persons' (Wood, 2008, p. 1083). For example, it held meetings with the: 'Director of the Children's Court Clinic in Parramatta, members from the Senior Children's Magistrate and two former Children's Court Magistrates, the Family Court of Australia and with the Judge of the District Court of NSW' (p. 1083). Other meetings involved the Guardian ad Litem panel, which included 'a group of midwives, and lawyers specializing in care and protection law in the Children's Court, university academics and lawyers specializing in such areas as alternative dispute resolution and children's law' (p. 1084).

The meeting phase of the engagement process reaffirmed that the two leading areas of interest were legal and child protection services. Table 4.3 below helps distinguish the meetings that were held with the senior representatives from government, non-government, academics, individuals and groups, and the number of Aboriginal people who participated in the meetings.

Table 4.3

Wood Inquiry Meetings and Aboriginal Representation

Engagement Source	Number of Representations	Aboriginal Representation
Government Senior Representatives	23	2
Non-government agencies and other organisations	23	3
Academics, individuals and groups	21	0 ¹²

(Wood Report, 2008, Appendix 6 *Meetings* pp.1094-6)

In summary, Table 4.3 shows that five Aboriginal organisations participated in the meetings. The two government senior representatives were represented by the NSW DAA and the Department of Premier and Cabinet. In the non-government agencies sector, again AbSec, the peak body for Aboriginal OOHC, were included in arranged meetings with the Commission, and so too were the NSW and ACT ALSs, the peak body for Aboriginal legal issues, and the Tharawal Aboriginal Corporation, which is a multifunctional service provider for Aboriginal people in the Campbelltown district. As a result of the abovementioned meetings, the Inquiry met with 67 senior staff representatives across the State of whom only five was Aboriginal, or 3.35% of all participants.

Regional visits

In accordance with Part 3 Division 1, s. 1 of the *Special Commission of Inquiry Act 1983*, the Inquiry was empowered to gather relevant evidence that would include meetings or hearings that involved key stakeholders involved in child protection

¹² The Wood Report does not stipulate if participants were Aboriginal

services. The Inquiry Team travelled across the State between February and July 2008 (see Table 4.1), to meet with those services. Analysis of the Wood Report revealed a schedule that included 'DoCS managers and visiting and meeting staff in 19 DoCS Services Centres located in Ballina, Bourke, Broken Hill, Campbelltown, Central Sydney, Coonamble, Dubbo, eastern Sydney, Gosford, Griffith, Inverell, Lismore, Moree, Newcastle, Nowra, Parramatta, Shellharbour, Wagga Wagga and Wollongong (Wood, 2008, p. 1083). Other meetings involved regional non-government and government offices specifically 'involved in the child protection system' (Wood, 2008, p. 1083).

In addition, during early March 2008, the Inquiry convened public meetings in the above locations that had local DoCS offices near 'towns either with or located near significant Aboriginal communities' (p. 756). The Inquiry team visited Dubbo, Coonamble, Bourke, Wagga Wagga and mid-March Broken Hill, Moree and Inverell, then Ballina, Lismore, Newcastle late March. In April they travelled to Gosford, Griffith, Nowra, early May to Wollongong, and Toomelah/Boggabilla in May and June (Lawlink NSW, Australia, 2007). A significant aspect of the regional public meetings was that unlike the forums with expert panels, they did not have specific agendas however, and the public were able to speak on issues of concern to them. The topics of interest to the Inquiry were; Government agencies working together; OOH; the Local Court and the Availability of Services (Lawlink NSW, Australia, 2007). Some of the forums included Aboriginal child protection issues, but not all (Wood, 2008, p. 756).

Submissions

A key process of the Inquiry included the submissions presented by those who responded to the Inquiry's TOR. The submissions had to be received by the 11 February 2008 (Wood, 2008, p. 1079). This process was governed by Part 3, Division 1, s. 18 of the *Special Commission of Inquiry Act 1983*. Some submissions requested confidentiality, 'under the guarantee they would not be identified' (Wood, 2008, p. 2080). Therefore, when problems were presented to the inquiry, Part 3, Division 1, s. 7 (2) and s. 7 (4) of the *Special Commission of Inquiry Act 1983*, provided protection against

breaching confidentiality or secrecy requirements. Some responders to the Inquiry submitted more than one submission and some remained anonymous (Wood, 2008, p. 1080).

The quantity of submissions received is best captured in Table 4.4 below. It illustrates the submission source and the number of submissions in each category. The information was extracted from the Appendices included in Volume 3 of the Wood Inquiry's Final Report.

Table 4.4

Wood Inquiry Submission and Aboriginal Representation

Submission Source	Number of Submissions	Aboriginal Representation
Government Agencies	21 agencies	1
Non-Government agencies and other organisations	118 agencies	8
Individuals and academics	284	Unknown
Submission marked confidential	246 marked not for publication	Unknown
Total Number of Submissions	669	9

(Wood Report, Appendix 5 *Submissions*, Vol. 3 pp. 1085-1093).

The Wood Report does not specifically state whether a submission is from an Aboriginal organisation or not, therefore I have relied on my professional knowledge and the internet to confirm Aboriginality of the non-government agencies. Submissions from eight organisations that I believe were Aboriginal non-government agencies, came from the NSW AbSec; the ALSs (NSW/ACT) Limited; Binaal Billa – Family violence Legal Service; Katungal Aboriginal Corporation Community and Medical Services; Rekindling the Spirit; SNAICC; the Stolen Generations Link Up NSW; and Yawarra Meamei

Women's Group Inc. It is important to emphasise that the Aboriginality of a submission writer is not a priority for the thesis. The reason for identifying the above Aboriginal organisations is for the reader to know that Aboriginal people did respond to the Inquiry's TOR.

In summary, this section has reviewed the submission process. From the 669 submissions received, I identified nine (or approximately 6%) as coming from Aboriginal organisations and there may have been more. Consequently, the problems identified by the Inquiry were drawn from a diverse range of individuals and organisations, including a small number of Aboriginal services that added to the findings of the Inquiry and to relevant future reform of the NSW child protection system.

Correspondence and case files

In accordance with Part 3, Division 1, s. 14 of the Special Commission of Inquiry Act 1983, Commissioner Wood sent 'written requests [or 'summons'] to 147 key government and non-government agencies, inviting the agency to provide information to and to liaise with, the Inquiry' (Wood, 2008, p. 1081). Eighty-five summonses were received, of which 32 'were directed to the Director-General of DoCS, 18 to the Director-General of Health, and eight to the Commissioner for Police, and the remainder to various other individuals and agencies (p. 1081). Amongst the collection of evidence were 'less formal requests from agencies and individuals' (p. 1081).

Finally, under Part 3 Division 1, s. 19 of the Act, the Inquiry examined 75 files located with DoCS that represented firstly all regions, age groups and core focus areas such as child protection, OOHC and Brighter Futures. Included were 37 females, 38 males, with 30 Aboriginal children and nine children and young persons from Culturally and Linguistically Diverse (CALD) background amongst the selection of files. The key focus was on comparing the established casework management framework provided by the DoCS internal procedural system, to actual practice (p. 1084). Aboriginal children and young persons represented 40% of the case file audit thereby highlighting their presence in the child protection and OOHC systems. Indeed, prior to the review, Aboriginal children 'referred for further assessment totalled 14,029 or 13.7% of DoCS

cases' (NSW DoCS 2006/07, p. 29). In addition, one of the two children who had died (discussed in the why the inquiry into NSW child protection was implemented section of this chapter), was Aboriginal, and this may also have promoted scrutiny of Aboriginal cases in the file audit. The Inquiry nevertheless realised that after the file audit 'the characteristics of their lives were not significantly different from thousands of other children and young persons reported to DoCS who did not die' (Wood, 2008 p. 906). In having access to case files, the story of an individual child or young person was revealed to the Inquiry Team. The Wood Report considered the circumstances surrounding the death of the children and the 'material gathered informed the considerations and recommendations of this Inquiry' (p. 3).

This section has explained the significance of the submissions to the Inquiry, the informal requests made to specific agencies and formal requests through the legal procedure of a summons, plus the personal audits of randomly selected files from identified cohorts placed in the NSW child protection system. The outcome for all the above-mentioned processes conducted by the Wood Inquiry team, resulted in the completion of a final report. On the 24 November 2008 Commissioner Wood presented the Inquiry's Report to Professor Marie Bashir, the Governor of NSW, (p. i). The then NSW Premier, Hon. Nathan Reece, described the completion of the Report as 'a pivotal day for child protection in New South Wales', emphasising that 'the report is a blueprint for a fresh approach to child protection in our State (Reece, 2008). In acknowledging the completion of the Report and the 111 recommendations, the Premier further stated that 'his Government will respond by March [2009]' (Reece, 2008). Consequently, the response was the new policy for the reform in child protection service delivery in NSW entitled: *Keep them Safe – A shared approach to child wellbeing*. As a consequence, this chapter recognises the significance of the Wood Report for the thesis.

Conclusion

In summary, the authority of the *Special Commission of Inquiry Act 1983* provided the administrative framework for Commissioner James Wood AO QC to conduct an inquiry into the NSW Department of Community Services child protection services. Letters

Patent to commission the inquiry also authorised the endorsement of a TOR which was released to the public on the 14 November 2007. The TOR was the public's guide to submit responses to the Inquiry. Three key issues pertaining to why the Inquiry was held became public. The first highlighted the stated concern regarding the safety of children. The second issue related to the increased demand on child welfare agencies and third, it focused on how the DoCS would address the increasing demand.

From February 2008 to July 2008 the Inquiry: facilitated public forums with expert panels; met with state-wide senior staff from agencies involved in child protection services; met with community people in and external to established organisations and analysed submissions based on the Inquiry's TOR. All methods of engagement with the NSW Government and non-Government agencies resulted in 111 recommendations from the Inquiry.

Further analysis of how the Inquiry applied the *Special Commissions of Inquiry NSW Act 1983*, demonstrated that the Inquiry included Aboriginal people's input, although the word "Aboriginal" is not included in the Inquiry's TOR. This chapter has interrogated how the 2007 Wood Inquiry engaged with Aboriginal people, organisations and communities throughout the duration of the Inquiry. The analysis highlighted the omission of Aboriginal children and young people in the TOR and exposed gaps in Aboriginal people being represented in senior/executive management positions within the NSW child protection system. For example, the manual count of Aboriginal involvement in the Inquiry's public forums found only 12 counts for Aboriginal people/organisation participation, compared to 166 for *non*-Aboriginal people/organisations (see Tables 4.2 and 4.3). The findings of this chapter go some way to addressing one of the guiding Research Questions for this thesis, as set out in Chapter 1: How were Aboriginal people included and represented in the NSW child protection reforms? It appears that right from the start of the Wood Inquiry, Aboriginal people were in fact marginalised in key processes and discussions regarding the child protection system or service provision to children and young people.

In order to recalibrate what is known about Aboriginal perspectives on child protection at the time, and, in a sense, to make up for the marginalisation of Aboriginal voices in the

Wood process, the following chapter provides a close analysis of one of the Aboriginal organisations' submissions to the Wood Inquiry. This submission represented the voice of the peak body in Aboriginal OOHC in NSW and it carried with it not only expert knowledge of this system, but a response from an Aboriginal perspective that relied on the cultural knowledge and understanding of where Aboriginal families were positioned within the NSW child protection system. The significance of the analysis of this submission for the thesis, is to provide an opportunity to scrutinise how the peak body in Aboriginal OOHC's submission responded to the pressing questions that the Wood Inquiry was set up to answer concerning: the safety of children in NSW; the drivers of demand on child welfare services; and how the DoCS managed that high demand.

Chapter 5: The AbSec Submission to the Special Commission of Inquiry into Child Protection Services in NSW

Introduction

This chapter provides an overview and analysis of the submission to the Wood Inquiry by AbSec; the peak body in NSW Aboriginal OOHHC. This submission provided the Wood Inquiry, and my study, with a distinctive Aboriginal perspective on OOHHC, child protection and Aboriginal child welfare policies in NSW, operational at the time of the Inquiry. This chapter leads with specific background information on AbSec to emphasise the relevance of this organisation in the analysis. To produce this background account, I combined material from the Submission and a range of other sources to provide information on the establishment and purpose of the organisation. In contrast, the description of the problem representations found in the AbSec Submission is based wholly on the analysis of the text of that document. As discussed in Chapter 3, the WPR approach is focused on problem representations as they appear in policy texts: in this case, the text of the 2008 AbSec Submission. The main objective of the analysis was to identify the issues that AbSec deemed to be problematic for them, and to explore how these problems are constituted in the AbSec Submission document.

AbSec: Historical Background

The planning for an Aboriginal OOHHC agency commenced in 1999 (AbSec, 2015), by a partnership between the Aboriginal State-wide Foster Carer Support Service (ASFCSS) and the Association of Children's Welfare Agencies (ACWA). ACWA is the *non-Aboriginal* (or generalist) child and family welfare peak body for NSW. The organisation's main objective centres on supporting non-government agencies and improving the quality of services to children and young people who need to live away from their families (ACWA, 2015). ACWA was 'founded in 1958 and supports a membership base of more than 100 agencies across NSW' (ACWA, 2015), hence it has long established experience as the peak body for child welfare issues in NSW. Funding

from the DoCS was secured by ACWA to coordinate monthly meetings of all the ASFCSSs (AbSec, 2015) and the establishment of AbSec was an outcome of these meetings. The overall aim of forming the Aboriginal secretariat¹³ was to support the functioning of an Aboriginal OOHC NGO sector. The key objective of the Secretariat (and still is) was to work with and support established Aboriginal OOHC agencies across NSW, in a similar way that ACWA supports generalist services.

Information available on the AbSec website explained the organisation's membership criteria: 'Membership of AbSec comprises of (sic) most of the NSW non-government Aboriginal controlled agencies providing Out-of-Home Care services, as well as other Aboriginal and non-Aboriginal organisations and individuals who are supportive of our aims and objectives' (AbSec, 2015).

The objective of funding AbSec was to introduce a more coordinated network system that filtered essential OOHC information to Aboriginal managed agencies (AbSec, 2014). Further development in AbSec's responsibility occurred when 'ACWA, as the incorporated body and AbSec as the [Aboriginal] advisory group, partnered a successful tender to provide support services to Aboriginal foster carers' (AbSec, 2014), thus, extending AbSec's responsibility to include support and advocacy for not only Aboriginal OOHC agencies, but also Aboriginal carers in NSW. This dual role is captured in a key stated function of AbSec, which is to:

Strengthen links between Aboriginal child and family service provider agencies and to support the organisations to provide effective and high quality services for children and young people. The group also acts as a central point of advice, consultation and advocacy on children and young people's care and protection issues. (AbSec, 2015)

The funding of AbSec to lead Aboriginal OOHC occurred after a 'proposal was submitted to the Department of Community Services as the peak body for Aboriginal

¹³ Secretariat - officials or office entrusted with keeping records and carrying out secretarial duties (Macquarie dictionary, 3rd edit., 1998)

Out-of-Home Care in NSW' (AbSec, 2015). The ACWA facilitation role remained until AbSec became legally incorporated in 2002 (AbSec, 2014). The incorporation of AbSec afforded them the title of 'Aboriginal OOHK Peak Body' (AbSec, 2014) and with that came the opportunity to obtain funding for the employment of Aboriginal staff as well as opening communication regarding Aboriginal child protection issues from skilled Aboriginal child welfare representatives, to the NSW Government, to the non-government sector and to other peak bodies (AbSec, 2014). The ACWA continued to support AbSec until 'full independence' in 2003 (AbSec Submission, 2008, p. 11).

Functions of the AbSec

AbSec's operational framework includes priorities earmarked to achieve the aims and objectives of the organisation:

- Assist Aboriginal communities in the goal to achieve self-determination and a safe, secure and caring environment for our children and young people;
- Assist Aboriginal organisations to provide quality services for Aboriginal children and their families, extended families and communities;
- Provide support, information and networking opportunities for Aboriginal agencies providing care and protection service for children and young people;
- Advise Government and key Departments and agencies on Aboriginal child and family issues;
- Advocate on issues of concern to Aboriginal Child and Family agencies and
- Identify training needs for carers, staff and management and to access or arrange relevant and appropriate training. (AbSec, 2014)

The above list of priorities captures the key areas that AbSec envisaged the organisation to function within. Furthermore, the AbSec positioned itself to operate as an ACCO stating that it is 'an independent, not for profit organisation, incorporated as an Aboriginal organisation', which advocates for the 'right of Aboriginal people to self-determination' (AbSec, 2014). This organisation believed that ACCOs 'governed by an Aboriginal Board' and in which 'decision-making by the Board is determined by Aboriginal Board members' (AbSec, 2014) with a key focus on building the capacity and

strength of communities and people, provided quality cultural support through service delivery and advocacy. Their aims and objectives aligned with the operational framework of Aboriginal self-determination and with s. 11 of the *Children and Young Persons (Care and Protection) Act 1998* that had been developed over the decades, (see Chapter 1).

The Approach and Structure of the AbSec Submission

As discussed in Chapter 4 the key objective of the Wood Inquiry was to find solutions to the future demands on the NSW child protection system and AbSec wanted to be part of those future developments. The AbSec Submission was registered as a response in the final Report of the Wood Inquiry, and included in the Report were details of the other activities AbSec participated in during the information gathering exercises that were organised by the Wood Inquiry (Wood, 2008, pp. 1085 & 1098). For example, it stated that AbSec participated in meetings between senior representatives and the Commission representatives (p. 1096), public forums on OOHC in February 2008, and Aboriginal Communities forum in April 2008 (p. 1098).

The AbSec Submission to the Wood Inquiry provided an in-depth account of the issues and concerns AbSec encountered within the parameters of the NSW child protection system to the Inquiry. The AbSec Submission established its own legitimacy throughout the Submission, stating that it was bringing together the knowledge and experience of the AbSec Board; the ASFCSS; Aboriginal community members; Aboriginal foster and kinship carers; ex-wards; statistical data; and literature reviews, and as a result, it reflected the 'general opinions of the member agencies' (AbSec Submission, 2008, pp. 9-10). The scope of the Submission was identified early by AbSec, broadening the scope of the 'problems' associated with the group of children and young people that were the focus of the Wood Inquiry and changing the boundaries of the discussion in the development of the Submission. The Submission was organised in the following way: it began with a 'statement of facts' (p. 6), followed by a 'series of questions' (p. 7) and culminating into a 'set of recommendations' (pp. 7-9).

AbSec's statement of facts

The AbSec Submission included the following information in its statement of facts:

- NSW has the largest Aboriginal population of any state or territory in the Commonwealth of Australia;
- Aboriginal children and young persons are at least as 10 times more likely to enter the Out of Home Care system in NSW when compared to non-Aboriginal children and young people;
- Aboriginal people, children and young persons in Australia continue to suffer disadvantage at rates totally disproportionate to the general non-Aboriginal population.
- Only 5% of the 3800 Aboriginal children and young people in care in NSW are supervised by community controlled Aboriginal agencies (proposed to increase to 370 over the next 3 to 5 years under capacity building. (p.6)

The statement of facts highlighted the specificity of the Aboriginal population and their experiences of child protection in NSW. These facts offered a basis for one of the distinguishing features of the Submission, which was to move beyond the Inquiry's TOR to 'issues that more directly affect Aboriginal children, young people, Aboriginal communities and Aboriginal OOHC agencies' (p. 10).

AbSec's set of questions

The second key element in the approach and structure of the Submission is how AbSec translated key indicators of concern to them, described as 'issues' (p. 7), and framed these issues as a set of questions to the Wood Inquiry. This is another way in which AbSec sought to move beyond the Inquiry's TOR, in essence by posing a set of demands for information from the Inquiry, rather than just limiting their response to providing information to the Inquiry.

AbSec directed questions to the Commission concerning funding; placements and quality of care for Aboriginal children and young people; and program delivery and

strategic development. The questions were:

- What is the average cost of an Aboriginal child or young person in care compared with the quoted general cost of all or young people in care of \$26,688 as disclosed in DoCS Annual report 2066/07?
- What are the numbers of young people, (including Aboriginal young people) who are subject to orders, who are currently residing in SAAP¹⁴ funded services (refuges) rather than accredited foster care placements?
- Are these placements adequately supervised or is this a case of the too hard basket?
- What programs are in place or being developed to reduce the disproportionately high number of Aboriginal children being reported and entering the care system?
- What definitive strategies are being put in place to attract Aboriginal foster carers? (Having regard to how poorly many Aboriginal foster carers believe they are treated by DoCS as revealed in the transcript of the 2007 AbSec Aboriginal Foster Carers' Conference).
- What is the actual number of Aboriginal children in non-Aboriginal care? - Both with DoCS carers and non-government agency carers. (p. 7)

As indicated previously, AbSec broadened the Inquiry's TOR in the hope that the 'Commission may be able to address some or all the above issues during the course of the inquiry' (p.7). Consequently, the organisation positioned Aboriginal child protection business within the Wood Inquiry even though there was not an explicit recognition of it in the TOR.

AbSec's recommendations

Third, to encapsulate the AbSec response to the Inquiry's TOR, a set of recommendations were drawn from the statement of facts and the set of questions. The

¹⁴ SAAP (Supported Accommodation Assistance Program) receive funding from NSW Community Services.

recommendations covered significant issues of concern for the Aboriginal OOHC and child protection peak body. Consequently, the Submission concluded with 20 recommendations to the Wood Inquiry Commission. Table 5.1 below illustrates the recommendations as stated from pages 7 to page 9 in the AbSec Submission.

Table 5.1

AbSec Submission Recommendations

Recommendation	AbSec Response
Recommendation 1	<i>That DoCS and other NSW government agencies act to implement the recommendations of all previous reports/commissions into overcoming indigenous disadvantage, child sexual assault reports, The Bringing Them Home report and the Royal Commission into Aboriginal Deaths in Custody.</i>
Recommendation 2	<i>That DoCS immediately adequately fund AbSec to continue to undertake research into the establishment of new Community based Aboriginal OOHC services throughout NSW.</i>
Recommendation 3	<i>That DoCS should adequately fund AbSec to support the new agencies through their establishment phases.</i>
Recommendation 4	<i>DoCS should immediately revisit the process of awarding contracts for Aboriginal services through what is currently an unfair (to small Aboriginal services) Expression of Interest process.</i>
Recommendation 5	<i>That DoCS, in consultation with AbSec, other government departments and Aboriginal community partners devise and support innovative programs to reduce the alarmingly high number of Aboriginal in the OOHC system.</i>
Recommendation 6	<i>That systemic change be undertaken to ensure the safety of children in NSW.</i>
Recommendation 7	<i>That DoCS, in consultation with AbSec, other government departments, Aboriginal community partners devise strategies around culturally appropriate intake systems for Aboriginal [children].</i>
Recommendation 8	<i>That DoCS revisits the provision of early intervention services to Aboriginal people by non-Aboriginal non-government agencies.</i>
Recommendation 9	<i>That DoCS should not provide any direct early intervention services, especially not to Aboriginal people.</i>
Recommendation 10	<i>All OOHC in NSW should be provided by the non-government sector with DoCS solely concerning itself with child protection</i>

Table 5.1

AbSec Submission Recommendations

Recommendation	AbSec Response
Recommendation 11	<i>That a return to a local based intake system be considered (especially for Aboriginal people) with the Helpline to remain as an after-hours emergency service.</i>
Recommendation 12	<i>An independent review of DoCS reports concerning Aboriginal children be carried out prior to the commencement of Court proceedings by DoCS (where there is no immediate risk of harm identified).</i>
Recommendation 13	<i>That it be mandated that where DoCS agrees to or encourages mediation, then that mediation should be undertaken by external independent agencies: e.g. Community Justice Centre's Aboriginal mediation.</i>
Recommendation 14	<i>That the Children's Court be made more user friendly for Aboriginal children and families. Including the expansion of the role of Aboriginal Court Client Support workers.</i>
Recommendation 15	<i>DoCS should better recruit, resource and train Aboriginal (and all) foster/kinship carers.</i>
Recommendation 16	<i>That it be mandated that DoCS be required to fully participate with all the Welfare sector peaks with an open partnership framework established to ensure best practice outcomes for children and families in NSW.</i>
Recommendation 17	<i>Immediate strategies should be developed to reduce the number of Aboriginal children in non-Aboriginal OOHC.</i>
Recommendation 18	<i>Retrospective Cultural Case Planning should be implemented for all Aboriginal children in care, especially those in non-Aboriginal care.</i>
Recommendation 19	<i>A system of community visitors should be appointed to ensure that those Aboriginal children in non-Aboriginal care are being appropriately culturally cared for.</i>
Recommendation 20	<i>That DoCS and the NSW Government should fully acknowledge the Aboriginal people of NSW as the traditional inhabitants of the country, their culture and diversity. They should also fully acknowledge that good intentions can often lead to poor results for Aboriginal people, as in the Stolen Generations and they should also fully acknowledge that unless adequate supports and programs are put in place, then the current regime will become known as those who were responsible for the lost generations of Aboriginal children. (pp. 7-9)</i>

As outlined at the start of this chapter, AbSec participated in a process whereby they worked in collaboration with the NSW lead NGO agency (ACWA), on having a leading representative role for Aboriginal families involved in the NSW OOHC and child protection system, as well as a coordination role for other Aboriginal OOHC agencies. The inquiry into the NSW child protection services system provided an opportunity for AbSec to put into practice their leadership role in presenting to the Wood Inquiry Commission what is problematic for this Aboriginal organisation. To do this they gathered key information that informed the above “statement of facts”, the “set of questions” and the “recommendations” from their operational framework.

The ‘WPR’ Analysis of the AbSec Submission: Problem Representations

As discussed in Chapter 3, the Submission was subjected to a form of analysis which sought to identify key problem representations in the text. For the WPR analysis of the AbSec Submission document, three core problem representations were identified. At times the ‘problems’ the submission sought to address are stated explicitly in the Submission and at other times they are implied problem representations. Firstly, it emerged that AbSec represented disadvantage as a problem that needs to be addressed. However, the problematising of disadvantage takes a quite particular form, one that links the overrepresentation of Aboriginal babies, children and young people in the child protection to being disadvantaged – by policies, systems and by policy and system failures. The second prominent ‘problem representation’ is inadequate funding; and the third was exclusion of Aboriginal people from decision-making. All three ‘problem representations’ were subjects of robust discussions in the Submission.

The ‘Problem’ of Disadvantage

The AbSec Submission proposed that it was impossible to respond to just the TOR of the Wood Inquiry Commission. Instead, AbSec broadened the Inquiry’s TOR to consider ‘issues that more directly affect Aboriginal children, young people, Aboriginal communities and Aboriginal OOHC agencies’ (p. 10). The Submission not only included solutions to the future demand on the NSW child protection in accordance with the TOR but also raised solutions to problems in the existing child protection services system for

Aboriginal children and families (pp. 1-20). In particular, the Submission claimed that 'this submission will attempt to highlight how a broader concept of disadvantage and the implementation of past and present policies and practices result in poor outcomes for Aboriginal people' (pp. 10 & 26). It recognised disadvantage as an explicit factor that gives shape and meaning to Aboriginal experiences of the NSW child protection system. The AbSec Submission referenced "disadvantage" many times (pp. 6; 7; 8; 10; 15; 16; 17; 27; 31; 32; 38; 45 & 48) in the 52-page document.

The issue of disadvantage was twofold. First it was a problem that was represented as social disadvantage that had emerged as a result of the inefficiency of key government welfare agencies, to implement the recommendations from previous social justice reports. Second, disadvantage was represented as a problem caused by the management system of NSW DoCS child protection services, which systematically disadvantaged Aboriginal children. This form of disadvantage was described as 'systemic failure' when Aboriginal children are placed in statutory care. The next part explains how the Submission presented disadvantage in this way – as an overarching problem which 'embedded or overlapped' (Bacchi, 2009, p. 21) with key external and internal causal factors associated with social disadvantage and systemic failure.

The 'Problem' of Disadvantage as Social Disadvantage

Firstly, AbSec's broader view centred on the causal factors of 'social disadvantage' (AbSec Submission, 2008, p. 10) and described how these factors can have the potential to increase the causal factors associated with 'the removal and fostering of Aboriginal children and young people' (p. 10), consequently leading to the serious problem of overrepresentation in the NSW OOHC system.

The Submission emphasised the historical implications of past and current welfare policies for Aboriginal people. In problematising the implications of 'past practices and policies' (pp. 9, 15 & 26) the Submission focused on the ways that social disadvantage was being caused by the ineffectiveness of governments to implement key recommendations from previous social welfare reports; and Commissions of Inquiries that repeatedly identified the causal factors of Aboriginal social disadvantage. Thus, the

implied problem was that social disadvantage has been sustained through the noncompliance of governments implementing the recommendations from key reports.

The Submission draws on Australian Institute of Health and Welfare (AIHW) data to highlight that an 'Indigenous child is more likely to be the subject of a substantiation of a notification' (p. 16), than other children. For example, AbSec claimed, that:

Aboriginal people still suffer from unemployment, a lack of suitable housing, health and mental health problems, suicide and self-harm, lack of attendance or attainment in education, deaths from homicides, hospitalisations for assault, imprisonment and juvenile detention at rates disproportional demographically to other Australians. (pp. 16-17)

The Submission utilised international Human Development Index (HDI) data from a period dated 1990 – 2006 that was registered for three Indigenous groups: Australia; Northern America; and New Zealand to compare the HDI outcomes. Australian Indigenous HDI decreased in comparison to others in Australia, whereas HDI levels improved at a faster rate for the other two Indigenous groups (p. 17).

The Submission then linked this data to the failure of government in implementing key recommendations of previous reports. For example, the AbSec Submission cited Gary Banks, the Steering committee's Chairman of the Australian Institute of Health (2006-2007), who stated that:

It is distressingly apparent that many years of policy effort have not delivered desired outcomes; indeed, in some important respects the circumstances of Indigenous people appear to have deteriorated or regressed. Worse than that, outcomes in the strategic areas identified as critical to overcoming disadvantage in the long term remain well short of what is needed. (AbSec Submission, 2008, p. 16)

Consequently, in broadening of the Inquiry's TOR's, the Submission considered the significance of past reports by including **Recommendation 1**:

That DoCS and other NSW government agencies act to implement the recommendations of all previous Reports/Commissions into overcoming Indigenous disadvantage, child sexual assault reports, the Bringing Them Home Report and the Report of the Royal Commission into Aboriginal Deaths in Custody NSW. (p. 7)

The Submission emphasised that findings from the above reports and research are critical to solving or diminishing the stated problem of social disadvantage. For example, the Submission referenced the 2006 report of the NSW Aboriginal Child Sexual Assault Taskforce (ACSAT) *Breaking the Silence – Creating the Future. Addressing Child Sexual Assault in Aboriginal Communities in NSW*, to highlight that social disadvantage influences the ‘dysfunction in Aboriginal communities’ (p. 38). The implied problem was that this social disadvantage positioned Aboriginal children in danger of being removed; at the same time reminding the Wood Inquiry that minimal change has occurred for Aboriginal people since the findings of the ACSAT Report were released. The Submission stated that ‘while in some areas there have been slight improvements in outcomes for Aboriginal people, other areas show no change or some slippage’, and highlighted that a sense of ‘pervasiveness of Indigenous disadvantage’ exists (Banks, 2005, cited in the 2008 AbSec Submission, p. 16). Consequently, social disadvantage sustains the statistical overrepresentation of Aboriginal children and young people in the NSW OOHC system.

AbSec claimed that this ongoing’ social disadvantage:

...continues [in part] to result in a disproportionate number of Aboriginal children and young people being reported related to allegations of abuse or neglect, a disproportionate number of those reports being substantiated, and a disproportionate number of Aboriginal and young people being subsequently placed in the OOHC system. (AbSec Submission, 2008 p. 15)

In addition, the Submission suggested that social disadvantage links specific social welfare outcomes to the lack of support available for Aboriginal people. It stated that:

This current disadvantage is compounded by a lack of appropriate support mechanisms that affected Aboriginal people receive [related to these past and current practices], including a lack of mental health support for families who have had children or young people removed in the past (intergenerational trauma), a lack of culturally appropriate community supports to overcome alcohol and substance abuse, a lack of culturally appropriate local level Aboriginal controlled early intervention services and a lack of culturally appropriate leaving care services. (p. 15)

Consequently, social disadvantage affects the overall well-being of an Aboriginal person and has serious impacts on Aboriginal child removal. The Submission linked the inability of Aboriginal people to overcome disadvantage back to past and present policies and practices (pp. 10 & 26).

The problem represents a set of disadvantage characteristics that indicate what gives shape and meaning to social disadvantage for Aboriginal families, who in fact suffer from 'greater social disadvantage than other Australians' (p. 16). Consequently, the implication of social disadvantage on Aboriginal families creates opportunity for removal. The AbSec Submission stated that:

AbSec believes that the removal and fostering of Aboriginal children and young people can in many instances be demonstrated to be as a direct result of the factors associated with the indicators of social disadvantage disclosed in the various reports. (p. 10)

The major implication for ongoing social disadvantage is that it sustains the overrepresentation of Aboriginal children in the NSW child protection system. The stated solution to this problem is that 'there needs to be a greater commitment by government to address Aboriginal health, housing and employment issues, which continue to impact on child safety' (p. 17).

The 'Problem' of Disadvantage as Produced by Systemic Failures of DoCS

Not only does social disadvantage have severe consequences for Aboriginal families (pp. 10, 16 & 27), it was identified in the AbSec Submission that Aboriginal babies, children and families experience disadvantage within the NSW DoCS system. This component of disadvantage is identified in the text as related to the problem of 'systemic failure' (p.10). The analysis identified key areas whereby systemic failure is a stated problem that produces Aboriginal disadvantage. Thus, included in the Submission is **Recommendation 6** which stated, 'That systemic change be undertaken to ensure the safety of children in NSW' (p. 8).

It further provided extensive examples of systemic failure within the DoCS system: culturally inappropriate carer-resource tools for staff and *non*-Aboriginal carers on page 23; dysfunctional Aboriginal consultative processes on pages 42 and 43; inappropriate permanency planning procedures for Aboriginal children and young people on page 47, with **Recommendation 18** (p. 8) focusing on gaps in Aboriginal child placement procedures on pages 22 & 23. In addition, it was proposed that existing legal processes increased systemic failure for Aboriginal children and young people, prompting **Recommendation 12** (p. 9), which suggested an 'independent review prior to the commencement of Court proceedings' and **Recommendation 14** (p. 9) advocated that 'Children's court be made more user-friendly for Aboriginal children and families' (p. 31). Therefore, the implied problem is that the administrative arms of the child protection system, including the resourcing of OOHC; departmental decision-making processes; and the courts, are implicated in the disadvantaged Aboriginal outcomes.

The AbSec Submission suggested that one solution to systemic failure included better early intervention. It stated that an 'extended early intervention program could be used to address the large number of levels 3, 4 and 5 reports that are not allocated as part of the priority system currently used by DoCS to assess child protection reports' (p. 31). Thus, the Submission implied that Aboriginal children should be prioritised for EI programs. For example, a suitability test could minimise problems with accessing such programs at the very early stage of reports to the DoCS helpline instead of waiting until issues are at crisis point; as is the case most times for Aboriginal children (p. 31). It

was suggested that assessing suitability to enter an EI program at the initial point of level 3, 4 and 5 reports, could reduce removal (p. 28). Furthermore, the Submission stated that 'culturally appropriate early intervention programs are the most efficient way to ensure that the number of Aboriginal children and young people coming into care is reduced' (p. 29). Thus, the 'problem' of systemic failure is also implied in **Recommendation 5** which stated:

That DoCS, in consultation with AbSec, other government departments and Aboriginal community partners devise and support innovative programs to reduce the alarmingly high number of Aboriginal children in the OOHC system. (p. 8)

Systemic failure, therefore, further hinders the level of social disadvantage suffered by many Aboriginal people, so the notion of systemic failure had 'exacerbated problems associated with identified disadvantage' (p. 10), within DoCS. Therefore, the DoCS' internal management procedures systemically disadvantage Aboriginal families.

The second 'problem' concerned funding allocation to Aboriginal child welfare organisations. More detail on this issue follows.

The 'Problem' of Inadequate Funding

The AbSec Submission identified that inadequate funding to ACCOs was another major problem for AbSec. The Submission stated that 'Government has a role in adequately funding Aboriginal services to ensure the safety and wellbeing of Aboriginal children and young people' (p. 15). The implied problem of inadequate funding of Aboriginal services had two dimensions. Firstly, the analysis revealed the influential power that funding decisions have on silencing the independent voice of AbSec. Second it was implied that funding for working with, and providing out of home care for, Aboriginal babies, children and young people was being misallocated. The problems related to funding were prominent and consistent through the text. Indeed, there are 38 references to funding in the 52-page document. The next part includes more detail concerning how this problem was represented.

The 'problem' of inadequate funding: impact on AbSec

Both the Submission and the AbSec webpage cited in the introduction to this chapter, clearly indicated that AbSec was funded to 'advocate on behalf of Aboriginal children and young people, families, communities and Aboriginal agencies' (p. 10), and to be an 'independent Aboriginal voice' (p. 11) in the decision-making process in the NSW OOHC and child protection system. However, the AbSec Submission to the Wood Inquiry implied that the level of funding that AbSec receives makes it difficult to lead in advocacy and to be the representative Aboriginal voice on NSW Aboriginal OOHC and child welfare issues. The WPR analysis revealed that inadequate funding hinders the delegated role and responsibility of AbSec, in the NSW child welfare system.

Further addressing the problem of inadequate funding, the Submission presented a case for further funding for AbSec to conduct appropriate research. The Submission centred on measuring outcomes for Aboriginal children and young people in the NSW OOHC system; and argued that essential planning and development for this group, required a more 'strategic approach' (p. 39) in developing programs, so that 'Aboriginal children and young people are not put at risk or disadvantage' (p. 32). The Submission highlighted that funding allocated to further investigate and/or research ways to improve service delivery was essential and a significant component of Aboriginal child welfare (pp. 8; 12; 13; 15; 25; 26 & 44). The Submission included research topics such as: 'placement stability/breakdown; compliance with the Aboriginal Placement Principles; community and cultural connection; outcomes when leaving care; cost effective service provision; Early Intervention (informal unfunded compared to funded)' (p. 13). Supporting this claim is **Recommendation 2**, which suggested that adequate funding is necessary to 'undertake research into the establishment of new community based Aboriginal OOHC services in NSW' (p. 8).

Why Research? AbSec believed that ongoing research would identify appropriate resources needed for AbSec to undertake their funded advocacy role to support Aboriginal agencies should they, for example, encounter issues in remaining operational. The Submission highlighted that, in the past, defunding had occurred for Aboriginal Children's Services, like the Murawina Aboriginal Early Childhood Centre and

Preschool at Mt. Druitt and Ja-biah (Aboriginal juvenile bail house). In essence, defunding creates social welfare vulnerability (p. 32), which influences disadvantage. This idea is expanded in **Recommendation 3** (p. 8) which stated 'that DoCS should adequately fund AbSec to support the new agencies through their establishment phases' (p. 8). Analysis of the Submission revealed that research could provide a strategic framework in solving funding issues, thus decreasing the likelihood of defunding and added pressure on other Aboriginal services providers. This problem highlighted how AbSec was placed in a precarious situation to fill the gap left by other Aboriginal organisations. What is problematic is that 'AbSec does not have the resources, financial or otherwise, to support them' (p. 32). Consequently, the Submission put forward that:

AbSec should have a role where a final decision is made to defund individual programs, to ensure that appropriate service delivery is maintained prior to and after the dismantling of programs, that have in the main been achieving measurable beneficial outcomes. (p. 32)

Furthermore, it was identified that 'successful external DoCS funded programs have been developed, piloted, evaluated and implemented, only to be closed due to DoCS funding, management or other restrictions' (p. 19). Not only does a successful service close, a major issue is that programs managed by government agencies 'are less likely to be embraced by Aboriginal people and communities' (p. 19), because 'many of these agencies are still remembered as being part of the system that led to the stolen generations [managed group homes etc.]' (p. 31). In fact, **Recommendation 10** on page 8 of the Submission stated that: 'All OOHC in NSW should be provided by the non-government sector, with DoCS solely concerning itself with child protection' (p. 8). Hence, advocating for Aboriginal children to be cared for by Aboriginal OOHC agencies.

The Submission also argued for an increase in funding to AbSec by including an account of what happens in Victoria. It compared funding arrangements for the Victorian Aboriginal Child Care Agency (VACCA) with AbSec's funding. It highlighted that VACCA is funded according to the number of Aboriginal children in care, receiving '7.3 million dollars' (p. 14). In NSW, Aboriginal children and young people make up a third of the

OOHC population (p.17) and funding allocated to AbSec, does not 'reflect the number of Aboriginal children and young people' in care nor does it allow the Aboriginal OOHC peak body to 'achieve successful measurable results' (p. 14) in a strategic manner. The Submission stated that, compared to Victoria:

Less than 10% of the third of Aboriginal children and young people in care ... will be supervised by an Aboriginal agency in NSW, however, in Victoria the VACCA are responsible for 44% of Aboriginal children in care in Victoria who are supervised by Aboriginal agencies. (p. 20)

At the time of writing the Submission, AbSec received \$694,908 (p. 14); stating that as 'at June 2006 there were 12,712 children and young persons in OOHC, 3,033 of those were Indigenous' (p. 18). Here the Submission was articulating a further rationale for the argument that funding to the NSW Aboriginal peak OOHC body should reflect the number of Aboriginal children and young people in care in NSW (p.14).

The 'problems' that were represented in the Submission in relation to AbSec's funding included that the NSW Government did not recognise the significance of funding for Aboriginal outcomes or the leadership role of AbSec as the independent voice of Aboriginal child welfare. Consequently, the NSW government was making decisions not informed by AbSec's strategic framework or based in research. These decisions were impacting financially on Aboriginal child welfare community-controlled organisations. The 'problem' of funding Aboriginal child protection services troubled AbSec because it was perceived to open the way for non-Aboriginal organisations to supervise the care of Aboriginal babies, children and young people after removal.

The 'problem' of inadequate funding: impact on Aboriginal children and young people in OOHC

The analysis of the AbSec Submission highlighted how funding influences the supervision and management of Aboriginal children and young people in care. The Submission presented facts which highlighted the very low numbers of Aboriginal children and young people in care, who are supervised by ACCOs, problematising the

placement in *non*-Aboriginal organisations. In arguing for change in this area, the Submission put forward several statements to clarify their understanding of how the funding system works. For example, the Submission stated that ‘there is preference to fund large non-Aboriginal non-government agencies and other white agencies, rather than fund or establish community controlled Aboriginal agencies’ (pp. 6 & 15). This claim emphasised that other agencies are mostly not accessed by Aboriginal people, linking that ‘problem’ to the experience of the Stolen Generations era (pp. 26, 31 & 49). In addition, the Submission argued that ‘nearly all Aboriginal funding for early intervention went to non-Aboriginal agencies’ (p. 31). Thus further stating: ‘If the DoCS truly believe that there are not enough qualified Aboriginal agencies available to deliver services to Aboriginal people, they should commit to funding the establishment and support of new agencies rather than funding inappropriate services (p. 15).

To position this ‘problem’ within context, the Submission included a comparison between Victoria and NSW to push the point even further. It claimed that the Victorian Government provides ‘better outcomes for Aboriginal children, young people and families’ and that ‘child protection reports relating to Aboriginal children are managed in consultations with VACCA and the Aboriginal child specialist Advice and Support Service’ (p. 33). To legitimise this argument, the Submission included comparative data which revealed that the role and responsibility of the VACCA, within the Victorian child protection system, had resulted in only 10% of the total number of children and young people in care being of Aboriginal descent, compared to 30% of the children and young people in care in NSW being of Aboriginal descent. The Submission also presented data that 44% of those Aboriginal children in OOHC in Victoria are supervised by an Aboriginal agency, compared with only 5% in NSW (as cited in the Absec Submission, p. 33).

The Submission thus also problematised the NSW Government. It stated that other states ‘have shown a greater propensity to fund and allow for the development of community-controlled programs’ (p.19). The Submission highlighted that the Victorian Lakidjeka service ‘is run by Aboriginal people, for Aboriginal people’ and its described as a ‘unique Indigenous-specific response to statutory child protection intervention

service, built on effective collaboration with the Department of Human Services in Victoria (p. 33). Therefore, Victoria has moved beyond *non*-Aboriginal control. For example, the Lakidjeka service leads the response in ‘notifications made regarding Aboriginal and Torres Strait children, with an aim to ensure decisions are made that focus on the child’s best interest’ (p. 34). Thus, Victoria was represented as having a system that maintains culturally appropriate care for Aboriginal children placed in OOHC, whereas, ‘NSW lags by its demonstration of a lack of commitment to the funding of independent community based Aboriginal child protection and OOHC programs’ (p. 17).

Further adding to the above, the Submission identified the following: Aboriginal OOHC agencies are ‘grossly underfunded’ (AbSec Submission p. 16); and a ‘disproportionate amount of early intervention funding went to non-Aboriginal agencies’ (p. 28). The Submission claimed that ‘non-Aboriginal agencies are funded to an amount many times the funding of Aboriginal agencies to provide service to Aboriginal communities’ (p. 15). The implied problem was that this forces the lead agency in Aboriginal OOHC in NSW, out of the organisation’s fundamental role of providing effective culturally appropriate services and advice and advocacy, on Aboriginal child protection business to key stakeholders. Muriel Bamblett, chairperson of SNAICC and Chief Executive Officer of VACCA, emphasised that ‘the NSW Government appears to be very good at funding itself – most of your Aboriginal programs seem to be in-house government programs – maybe that’s why they are not working (p. 17).

AbSec further questioned the allocation of inadequate funding, in again emphasising that ‘ASFCSS is grossly under-funded compared to the recently funded [non-Aboriginal] service engaged to provide a similar service to non-Aboriginal foster carers’ (p. 16). The Submission claimed that although ASFCSS continued to offer ‘unfunded informal intervention programs despite no funding being made available...through the 2006 Expression of Interest (EOI) tenders period for the provision of EI services in NSW – only one Aboriginal controlled agency was successful’ (p.28).

Therefore, the Submission argued for increased funding for 'new and/or existing community Aboriginal agencies to provide early intervention and other innovative programs' (p. 17). **Recommendation 4** stated:

That DoCS should immediately revisit the process of awarding contracts for Aboriginal services through what is currently an unfair (to small Aboriginal services) Expression of Interest process. (p. 8)

Implications of the above 'problem' were that 'bigger non-Aboriginal agencies can employ consultants to complete tenders' (p.49), whereas Aboriginal agencies do not have financial resources to pay consultants. Consequently, the implications of inadequate funding to Aboriginal organisations also reproduces the power of *non-Aboriginal* OOHC agencies in NSW to manage the cultural care of Aboriginal children and young people placed in foster care, whilst disempowering the role of AbSec and impacting on the cultural identity of an Aboriginal child. The need for change in this area is stated in the strongest terms in the document: 'unless credence is given to the concept of self and community determination, then the current regime will be known as those who are responsible for the next and subsequent lost generations' (p. 6).

The proposed solutions to the 'problem' of inadequate funding included that more Aboriginal managed services are essential (p. 38). For example, **Recommendation 17** (p. 9) encouraged the development of strategies to decrease the overrepresentation of this group. Consequently, an increase in funding to develop more Aboriginal services to supervise culturally safe care of Aboriginal children and to support those Aboriginal families in general child welfare issues, is required. **Recommendation 20** (p.9) emphasised that unless there is a shift in how the core business of OOHC and child protection is undertaken for Aboriginal children and young people, then successful outcomes for this group will be difficult to obtain. The Submission stated that:

AbSec believes that as part of ensuring the social, emotional and cultural wellbeing of all children and young people, credence should be fully given to the development and support of culturally appropriate local services to ensure this safety. AbSec believes that government has a role in adequately funding

Aboriginal services to ensure the safety and well-being of Aboriginal children and young people. (p. 15)

Therefore, the AbSec Submission raised a critical issue for Aboriginal children in OOHC. The analysis identified that inadequate funding provided to irrelevant *non-Aboriginal* organisations impacts attempts by the Aboriginal peak body and other Aboriginal child welfare agencies, to determine the lives of Aboriginal children in care. Being dismissive of the development of Aboriginal managed service delivery, created a sense ‘that only Aboriginal people are involved in child abuse and only Aboriginal people are unable to care for their own children and young people’ (p. 7). In challenging this ‘problem’ the Submission stated that ‘funded non-Aboriginal agencies should consider setting aside a certain proportion of their Aboriginal funding to assist new Aboriginal services to establish as viable entities’ (p. 15).

The problem of the NSW Government continuing to allocate funding to *non-Aboriginal* organisations and the absence of Aboriginal decision-making was identified as another key ‘problem’ for key stakeholders in Aboriginal child protection business.

The ‘Problem’ of the Absence of Aboriginal Decision-making

The Submission indicated that relationships and communication systems procedures impacted on input into the NSW child protection system from key Aboriginal child welfare groups. Thus, an implied ‘problem’ in the Submission was the absence of Aboriginal decision-making in policies to do with Aboriginal child protection service delivery. The analysis identified that the ‘problem’ of the absence of Aboriginal decision-making was represented as: (i) excluding the role of AbSec; (ii) excluding Aboriginal decision-making in case work practice and (iii) excluding Aboriginal decision-making in the development of culturally appropriate resources.

The ‘problem’ of excluding the role of AbSec

The ‘problem’ of excluding the role of AbSec was twofold. It comprised an internal and an external aspect. To differentiate, the internal communication problem involved the DoCS ‘executive, management, staff and committees’ (AbSec Submission, 2008, p. 13)

and the external problem related to the Minister for Community Services (p. 14). The Submission argued for the legitimate right for AbSec to be the leading advocate for Aboriginal OOHC within the NSW child protection system. For example, the Submission stated that 'AbSec has an important and ongoing role in representing Aboriginal people as an independent Aboriginal peak OOHC and child protection organisation in NSW' (p. 13); and are 'in a position to comment on issues relating to the Department's structure, functioning, management and resourcing' (p. 39), as the organisation responsible for Aboriginal OOHC in NSW.

Analysis of the text revealed that AbSec argued their role, was important; however, they perceived that the DoCS thought otherwise. Thus, it was impossible for them to find entry points into the administrative arm (internal communicative infrastructure) of the DoCS. A stated problem, for example, was that 'requests for assistance or consultation [from AbSec] needed to be prioritised and on occasion it was believed that relevant information that could be provided by AbSec, was not disseminated to the detriment of Aboriginal children and young people' (p. 14).

Underpinning the above is that the relationship between AbSec and the DoCS had undergone 'various phases and degrees of cooperation, consultation and participation' (p. 13) and hinged on how the DoCS had seen their role within a paradigm of 'acceptance/non-acceptance of the relevance of AbSec by members of the DoCS executive and management' (p. 13). However, AbSec believed their role to be 'only irrelevant as long as the DoCS treat AbSec as irrelevant' (p. 7). Offering an example, the Submission stated that 'the disbandment of the OOHC professional reference group and the standing Ministerial advisory committees' (p. 7), which AbSec were a member of, exemplified the perception that DOCS undervalued AbSec and Aboriginal participation in decision-making. The Submission implied that the DoCS were not committed to having a genuine collaborative organisational relationship with AbSec or, to have Aboriginal decision-making incorporated into relevant Aboriginal child protection and OOHC policies.

The Submission referenced essential criteria for the cultural care of Aboriginal children in the NSW child protection system: such as 'cultural diversity; social emotional and

cultural wellbeing; and the safety and wellbeing of Aboriginal children and young people' (p. 15). However due to the absence of a collaborative working relationship with the DoCS, it was deemed difficult to ensure appropriate cultural care policies were a permanent fixture of casework practice. Consequently, relationship and communication dysfunction created 'management, administrative and professional systems currently operating with the Department of Community Services as inadequate, at times in direct contradiction to the achievement of positive and long-term outcomes for vulnerable Aboriginal children and young people' (p. 39).

Further analysis of the Submission identified the belief that the 'DoCS system is a self-perpetuating child (un)protection machine that is often unable to distinguish between the needs for child safety and the self-preservation of a failing bureaucracy' (p. 7). Thus, DoCs had created a disadvantaged space for AbSec. The Submission emphasised that a shift is needed which:

...requires the recognition and practice of a shared vision, shared values, a respect and understanding of the respective roles of DoCS (as the statutory agency), Aboriginal and non-Indigenous non-government agencies (as major providers of services), other government agencies and the good will and support of government and the broader community in order to function successfully. (p. 39)

In pushing proposed solutions to this 'problem' further, the Submission argued for a mandated system of cooperation, requesting that 'DoCS be required to fully participate with all welfare sector peaks with an open partnership framework established to ensure best practice outcomes for children and families in NSW' (AbSec Submission, **Recommendation 16** p. 9). An example of dismissiveness on the part of the Department was provided when unsuccessful attempts to meet with the Director General (DG) of the DoCS (p. 1) occurred, however, success was obtained with the assistant DG (for reasons not included in the Submission).

The Submission also acknowledged that 'working relationships with the DoCS ASB and the DoCS Aboriginal Reference Group (ARG) have undergone various stages of

consultation and cooperation, mainly due to change in staff' (p. 13). Further reiterating that 'over the past year all AbSec and DoCS Aboriginal services have been working towards a more collaborative approach in cooperating to achieve better and more sustainable outcomes for Aboriginal children and young people (p. 13).

The Submission did acknowledge an improvement in relationships with the ASB by stating that 'AbSec business is now a permanent agenda item at each ARG meeting with expectations that it will help to facilitate a closer working relationship with the ARG' (p. 14). Therefore, one outcome achieved was that, a collaborative relationship was forged with internal Aboriginal staff, but not with the DoCS senior executive.

Unfortunately, the implied 'problem' was that a system without the inclusion of Aboriginal decision-making creates an inconsistent relationship between the lead authority in Aboriginal child protection business and Docs. The Submission positioned this 'problem' within a critical paradigm that described the DoCS in the following ways: 'the system is broken and what remains is a haphazard series of unrelated programs, with some providing better care than others in an inequitable, poorly distributed way'; stating also that the 'system is based on the needs of bureaucracy rather than the needs of Aboriginal children, young people and families'; plus the 'system is developed in an ad hoc way' and is led by 'rhetoric of inputs and outputs that make up discussions' with 'no real attempt to systemically address issues such as capacity, quality and independent monitoring' (p. 41).

Consequently, the Submission provided a view about the internal operations of the DoCS whereby the opportunity for key Aboriginal stakeholders to have input regarding policies on the involvement of Aboriginal children and young people in the NSW child protection system had been routinely and regularly dismissed. Therefore, the exclusion of AbSec in decision-making had decreased the role and responsibility of the lead agency in Aboriginal child protection and OOHC. To somehow rectify this situation, the Submission pointed to specific areas that should be considered for change. For example, the Submission, proposed **Recommendation 7**:

DoCS in consultation with AbSec, other government departments, Aboriginal community partners devise strategies around culturally appropriate intake systems for Aboriginal [children and young people]. (p.8)

As discussed above, the Submission raised serious issues that questioned the way AbSec's role was integrated within the NSW child protection and OOHC system, providing a case of the ways that Aboriginal decision-making was limited within the operational structure of the DoCS. The analysis of the text also found that the Submission broadened the 'problem' of excluding AbSec to include concerns about engagements with the Minister for Community Services; therefore, extending the 'problem' from the administrative arm of the DoCS to include those external to the Department, such as the Minister.

The Submission stated that in the 'past AbSec has had formal and informal relationships with various Ministers of Community Services (p.14); in addition, it stated that 'ministerial relationships have ranged from fully consultative and inclusive to fully exclusive' (p. 14). The analysis identified that in the past AbSec had proposed to the Minister to 'seek formal advice from AbSec on Aboriginal child welfare issues, thereby balancing advice that he receives from DoCS and the non-government non-Aboriginal welfare sector' (14). The Submission emphasised that as a 'peak Aboriginal organisation we are able to see the opportunities and the limitations of the system as it currently operates' (p. 39) for Aboriginal children and young people. The significance of this 'problem' is a perceived lack of power in the policy process, within the context where the Minister does not seek 'formal advice from AbSec' (14).

Therefore, the lack of ministerial engagement with AbSec has resulted in a significant divide in the development and implementation of Aboriginal child protection policy processes, procedures and practices within the NSW child protection system. It has also resulted in privileging *non*-Aboriginal input to Aboriginal children welfare business and diminishing input from the peak Aboriginal agency.

The problem experienced by the Aboriginal peak body carries with it the serious implications of decreasing Aboriginal voice whilst Aboriginal children are in statutory

care. Further analysis of the text revealed problem representations that overlapped or nested within the problem of exclusion from decision-making. First, the Submission highlighted the 'problem' of excluding Aboriginal decision-making in casework practice and second, it identified a gap in Aboriginal input concerning the development of culturally appropriate resources for the cultural care of Aboriginal children placed in the NSW OOHC system. The identification of these problems added to AbSec's robust discussion on Aboriginal decision-making.

The 'problem' of excluding Aboriginal decision-making in case work practice

At the time of submitting the AbSec Submission, 'Aboriginal people made up 7% of the DoCS employee numbers and Aboriginal children made up to 30% of OOHC placements' (pp. 41-43). The Submission stated that some of the 'local DoCS Community Services Centres still have a lack of Aboriginal caseworkers to consult with and this can become problematic when the community services has no Aboriginal caseworker to consult with at all' (p. 42). Thus, 'there are still not enough Aboriginal caseworkers in DoCS Centres to provide an adequate consultative service to non-Aboriginal staff and for DoCS Aboriginal clients to receive a culturally appropriate service' (p. 43).

The extent of excluding Aboriginal decision-making in case work practice broadened to the Helpline and the Children's Court. Thus, the Submission included a proposal to the Inquiry concerning the inclusion of 'Aboriginal caseworkers at the Helpline' (p. 39) and relevant Aboriginal staff in the Children's Court. Thus, **Recommendation 14** stated:

The children's court be made more user friendly for Aboriginal children and families including the expansion of the role of Aboriginal Court Client Support workers. (p. 9)

The low numbers of Aboriginal staff employed in the DoCS EI 'reprioritising processes' (p. 31) was also problematised. One opinion put forward concluded that 'it is essential for Aboriginal people to not be disadvantaged in the process' (p. 31). In fact,

Recommendation 9 (p. 8) suggested ‘that DoCS not provide any direct early intervention services, especially not to Aboriginal people’ (p. 8), because the absence of Aboriginal staff does in fact promote disadvantage for Aboriginal families.

Interestingly, the Submission stated that ‘non-Aboriginal OOHC/child welfare peak agencies and the majority of OOHC service providers do not in general have Aboriginal staff in senior management positions’ (p.12). Indeed, the Submission argued that it should be mandated for EI teams to have at least one Aboriginal identified position and at least one identified child protection caseworker in each office’ (p. 44). In providing another solution, the Submission shifted the focus to support AFSCSSs playing a role in EI service provision, stating they will ‘demonstrate through research that ‘Aboriginal OOHC are providing better outcomes for Aboriginal children and young people, when compared to services provided by DoCS and non-Aboriginal service providers’ (p. 12) and **Recommendation 8** (p. 8) advocated that the NSW government ‘revisit the provision of early intervention services to Aboriginal people by non-Aboriginal non-government agencies’ (p. 8). The Submission claimed that the strength of having Aboriginal people work with at risk Aboriginal families would increase Aboriginal decision-making in the external non-Aboriginal service system (pp. 15-17, 31-32 & 48-31); with the view that it would prevent removal of Aboriginal children and young people from their parents.

As with the DoCS system, the absence of Aboriginal people in service delivery at the NGO level was represented as decreasing Aboriginal decision-making and increasing systemic failure in the delivery of Aboriginal child and family EI services. The dominance of decision-making by *non*-Aboriginal people in the NGO child welfare services sector was problematic, particularly as the non-government services sector had come to have the majority of input in program delivery targeted for Aboriginal people. Diminishing Aboriginal decision-making in this sector opens the way for *non*-Aboriginal people to obtain ongoing funding for services and the control of the cultural care of Aboriginal children in the OOHC system. Thus, the ‘problem’ of excluding the role of AbSec not only existed within the DoCS EI strategic planning system, but beyond it, to the NGO EI programs service delivery framework, for Aboriginal children and their families. In

addition, the Submission identified a gap in the development of culturally appropriate resources for carers of Aboriginal children involved in the NSW child protection system, as discussed below.

The ‘problem’ of excluding Aboriginal decision-making in the development of culturally appropriate care resources

Another aspect of the ‘problem’ of the absence of Aboriginal decision-making was the exclusion of Aboriginal decision-making in the development of culturally appropriate care resources. The Submission problematised non-Aboriginal organisations and departments as not having the ‘cultural connections, skills or resources’ (p. 41), to develop culturally appropriate resources to support the supervision and the care of Aboriginal children and young people. **Recommendation 15** stated that ‘DoCS should better recruit, resource and train Aboriginal [and all] foster/kinship carers (p.9).

The Submission named two key cultural resource packages for carers that were inappropriately developed. For example, the stated ‘problem’ was that ‘AbSec and its member agencies had limited input into the development of the *Step by Step Aboriginal Assessment Tool* and invited to participate in a trial after it was developed’ (p. 20). Thus, adding that ‘HACCS¹⁵ instead were consulted as to the efficiency/relevancy of the tool’ (p. 20). The endorsement of the package was ‘launched by the Minister of Community Services at the 2007 DoCS Aboriginal workers’ conference’ (p. 20). However, the Submission further asserted that, ‘the actual package has no real new Aboriginal content other than some Aboriginal artwork and a few deadlines and other Aboriginal language thrown in’ (p. 20). The implied problem was that the *Step by Step Aboriginal Assessment Tool* was developed without Aboriginal input, and it omitted key Aboriginal perspectives in the tool.

¹⁵ HACCS – NSW Home and Community Care Services

Another example concerned the DoCS *My Life Story Work*¹⁶ package. The Submission stated that it be 'best described as a mainstream package' which had 'limited Aboriginal consultation' and that 'consultation occurred after the original package was rolled out' (p.23). The Submission further stated that 'AbSec does not believe that the package is culturally appropriate at all and it should be further evaluated, at least annually as it is especially important for Aboriginal children in care' (p. 24). The Submission stated that 'Aboriginal consultation on this project only occurred with caseworkers after the original package was rolled out (p. 24). Consequently, Aboriginal decision-making was dismissed. What was particularly problematic for the peak Aboriginal OOHC organisation is that although the *My Life Story Work* package supports the cultural care of Aboriginal children and young people, the design; implementation; and evaluation of the abovementioned Aboriginal resources excluded the involvement of Aboriginal people. Thus, the Submission further emphasised that culturally appropriate life story work 'should be compulsory for all children and young people in care but is especially important for those Aboriginal children and young people in non-Aboriginal care' (p. 24). Therefore, the 'problem' was extremely significant as it involved the cultural care of Aboriginal babies, children and young people after removal from their parents.

The significance of Aboriginal decision-making in the development of culturally appropriate care resources was regarded as particularly necessary in a context whereby most Aboriginal children and young people are cared for by non-Aboriginal carers (p. 16). The Submission stated that 'due to the extraordinarily high number of Aboriginal children in care it is highly unlikely (in the foreseeable future) that enough Aboriginal foster carers will be able to be recruited to significantly reduce the number of Aboriginal children in non-Aboriginal care (p. 25). Although AbSec acknowledged the shortage of Aboriginal carers; they stated that they wanted the responsibility for delivering support programs to carers of Aboriginal children and young people. The logic in this proposal is

¹⁶ The *My Life Story Book* is packaged in a folder with various separated categories that will capture events throughout the life of a child. It was developed in 2004 by the OOHC Directorate, DoCS Head Office, 2nd Ed in 2006.

that through AbSec involvement, the cultural identity of an Aboriginal child and/or young person would be sustained.

To alleviate part of the problem of not having enough Aboriginal carers, the Submission included **Recommendation 19** (p.9), which stated that ‘community visitors be appointed to ensure that those Aboriginal children in non-Aboriginal care are being appropriated cultural care’ and **Recommendation 13** (p.9) proposed that Aboriginal ‘external mediation agencies’ be involved in the care of an Aboriginal child in non-Aboriginal care. Thus implying that due to the shortage of Aboriginal carers, there are other ways to include Aboriginal people in the participation of culturally appropriate decision-making for Aboriginal children.

Therefore, the analysis identified three key dimensions that the ‘problem’ of the absence of Aboriginal decision-making had major impact on: the role of AbSec; casework practice’; and the development of culturally appropriate resources for carers of Aboriginal children.

Conclusion

In conclusion, this chapter has provided an analysis of the AbSec Submission to the *Special Commission of Inquiry into Child Protection Services in NSW*. The analysis identified what was problematic for the peak Aboriginal OOHC organisation in NSW at the time. The Submission represented an Aboriginal voice in the 2007 Wood Inquiry and provided a challenge for the Special Commission of Inquiry team to listen to the independent voice of the peak body in Aboriginal child protection and OOHC business.

The Submission broadened the Inquiry’s specified TOR, to incorporate a perspective that was based on an Aboriginal organisation’s experience. The Submission identified an open and direct response to the Inquiry that targeted key areas nominated as in need of policy reform for Aboriginal child protection services. The WPR analysis revealed three key problem representations that had, nested within them, a range of specific problematisations. The three key ‘problems’ were identified as: the ‘problem’ of disadvantage which was represented as two kinds of problems: the ‘problem’ of disadvantage as social disadvantage and disadvantage as produced by systemic

failures of DoCS; Second, the 'problem' of inadequate funding which was inclusive to the impact on AbSec; and the impact on Aboriginal children and young people in OOHC. Third, the 'problem' of the absence of Aboriginal decision-making was threefold. It included the 'problem' of excluding the role of AbSec; the 'problem' of excluding Aboriginal decision-making in case-work practice; and the 'problem' of excluding Aboriginal decision-making in the development of culturally appropriate resources.

This chapter positions AbSec's submission to the Wood Inquiry as an extremely important contribution by Aboriginal people and about Aboriginal people in the NSW child protection policy reform process. It has demonstrated how an Aboriginal organisation represented the problems and how it proposed solutions to those problems, in the context of the major government Inquiry. After ascertaining the problem representations embedded in the AbSec Submission, I was interested to explore how closely (or otherwise) they matched the problem representations in the Wood Report. The next chapter is an analysis of the 2008 Wood Report and it provides insight into my Research Question Two: How was the Aboriginal child protection problem represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?

Chapter 6: The Report of the Special Commission of Inquiry into Child Protection Services: The Wood Report

Introduction

This chapter presents an analysis of the Wood Report, with a focus on the ways that Aboriginal child protection business was represented in the text. The Wood Report was the outcome of the *Special Commission of Inquiry into Child Protection Services in NSW*. A key responsibility of Commissioner Wood was to provide the NSW Government with an evaluation of the Inquiry in the form of a final report. Thus, on the 24 November 2008 the Wood Report was presented to the Governor of the State of NSW, Her Excellency Professor Marie Bashir. The purpose of the Report was to guide the NSW Government's reform into child protection services in NSW. To restate, there were three key reasons for undertaking the Inquiry to investigate: the safety of children in NSW; the drivers of demand on child welfare services in NSW; and how the DoCS managed that high demand. The Report anchored many of the reforms to child protection services in NSW that remain in place today.

The chapter introduces the 2008 Wood Report and explains the approach and structure of the Wood Report. It also provides an overview of the recommendations and the principles that underpinned them, to highlight the major policy shifts and fundamental system reforms proposals contained within the Report. The objective of the WPR analysis presented in this chapter was to focus on how Aboriginal child protection was represented in the Wood Report. The analysis explored the concepts, categories, language, logics, and rationales used within the report. In doing so, the analysis paid detailed attention to the problem representations throughout the text: in the background discussions and in the recommendations; in the general statements about children and child protection; as well as in the specific statements about Aboriginal people and communities, Aboriginal babies, children and young people, and Aboriginal child protection. This has enabled new insights into how this important policy document represented the Aboriginal child protection 'problem' through ways of thinking and

talking about Aboriginal people and issues. Four key problematisations were identified in the Wood Report: (i) the 'problem' of statistical overrepresentation of Aboriginal people; (ii) the 'problem' of disadvantage, in particular Aboriginal disadvantage; (iii) the 'problem' of NSW government agencies lack of commitment to Aboriginal child protection and (iv) the 'problem' of Aboriginal capacity.

The Approach and Structure of the Wood Report

The Wood Report's three volumes comprised 1107 pages. It included 111 comprehensive recommendations that were developed from data gathered from 669 submissions to the Inquiry and from public forums, meetings with relevant agencies; individuals and regional visits. Eleven of the recommendations specifically relate to Aboriginal child protection, in particular mentioning Aboriginal children and young people, Aboriginal organisations, Aboriginal communities and Aboriginal people. The three volumes are commensurate with the wide-ranging investigative procedures described in Chapter 4 of this thesis. Volume 1 includes Chapters 1 to 10 and concerns the procedural system of DoCS. Chapters 11 to 19 make up Volume 2 and concentrate on the Legal procedures relating to child protection, in addition to specific issues to do with domestic violence and Aboriginal overrepresentation in the NSW child protection system. Volume 3 deals with specifics relating to interagency cooperation and DoCS funded non-government agencies and how the processes of measuring performance indicators operate within this system. Part seven of Volume 3 is the final section of the Report and presents the implementation procedure for the recommendations. Consequently, in examining the Report, the reader can understand the enormity of the responsibility of managing the NSW child protection system.

The Wood Report: Principles, Goals and Recommendations.

This section describes the principles and goals that underpinned the Wood Report's 111 recommendations. The Wood Report emphasised that 'many of the recommendations are dependent upon or integrated with other recommendations' and some relied upon 'a revision of many of the policies and procedures currently in place' (p. xi). Some of the

recommendations relate to problems identified with the internal management procedures of DoCS, others with external service providers and operations.

Commissioner Wood (2008) stated at the time that some recommendations were not as complex as others to implement, and the recommendations could be implemented at various intervals. This view was repeated later by Minister Burney in the *Keep Them Safe – A shared approach to child wellbeing* policy text. Consequently, the implementation procedure included a period of six-month updates or as required under the monitoring of an inquiry implementation unit (Wood, 2008, pp. 1036-37).

The predominant principle that underpinned the recommendations for child protection reform in NSW was that ‘child protection is the collective responsibility of the whole of government and of the community’ (p. 380). Embedded within this principle, however, is that the primary responsibility of child safety sits with family and community, ‘with government providing support where it is needed, either directly or through the funded non-government sector’ (p. 380). The Wood Report, therefore, called for a combined effort from government and non-government sectors, to support the principles underpinning the idea that government and non-government child protection services operate within a whole of community response. The role of, and supports for, parents and families were included in the recommendations, as was consideration of the best interest of a child. For example, **Recommendations 7.1** (p.260); **10.4**; **10.5 (b)**, and **10.5 c** (p. 385), concentrated on determining eligibility for EI initiatives, taking into account the strengths of a family and how support services could be framed (p. 380).

In addition, the Wood Report linked the above with other recommendations that clarified the significance of casework practice across service sectors, such as **Recommendation 16.11** which stated ‘common case management framework for children and young people in OOHC across all OOHC providers, should be developed, following a feasibility study on potential models including the *Looking After Children* system’¹⁷ (p. 690). **Recommendations 16.2 a–c**; **16.3** (pp. 687-688) and **16.8** (p. 689),

¹⁷ The Looking After Children case practice framework concerns the health needs of children and young persons in OOHC (Wood Report 2009, p. 662).

represent some of the major changes in how responsibility for child protection was to be organised in NSW. These recommendations concern the transitioning of OOHC services to external service providers (p. 656) and the sharing of responsibility by such agencies as the NSW Education Department. The transitioning of OOHC from DoCS to the external OOHC agencies strengthened the principle underscoring the belief that child protection is positioned within a whole of government, community and family approach.

To reinforce this significant proposal for change in child protection service delivery and parental responsibility, the Report included recommendations to amend parts of the *Children and Young Persons (Care and Protection) Act 1998*. For example, a combination of parent responsibility and child safety were represented in **Recommendation 11.1** (pp. 460-461), whereby it considered the safety of children and it affirmed parent and service delivery involvement in recognising the significance of child protection. Other **Recommendations 6.1; 6.2 a** (p.197) concerned changes to the Act (1998) that would add the word significant, before the word harm, therefore raising the 'threshold to risk of significant harm' (p. xiii). In addition, **Recommendations 10.1 and 10.2** (pp. 382-384) suggested that the adaptation of **Recommendations 6.1 and 6.2 a** in the abovementioned Act, accommodated the categorisation of reports to the DoCS Helpline and positioned this amendment in accordance with 'the principles set out in s. 9 and s. 10' (p. 395) of the Act. Consequently, the amendments to the *Children and Young Persons (Care and Protection) Act 1998* provided the legal framework that would broaden the areas of responsibility for government and the NGO sectors, strengthen current EI program delivery and ensure parental involvement in such programs.

To achieve the objectives of the principles underpinning the reforms for relevant NSW child protection services, an overarching goal centred on the significance of child safety. The Wood Report emphasised 'that, at the very least, children are able to grow up unharmed... and supported by parents who are competent and confident' (p. 381). In broadening this objective, it was argued that 'possible strategies could achieve a coordinated, compassionate and effective system that brings together the combined skills of relevant agencies that play a part in the child protection system' (p. 381).

Child protection was to be the responsibility of the government, but would involve other community service providers and be located where the families live (p. 380). The main objective, however, was for service delivery to be framed as an 'integrated universal, secondary and tertiary services' (Wood, 2008, Vol. p. v) system and based on a whole of government approach. The Report stipulated that this system would have to be supported by State and Commonwealth regulations and monitored by key NSW lead agencies such as DoCS, Health, Education, Juvenile Justice, Department of Disability and Home Care (DADHC) and Housing. Consequently, a common framework would govern the accountability process for agencies providing child protection services (p. 382).

Putting the above goals into context, **Recommendation 10.4** (p. 385), indicated that 'all services should be integrated and, where possible, co-located or operated in hubs, with outreach capacity' (p. 381). Furthermore, **Recommendation 10.7** (p. 387), referred to a collective responsibility framework that would integrate government and non-government EI service delivery systems, hence broadening the responsibility of child safety from DoCS to include other relevant services. The recommendations also proposed an alternative to the first point of contact for reporting child protection issues. For example, **Recommendations 9.3** (p. 377); **10.1a** (p. 383); **and 10.2** (pp. 383-385), suggested the establishment of a 'Regional Intake and Referral Service in recognition of the responsibility of relevant NGO and government EI program delivery. This system would refer families to EI services at the first stage of concern for a child's safety. Consequently, the targeted goals identified in the Wood Report, would be achieved by a system of lead government and non-government agencies that would provide a collaborative service system for parents and communities. A major gap in the recommendations relating to the Regional Intake and Referral Service is any specific mention of, or consideration of: Aboriginal people; organisations; or service systems management, such as proposing an Aboriginal referral service.

The Wood Report included specific principles and goals that were intended to underpin the recommendations concerning the future planning of Aboriginal child protection services in NSW. The specific goal and the two principles informed the

recommendations concerning Aboriginal child protection services. The overarching goal was for the creation of:

An integrated locally based universal secondary and tertiary services for Aboriginal people which should include those services described in the principles, as well as healing programs and services for perpetrators. (p. 381)

The two principles relating to Aboriginal babies, children and young people were

Support services should be available to ensure that all Aboriginal and Torres Strait Islander children and young persons are safe and connected to family, community and culture. (p. 381)

And

Aboriginal and Torres Strait Islander people should participate in decision-making concerning the care and protection of their children and young persons with as much self-determination as is possible, and steps should be taken to empower local communities to that end. (p. 380)

Thus, the Wood Report included stated problem representations that suggested that the solutions to Aboriginal child protection business included healing; cultural safety; cultural connections; participation in decision-making; self-determination; and the empowerment of local communities. As discussed in Chapter 3, implicit problem representations are also always contained in policy documents, and it is important to analyse “what the problem is represented to be” as well as “what it is stated to be”.

The next section focuses on how the Report represented Aboriginal child protection issues. The WPR policy analysis focused on the authoritative statements made in the Report about the ‘problem’ of Aboriginal babies, children and young people and their families, communities and organisations in the NSW child protection system.

The 'WPR' analysis of the Wood Report: Problem Representations

The 'problem' of statistical overrepresentation

Like many contemporary policy documents, the Wood Report used statistical data as a way of legitimising the policy problems it was concerned with. Extensive use of population data was deployed to compare Aboriginal and *non*-Aboriginal children and, in the process, to define the 'problem' of overrepresentation. The analysis of the Report showed the kinds of statistics used and the ways that the different kinds of data were presented to make the case that Aboriginal children are overrepresented in the child protection system and therefore a problem that needs to be addressed. Statistical data were used to clarify the meaning of 'overrepresentation'; and included in Volumes 1 and 2 of the Wood Report.

Population data

One kind of statistic used was the comparison of Aboriginal people in the child protection systems compared to their proportion of the population. Another statistic was the proportion of the total child protection population who are Aboriginal, as compared with the proportion who are non-Aboriginal. The Wood Report also cited demographic information to highlight the ages of children in NSW. For example, in 2006 the total NSW population was 6,549,174 with Aboriginal people representing 138,511, or 2.1% of that count. A further breakdown of data revealed that all children aged 0-17 years represented 24% of the total population and within that cohort 0-3 years make up 5.2%. Regarding Aboriginal children aged 0-17 years, they make up 45.4% of the Aboriginal population (2.1%) with Aboriginal babies aged 0-3 years making up 10% (p. 118).

Reports to the DoCS Helpline

A second set of statistics is what is known as reporting data. The inclusion of data relating to reports to the DoCS Helpline is the first stage of an assessment procedure where a child or children are assessed as being unsafe in their home. This stage is where an EI assessment should occur, thus not waiting for more reports without

essential support commencing. The Wood Report presented data that revealed what overrepresentation looks like for Aboriginal children in terms of reported exposure to harm. Most of the reports are submitted by NSW Health and the NSW Police and many reporting issues are related to domestic violence, drug and alcohol and mental health (p. 123).

Data cited by the Wood Inquiry included reports for all children to the DoCS Helpline Centre, between the periods 2001/2002 to 2007/2008 (preliminary¹⁸). The age categories are: children aged less than 1 year; then aged from 1-2 years, 3-4 years, 5-11 years, 12-15 years and 16-17 years. The comparison of data revealed that in '2007/08 the Helpline Centre received 303,121 child protection reports, representing an increase of about 90 percent over the 159,643 received in 2001/2002' (p. 119). The data also revealed that 'when new and known children are examined by age, a high percentage of new children are infants' (p. 123).

Reports to the Helpline Centre revealed for the same periods, there was a sharp increase for Aboriginal children from 7,093 in 2001/2002 to 18,179 by 2007/2008 (p. 124). The data revealed that an overwhelming number of reports identified that during 2007/2008 'for every 1,000 Aboriginal children and young persons in NSW, 289 were reported, in comparison to 75 per 1,000 for non-Aboriginal children' (p. 126). The presentation of this data in the Wood Report assisted in extending and clarifying what is meant by over-representation: the data reveal that Aboriginal children have a 57% chance of repeated Helpline reports, in comparison to 36% for other children.

The Wood Report stated that the reports for Aboriginal children 'was higher than the rate of reporting about other children and for Aboriginal babies aged less than one year it was higher than for non-Aboriginal babies aged less than one year, and for all ages of Aboriginal children' (p. 126). The statistics were also deployed in the following statement: 'for every 1,000 Aboriginal children and young persons in NSW aged less than one year, 647 were reported to DoCS, compared with the reporting rate of 130 per

¹⁸ Preliminary data is the most recent data used for relevant categories of data records.

1,000, for non-Aboriginal children aged less than one year' (p. 126). Thus, the problem of disparity between Aboriginal and *non*-Aboriginal children is clearly illustrated through the deployment of data recorded by the Helpline Centre.

Consequently, the data on the reports registered at the Helpline Centre explained the meaning of overrepresentation for Aboriginal children. From a group that holds 2.1% of the total NSW population (Wood, 2008, p. 741) and within that cohort, Aboriginal babies represent 10%, but make up approximately 65% of the total reports to the DoCS Helpline for this age group, adding to the statistical picture of an extremely problematic situation for Aboriginal children.

Out-of-home care data

Another form of data that was utilised to make the overrepresentation case was OOHC data. The section below describes the data provided on children involved in the NSW OOHC system. At this stage of engagement with the child protection authority a child/ren and/or youth have been taken away from their parent or carer.

The Wood Report extracted data from the 2002-2008¹⁹ *DoCS Annual Statistical Records* Report, concerning the number of children that were removed and placed in a foster care arrangement, known as OOHC. This process is managed by NSW DoCS. The removal procedure is in accordance with the *Children and Young Persons (Care and Protection) Act 1998* (Wood, 2008, p. 589) whereby parental care becomes the responsibility of the NSW Minister of Community Services (p. 395).

The OOHC data revealed that for all children, there was an increase from 9,273 at 30 June 2002, to 14,667 by 30 June 2008, with a prominent increase of 21.3 per cent during a 12-month period from 30 June 2006 to 30 June 2007. The Wood Report does not say why data for this period stood out from others. The data revealed a steep increase for Aboriginal children by '90.1 percent between 30 June 2002 and 31 March

¹⁹ The OOHC data provided in the Vol. 2 of the Wood Report are based on children and young persons in OOHC as at 31 March 2008 rather than 30th June 2008 – Wood Report, p. 597.

2008 and in proportion to the OOHC population it increased 25.3 percent during this period (p. 597). Apparently, the ages of all children do not differ greatly, but data identified 'there was a 15.5 percent increase over the same period for children aged 1-2 and 21.3 percent in young persons aged 16-17' (p. 598). Consequently, the data presented in the Report was used to reveal a gradual increase for all children and young person's entering the NSW OOHC system and an enormous increase for Aboriginal children.

The analysis of the Wood Report in relation to OOHC, further revealed that data presented comparative ratios of removal rates against a population count of 1,000, between Aboriginal and *non*-Aboriginal children. It identified that for *non*-Aboriginal children there was an increase in OOHC placements, from 5.9 per 1,000 as at 30 June 2002 to 9.1 per 1,000 as at 30 June 2007. Data relative to Aboriginal children, revealed that the OOHC placements for every 1,000 of the NSW Aboriginal 0-17-year population, was significantly higher than for all children and young persons in the State. Data represented an increase from '41.9 per 1,000 as at 30 June 2002 to 61.4 per 1,000 as at 30 June 2007 (p. 599); further revealing that of the 'children and young persons who entered care in 2006/07, around 30 percent (1,380) were Aboriginal' (Wood, 2008, p. 600). The Wood Report provided even more disturbing figures, revealing that 'for every 1,000 children in NSW aged less than one year, around seven entered care and in comparison, for every 1,000 Aboriginal children aged less than one year, 50 entered care' (p. 600).

Further forms of OOHC data presented, related to Section 13 of the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles of the Children and Young Persons (Care and Protection) Act 1998*. These data show that of all Aboriginal and Torres Strait Islander children and young people under supported care, '56.4 percent (1,090) were in relative or kinship care but under no care order and for 36.7 percent (710) parental responsibility was assigned to a relative' (p. 604). Consequently, data on Aboriginal children and 'kinship care' or care by family, suggested an acknowledgment of the significance of the placement principle in the policy discussions

at the time – i.e., *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles* were a dimension of Aboriginal child protection policy.

Therefore, a telling feature of the data revealed an extreme overrepresentation of Aboriginal children, clarifying what the term overrepresentation means for Aboriginal children involved in the NSW child protection system. The removal age of Aboriginal children and young persons in NSW, represented a high ratio for that group's population and substantiated by the number of reports registered to the NSW DoCS Helpline. Consequently, the statistics distinguished the problem of Aboriginal families encountering the child protection system. The data clearly illustrated why the overrepresentation is of concern to the NSW Aboriginal community and key stakeholders, such as the NSW and Commonwealth Governments and others interested in what is happening in this area of child welfare.

The representation of statistical overrepresentation of Aboriginal children as the 'problem' to be addressed by the Wood Inquiry was probably important for the following reasons: first the Wood Report used the data to underline the significance of the issue for Aboriginal children involved in state protection; second, data provide an entry point for the DoCS to address the problem of overrepresentation of Aboriginal children as DOCs manages the data; and third the baby data identified a targeted group for intervention programs. Thus, the data presented the opportunity for DoCS to strategically plan for demand on child protection services. The statistical data presented certainly add to the meaning of overrepresentation of Aboriginal children and young persons in the NSW OOHHC system as well as another arm of the NSW child protection system that could become an object of intervention. The data represented an image of an entire system not coping well. In fact, the statistical data confirmed one of the rationales for the Wood Inquiry, as described in Chapter 3 of the thesis - that the NSW child protection system had broken down and was struggling to keep up with the sheer numbers confronting DoCS.

Throughout the report, the data are represented as uncontroversial: They are presented as authoritative representations of the truth. Yet, as numerous commentators (Wilson 1997; DoCS 2002-2008; Barbour 2008) have discussed, data in the field of Aboriginal

people and the child protection system are always contingent. For example, the assumption that Aboriginal identity is straightforwardly able to be established; that data collection processes reflect what is going on around child protection practices; that services and agencies are recording information correctly; that the grey areas of child protection business, such as where children have been notified but not removed by a court, make the work of deciding what is and what isn't a child protection case difficult to define. Therefore, the representation of the 'problem' of statistical overrepresentation can be understood as a legitimate technique used in this government report to underscore the level of seriousness of child protection as it impacts on the lives of Australian Aboriginal babies, children, young people and their families. The problem of statistical overrepresentation was deployed in the Report to bolster the case for policy reform and for governmental interventions.

In response to the overwhelming statistics, the Wood Report included background information to what it perceived to be the causal factors of such a calamitous issue. To do this the analysis has cited the various reports and social welfare studies that investigated the casual factors associated with disadvantage, as included in the Report, thus, the second 'problem' identified in the Wood Report was the stated problem of disadvantage.

The 'Problem' of Disadvantage

The Wood Report associated proposed reforms to the NSW child protection system overall with the 'problem' of disadvantage. The Report proposes that disadvantage can exist within social environments, causing ongoing complexities which are very difficult for families to overcome. The causes of disadvantage are represented as including multiple factors that impact on the lives of children, however socio-economic factors are emphasised. In Volume 1, the Wood Report cites research undertaken by Edwards (2005) stating that it is 'generally recognised that child abuse and neglect are in many cases manifestations of social disadvantage and social exclusion' (Wood, 2008, p. 87). Edwards' research refers to the concepts of vulnerability and accumulating risk factors, that can become entrenched in 'poor socio-economic neighbourhoods that have the

power to exacerbate social disadvantage, hence resulting in poorer outcomes for children' (p. 87). Some accumulated risk factors mentioned in the Report are age, disability, serious illness and behavioural problems of a child; and for parents experiencing: mental health, domestic violence; substance abuse; poor parenting; low education levels; low socio-economic status; trauma; gaps in medical care and personal support; isolation; homelessness and community violence (p. 84).

The Wood Report demonstrated an interest in exploring the specifics of disadvantage as experienced by Aboriginal people. The focus on disadvantage experienced by Aboriginal children was informed by the presentation of findings in key reports such as *Bringing Them Home*. For example, the Report cited population data by quoting from *Bringing Them Home*, that nationally, '2.1 percent identified as Aboriginal with, four per cent being 0-17 years population'; '13 per cent of Aboriginal families have four or more children'; '40 per cent of the Aboriginal population in Australia is aged less than 14 years'; 'life expectancy for an Aboriginal male was 59 years (77 years for non-Aboriginal male) and for women 65 years (82 for non-Aboriginal female)'; 'Aboriginal children have poorer health'; 'Aboriginal infants in Australia are up to six times more likely to die from sudden infant death syndrome than non-Aboriginal children'; 'Suicide has been identified as four times that of the general population' (pp. 741-742).

Furthermore, to support the proposal that Aboriginal people experience socio-economic disadvantage the Wood Report included demographic data from the 2006 report of the NSW ACSAT Report and it referenced the 2007 Northern Territory's *Ampe-akelyernemane Meke Mekarie – Little Children are Sacred* Report. The ACSAT Report included commentary on disadvantage in the context of Aboriginal child sexual abuse. The *Ampe-akelyernemane Meke Mekarie – Little Children are Sacred* Report provided similar examples to ACSAT of socio-economic 'disadvantage' as experienced by Aboriginal people, such as 'poor health, drug and alcohol and drug abuse, housing, poor education and the general disempowerment of their parents were common among this group' (Wood, 2008, p. 736). Consequently, the Report represented the 'problem' of disadvantage as a combination of influential causal factors that occurred from a broader context of disadvantage.

Thus, the Wood Report connected the 'problem' of disadvantage to the overrepresentation of Aboriginal children and youth involved in child protection through the specific problematisation of Aboriginal disadvantage. It did this predominantly by referencing previous reports and studies, which depict the problem as disadvantage (Wilson, 1997; ACSAT Report 2006; NT Intervention Report, 2007). More detail on this 'problem' is in the next section.

The 'problem' of disadvantage as Aboriginal disadvantage

Through referencing previous literature, the Wood Report suggested that key indicators of the 'problem' of Aboriginal disadvantage overlaps within community settings and that Aboriginal disadvantage is vastly different to disadvantage experienced by the *non*-Aboriginal population. For example, the Report stated that 'the cumulative effect of these factors is seen to provide some explanation for the continuing poor health and welfare of Aboriginal people' (p. 778) and 'In Australia, Aboriginal carers have higher rates of poverty and disadvantage are more likely to be experiencing poorer health than their non-Aboriginal counterparts' (p. 632). In addition, 'Aboriginal children and young persons are among the more disadvantaged people in Australian society' (p. 740).

The Wood Report also linked past traumas and history of colonialism with present Aboriginal health conditions and Aboriginal child sexual assault (pp. 781, 749, 761), using key data from *Bringing Them Home*, stating that:

It is a tragic fact that an Aboriginal or Torres Strait Islander child born today does not have the same life chances as other Australian children. This is something that should not exist in 21st century Australia. And it is the defining challenge for our nation. (p. 740)

Further citing of key government-led initiatives, the analysis identified that the Wood Report also referred to the NSW State Plan; the NSW DAA Two Ways Together; and the Standing Committee on Social Issues on Overcoming Indigenous Disadvantage and how they are focusing on 'Aboriginal disadvantage' (p. 36). The Wood Report stated that 'the problems facing Aboriginal families and their children involve a wide range of

causes of disadvantage, such that a holistic response involving the full complement of human services and justice agencies is needed' (p. 789).

The Report linked the 'problem' of overrepresentation of Aboriginal babies, children and young people in the NSW child protection system to a 'broader context of disadvantage and vulnerability experienced by Aboriginal families' (p. 741). It cited a visit to Toomelah²⁰, which is a small Aboriginal community located near Moree in the western area of NSW to show how the 'problem' of disadvantage in an Aboriginal community in NSW, links to the 'problem' of overrepresentation. For example, the overrepresentation of Aboriginal children in the child protection system can occur from simple infrastructure failings such as: 'inadequate transport and street lighting, poor maintenance of houses and overcrowding, water supply problems and employment opportunities (p. 806).

In terms of responding to the 'problem' of Aboriginal disadvantage, the Wood Report raised the role of the Commonwealth government and issues of Commonwealth/State relations. For example, a discussion of the Commonwealth Government's *New Directions Policy: An equal start in life for Indigenous children* was included in the Report. It identified that this policy targeted the funding of key program areas such as primary health initiatives; parenting support; and early childhood programs (p. 758). The Wood Report included **Recommendation 18.4**, which suggested that the NSW State Government engage 'actively with the Commonwealth in securing the delivery of services identified in the *New Directions Policy* and in the 2008/09 Commonwealth Budget that were earmarked for the benefit of Aboriginal people' (p. 759).

In adding to the above, the Wood Report emphasised that the Commonwealth Government's *New Directions Policy*; the *2005-2010 Bilateral Agreement* between the Commonwealth; and the State Government's NSW Aboriginal Affairs *Two Ways Together* Plan, had been established. The strategic development of *Two Ways*

²⁰ The visit prompted the Inquiry team to include a case study in the Report.

Together further developed *Shared Responsibility Agreements*²¹ and as a result saw the implementation of the '2002 *Murdi Paaki* COAG trial' (p.759). In essence, the Wood Report provided a reminder to the NSW Government of its existing obligations to address Aboriginal disadvantage.

The 'problem' of NSW government agencies lack of commitment to Aboriginal child protection.

The Wood Report problematised the NSW Government in other ways; and DoCs in particular. For example, during the Wood Inquiry processes it requested information relative to the Department's response to the *Bringing Them Home* recommendations. In encapsulating concern for Aboriginal children, the Wood Report referred to *Bringing Them Home*, stating that:

The report concluded that though legislation and the language used in the child welfare field had changed, paternalistic attitudes towards Aboriginal children and families persisted in child welfare departments in Australia. The experience of Aboriginal children and families with child welfare agencies was still reported to be overwhelmingly one of cultural domination and inappropriate and ineffective servicing, **despite attempts by department to provide accessible services.** (pp. 744-745, my emphasis)

The Wood Report provided evidence that DoCs had responded to the request for information about the changes the organisation had made, and stated:

that the organisation formally apologised about the removal of Aboriginal children from their families from 1883 to 1969²²; achieved amendments to relevant legislation in accordance with nine of the Report's recommendations, including

²¹ Shared responsibility agreements are voluntary agreements between governments and Aboriginal communities developed where Aboriginal people and communities decide that they want to address specific priorities (Wood Report, 2008, p. 759).

²² The DoCS were known as the NSW child welfare department - the government agency in control of the removal of Aboriginal children and young persons.

access to records self-determination and the Aboriginal Child Placement Principle; developed a relative and kinship care policy targeting the employment of Aboriginal carers and they developed an Aboriginal Strategic Commitment Plan (p. 738).

The *Aboriginal Strategic Commitment Plans* (2006-2001) outline the DoCS obligation to Aboriginal families involved in the NSW child protection system. The Wood Report also reported that DoCS had indicated they had collaborated with all tiers of government such as: The Joint Investigation Response Team (JIRT); NSW Police; Aboriginal advisory groups; in addition to building external partnerships with NSW Health in the Aboriginal Maternal Infant Health Strategy²³ (AMIHS) program (Wood, 2008, pp. 770-772).

The Wood Inquiry found that since the completion of the *Bringing Them Home* Report in 1997, DoCS had implemented various initiatives concerned with Aboriginal child protection business. For example, internal strategies included: the recruitment of Aboriginal staff to work in specific areas such as OOHC policy and statutory requirement accreditation; the implementation of the *Brighter Futures*,²⁴ EI strategic initiative for all families, which has targeted Aboriginal families: it had implemented the *Family Group Conferencing* model²⁵ and the *Intensive Family Based Services*²⁶ (IFBS), model with a view to involving the family in the decision-making process regarding their child or young person.

²³ AMIHS was developed and initiated by NSW Health in 2000 It is a specific model of service provision, which includes a team approach to community maternity services (Wood Report, 2008, p.787).

²⁴ Brighter Futures was established in an effort to address demands on the child protection system through intervening earlier with an integrated set of services to meet the needs of vulnerable children and families (Wood Inquiry, 2008, p.232), thus the main focus is on early intervention and preventing removal.

²⁵ Family Group Conferencing involves bringing together the child or young person, members of their immediate and extended family, and child protection professionals to discuss issues, come to a resolution and develop and plan for future action (Wood Report, 2008, p. 481).

²⁶ The IFBS aims to protect children, prevent potential OOHC placement and build on family skills and competencies working in partnership with the family.

In assuring support for the inclusion of future EI initiatives, four recommendations were included in the Wood Report, comprising the direction for the amendments to the current DoCS EIP programs. The First **Recommendation (10.5 b)** is:

Brighter Futures should be extended progressively to provide services to children aged 9-14 years with priority of access to services for Aboriginal children and their families (DoCS estimates that this should assist an addition 3,400 families). (pp. 385-386)

The second **Recommendation (10.5 c)** suggested that:

The number and range of family preservation services provided by NGOs should be extended. This should include extending Intensive Family Based Services to Aboriginal and non-Aboriginal families (DoCS estimates that this should assist an addition 3,000 families). (pp. 385-386)

The third **Recommendation (10.5 d)** referred to the expertise of The NSW Health Departments' AMIHS and encouraged the NSW government to increase delivery:

The Aboriginal Maternal and Infant health Strategy should be delivered statewide (funds have been allocated for this service). (p. 386)

Finally, **Recommendation (10.5 g)** advised that:

Co-located child and family centres servicing Aboriginal communities, involving health and education services should be developed. (p. 386)

The above four recommendations were already established within the DoCS system, thus the Wood Report was restating them in order to assure continuity of the programs.

Another DoCS response to *Bringing Them Home* referred to in the Wood Report was that the agency had initiated cultural support for OOHC clients in accordance with the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles*; however, concerns regarding the Principles were identified in the Wood Report. For example, the Report cited Valentine and Gray (2006) who expressed concern about the limitation in assuring the sustainability of Aboriginal culture of Aboriginal children (p.

425). As such the Wood Report suggested that 'clear guidelines need to be developed and implemented to assist caseworkers to consistently and meaningfully apply the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles* – there may be regional differences in their application which should be accommodated' (p. 429). The Wood Report recommended more commitment to Aboriginal culture from DoCS, when applying the 'Principles'. **Recommendation 11.5** stipulates that:

DoCS should develop guidelines for staff in order to ensure adherence to the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles in s.13 of the Children and Young Persons (Care and Protection) Act 1998. (pp. 462-462)

The Wood Report also problematised the NSW Government's ACSAT Report. The most significant issues raised included 'lack of an independent oversight of the implementation of the recommendations by the NSW Ombudsman (Recommendation 21 of the ACSAT report) and that the 'design of performance indicators was measured on the process instead of provision of tangible practical outcomes for Aboriginal children and young persons or their families' (p. 769). The Wood Report suggested that more than one-third of the 119 recommendations of the ACSAT Report were not addressed by the Interagency Plan nor did the NSW Government accept all recommendations (p. 765-766), as a result, key Aboriginal child protection recommendations were not addressed²⁷. Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner (cited in the Wood Report) stated that:

While the plan is a step in the right direction on the part of the New South Wales Government, it also highlights the limitations of addressing such an issue of such

²⁷ (1) establishing an Aboriginal child sexual assault coordination unit; (2) concerning the way in which the government provides funding for regional and local initiatives to address child sexual assault issues; (3) proposing a formal review by the Ombudsman of how the ACSAT report recommendations are implemented; (4) providing more prevention and early intervention services; (5) relating to the conduct of annual reviews of all DoCS supported placements for Aboriginal children and (6) relating to the development of community based offender treatment programs for adults, that can be available for self-referral and are not dependent for access on involvement in the criminal justice system (Wood Report, 2008, pp. 765-766).

scale and seriousness without the commensurate level of responses and resources. (p. 766)

Therefore, a serious problem identified by the Wood Report was the non-compliance of key stakeholders who were responsible for the implementation of the ACSAT recommendations.

Consequently, the focus of Aboriginal child safety considered in **Recommendation 18.1** (p. 791), included that the NSW Ombudsman ‘audit the implementation of the Aboriginal Child Sexual Assault Taskforce’ (Wood, 2008, 791); positioning it within a similar context to the findings of the 2007 Northern Territory’s *Little Children are Sacred* Report²⁸, Recommendations **18.2 a-e** (pp. 791-792), made a number of suggestions for the NSW Government to consider that concerned alcohol control in Aboriginal communities; financial intervention for all families experiencing serious and persistent child protection issues; improve school attendance in other ways rather than incarceration; establish night patrols, and accommodate children at risk of harm in boarding-house type accommodation to care and educate them. In addition, **Recommendation 18.3** concerned the ACSAT Report, and the NSW Government taking steps to ensure that ‘the actions in the Interagency Plan be carried into effect within the lifetime of the plan’ (p. 792).

The most significant observation on the ACSAT Report included in the Wood Report however; was that the ‘design of performance indicators was measured on the process instead of provision of tangible practical outcomes for Aboriginal children and young persons or their families’ (p. 767). Hence it was impossible to measure ‘success against the Interagency Plan’ (p. 769).

The ‘problem’ of how the NSW government agencies measured outcomes for Aboriginal children and young people was also applicable to how DoCs measures outcomes for children in OOHC. For example, the Wood Report stated that:

²⁸ The Little Children Are Sacred report involved examining the extent, nature and factors contributing to sexual abuse of Aboriginal children (Wood Report, 2008, p. 748-749).

Even where the action relates to a specific service, such as Intensive Family Based Services, current performance indicators are about the completion of a service evaluation, rather than whether there has been a greater availability of services or any improvement in outcomes for Aboriginal children and young persons. (p. 767)

The Wood Report impressed the need for a more outcomes-based approach to service delivery for Aboriginal families, and in **Recommendation 10.6** stated:

The capacity of NGOs, Aboriginal and non-Aboriginal staff to deliver the services detailed in Recommendations 10.4 and 10.5 a, b, c, e, f and g to children, young persons and families, particularly those who present with a range of needs including those which are complex and chronic, should be developed. The principles underpinning performance-based contracts should apply. (p. 386)

Thus, the principles that underscore performance based contracting are an outcomes-based reporting system. Therefore, the analysis identified that the Wood Report had brought to the forefront the insufficient responses from relevant government agencies, to address Aboriginal disadvantage.

The 'problem' of Aboriginal capacity

As discussed above, one of the Wood Report's principles was that:

Aboriginal and Torres Strait Islander people should participate in decision-making concerning the care and protection of their children and young persons with as much self-determination as is possible, and steps should be taken to empower local communities to that end. (p. 380)

In addition, the Wood Report stated that 'DoCS are committed to increasing the capacity of Aboriginal communities to deliver early intervention and intervention services' and 'to work with DoCS funded Aboriginal organisations to ensure they are fully functional, sustainable and have good governance' (p. 425). Although the above statements were made, the Wood Report stated: 'However, the quantity and difficulty of

work required to bring the Aboriginal NGOS to the point where they can realistically take full responsibility for the safety and welfare of Aboriginal children should not be underestimated (p. 425). As such, the Wood Report problematised the capacity of Aboriginal people and organisations to 'participate in decision-making ...with as much self-determination as possible' (p. 380).

The Wood Report referenced previous studies that had provided the impetus for more inclusion of Aboriginal decision-making into the NSW child protection system, but which also problematised the capacity of Aboriginal communities to be involved. For example, the Wood Report cited an inquiry undertaken in 2004 by the Commonwealth Government to do with capacity building and service delivery in Aboriginal communities. First, the Report included a definition of the term "capacity" as described by the Commonwealth Government as 'activities which seek to empower individuals and whole communities while building the operational and management capacity of both organisations and governments to better deliver and utilise services' (p. 774-775).

The Wood Report explained that the Commonwealth Government described the concept of capacity as positioned within three overlapping levels. The first level 'involves the capacity of governments to be more responsive and effective in addressing service delivery, the second level is about building the capacity of Indigenous people and organisations ...to influence the effectiveness of service delivery and the third combined all layers to reduce the need for service delivery by working together to improve Indigenous people's quality of life' (pp. 776). The Report included the Government's claim that 'unless issues of dysfunction and disadvantage in Indigenous communities are addressed, greater capacity building efforts will remain largely ineffective'; and adding, that:

...government agencies needed to understand and work with Aboriginal people and to build the capacity of Aboriginal people and communities, to participate in decision-making process, with a view to finding solutions to the problems associated with Aboriginal service delivery. (p. 775)

The Wood Report also referenced the capacity building initiatives that DoCS had initiated. For example, DoCS had engaged with key Aboriginal OOHC stakeholders such as AbSec, SNAICC and ACWA²⁹ to explore building capacity within Aboriginal communities to establish Aboriginal OOHC services; and it had committed to continuing and participating in future research in child protection (p. 770). Furthermore, DoCS engaged with Aboriginal communities, to establish ways to deliver OOHC foster carer support programs in the belief that it would increase ‘the capacity of DoCS funded Aboriginal OOHC agencies to case manage more Aboriginal children in OOHC’ (p. 776).

As a result of referencing other government agencies and research undertaken concerning strategies to building the capacity of Aboriginal organisations, the Wood Report included **Recommendation 8.5** which represents the how-to component when implementing ways to build capacity:

The NSW Government should develop a strategy to build capacity in Aboriginal organisations to enable one or more to take on a role like that of the Lakidjeka Aboriginal Child Specialist Advice and Support Service³⁰, that is, to act as advisers to DoCS in all facets of child protection work including assessment, case planning, case meetings, home visits, attending court, placing Aboriginal children and young persons in OOHC and making restoration decisions. (p. 322)

The Wood Report also put forward that the Nowra pilot³¹ would add value to Aboriginal decision-making in the court process. **Recommendation 12.2** stated:

²⁹ ACWA is the Association of Child Welfare Agencies – the peak body for child welfare in NSW.

³⁰ Lakidjeka Aboriginal Child Specialist Advice and Support Service (Lakidjeka) is an Indigenous specific response to child protection intervention in Victoria (Wood Report, p. 292).

³¹ The Nowra Care Circle pilot initiative centres on how Aboriginal parents can have input to the legal procedures by participating voluntarily in a conference style forum (Aboriginal care circles) comprising a Children’s Court Magistrate, Project Officer, manager and caseworker, the child’s parents and their legal representative, the child’s legal representative and three community members (Best 2011).

The Nowra Care Circle Pilot should be monitored and evaluated. If successful, consideration should be given to its extension to other parts of the State with significant Aboriginal communities. (p. 491)

In addition, because data revealed the high number of Aboriginal families involved in the NSW child protection system, **Recommendation 16.12** emphasised that:

Due to the large numbers of Aboriginal children and young persons in OOHC, priority should be given to strengthening the capacity for Aboriginal families to undertake foster and kinship caring roles. (p. 690)

The Wood Report perceived 'capacity building in Aboriginal communities, as also critical to building more culturally appropriate models for supporting Aboriginal children' (p. 774), thus positioning Aboriginal capacity building and decision-making in this way:

Building capacity in Aboriginal organisations is the focus of the report, as is the need for the adoption of other methods of reducing Aboriginal representation in the child protection system, and of securing greater participation of Aboriginal agencies in that system. (Wood, 2008, Vol.1, p. ix)

Therefore, the recommendations concerning Aboriginal child protection service reform in the 2008 Wood Report focused on initiatives to build the capacity of Aboriginal families, communities and organisations as a route to Aboriginal and Torres Strait Islander participation in decision-making.

Conclusion

In conclusion, this chapter has provided an analysis of what is understood to be the key document in the reform of NSW child protection system, the 2008 three volume Report of the *Special Commission of Inquiry into Child Protection Services in NSW*, or the Wood Report. Question Two of the thesis was: *How was the Aboriginal child protection problem represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?* and this chapter provided important insights into how Aboriginal child protection was problematised in the Report.

The chapter introduced the fundamental purpose of the 2008 Wood Report; second it discussed the approach and structure of the Report including; the key recommendations, principles and goals that underpinned the reform into child protection services in NSW. The most prominent finding was that the Wood Report recommended a new whole of government child protection framework that would comprise an integrated government and non-government child welfare service system within an EI service delivery framework. The Wood Report explored why combined expertise from government and non-government agencies is important for the future planning of the NSW child protection services. Thus, the Wood Report concluded that the safety of a child should involve the commitment of all relevant government and non-government agencies. The focus of the analysis presented here, however, was how the Wood Report represented Aboriginal child protection business.

Four key problematisations were identified in the Wood Report: (i) the 'problem' of statistical overrepresentation; (ii) the 'problem' of 'disadvantage as Aboriginal disadvantage; (iii) the 'problem' of NSW government agencies lack of commitment to Aboriginal child protection, and (iv) the 'problem' of the capacity for Aboriginal organisations and individuals to be more involved in service delivery and decision-making in the NSW child protection system. The analysis demonstrates that the Wood Report constructed the 'problem' of Aboriginal child protection in quite distinctive ways.

The next chapter is the final WPR analysis for the thesis. It provides an overview of where the NSW Government were positioned, after accepting the Wood Report recommendations concerning the reform in child protection service delivery in NSW. The new policy in NSW child protection entitled: *Keep Them Safe – a shared approach to child wellbeing*, is the final key moment in the reform of child protection policies delivered by the *Report of the Special Commission of Inquiry into Child Protection Services in NSW*. The chapter provides an opportunity to analyse how the NSW Government responded to the Wood Report through an analysis of the Keep Them Safe Action Plan for Aboriginal Child Protection Service Delivery.

Chapter 7: ‘WPR’ Analysis of the Policy Entitled: Keep Them Safe: A Shared Approach to Child Wellbeing

Introduction

This chapter provides a close examination of the 2009 *Keep Them Safe – A shared approach to child wellbeing* policy document, which outlines the NSW government’s Keep Them Safe Action Plan³². This Plan was the response to the completion and handing over of the 2008 Wood Report to the NSW Government and it describes how the Government approached the implementation of the Wood Report recommendations. The document addressed five key elements of the operational structure of the NSW Department of Community Services that would be subjected to reform as a result of the Wood Inquiry. These elements included: (i) universal services; (ii) early intervention services; (iii) protecting children; (iv) practices and systems; and (v) strengthening partnerships and supporting Aboriginal children and families. Consequently, the policy document identified the new policies to be put in place to reform NSW child protection services, including a specific focus on Aboriginal child protection business.

The chapter is presented in two parts. The first part discusses the approach and structure of the Keep Them Safe Action Plan, which is the actual policy. It is descriptive and includes extracts from the whole policy text. The second part of the chapter describes how Aboriginal issues were problematised in the Keep Them Safe Action Plan, through a focus dedicated to Aboriginal children and young people. This focus is drawn from Chapter 5 titled “Supporting NSW Aboriginal Children and Families”, which has included in it, an *Aboriginal Action Plan* (see attachment 1). The analysis of these sections of the policy shows the relationships (or otherwise) between current Aboriginal child protection policies and the recommendations included in the Wood Report. Hence,

³² The acronym “KTS” will be used to reference information drawn from the *Keep Them Safe – A shared approach to child wellbeing* policy text.

in alignment with the aims of the thesis, Chapter 7 problematises how Aboriginal people were included and represented in the NSW child protection policy reform processes.

The Approach and Structure of the Keep Them Safe Action Plan

The Keep Them Safe Action Plan framework included: a set of principles; a set of measured outcomes; and the abovementioned elements. These were identified as the core components underpinning the Wood Report recommendations, and of the overall operational functions of the Plan. The then NSW Premier Nathan Reece stated that the 'Keep Them Safe document represents a genuine and thorough effort by the Government to engage, consult and partner with stakeholders across the government and non-government sectors' (KTS, 2009, para. 2). In introducing the child protection service delivery reform, he further indicated that the 'care and protection for children and young people is a shared responsibility' (para. 3).

The then Minister for Community Services, Linda Burney stated that 'the goal of the NSW Government is that all children in NSW are healthy, happy and safe and grow up belonging in families and communities where they have opportunities to reach their full potential' (para. 10). Minister Burney further stated that 'Keep Them Safe is our five-year plan' and that the existing child protection services system required a 'major change in culture and a new mindset, to enable the DoCS to prioritise the resources needed for children and families and that they are supported and protected' (para. 16). Furthermore, the Minister added that a 'central aim of the reform program is to get services to more children and families and to get them there sooner' (para. 10).

Therefore, both the Premier and the Minister for Community Services stated their agreement with the findings of the Wood Inquiry and that the way forward for the reform in NSW child protection services rested upon the development of a more collaborative process, whereby key agencies formed partnerships in service delivery. Thus it underpinned the principle that 'child safety would be everyone's business' (p. i). It appeared that there was an expectation of major reforms to the child welfare system throughout NSW. The Keep Them Safe Action Plan was therefore underscored by a set of principles that would guide this reform. The principles put forward in the Wood Report

to 'guide child protection in NSW' were restated in the Keep Them Safe Action Plan (see Chapter 6).

The NSW Government accepted the Wood Inquiry's findings that the NSW child protection service system should operate as a child-focused 'integrated system that supports vulnerable children, young people and their families' and that such an integrated system would be an 'alternative way for children and families to access support services' (KTS, 2009, p. ii) but also that the reforms would enhance already established prevention and intervention services.

A key component of the Keep Them Safe Action Plan included a set of measured outcomes, ostensibly goals or indicators that could be tracked over time. These measured outcomes were intended as a way of operationalising the stated goal that 'all children in NSW are healthy, happy and safe, and grow up belonging in families and communities where they have opportunities to reach their full potential' (para. 9). The measured outcomes were:

- I. Children have a safe and healthy start to life
- II. Children develop well and are ready for school
- III. Children and young people meet developmental and educational milestones at school
- IV. Children and young people live in families where their physical, emotional and social needs are met
- V. Children and young people are safe from harm and injury
- VI. Children, young people and their families have access to appropriate and responsive services if needed. (p. ii)

Consequently, these six measured outcomes were used to inform how the child protection support system would achieve those outcomes in practice. Basically, the system would: intervene early if there are issues affecting the safety of children; it would strengthen families; and would be based on a strong universal Early Intervention (EI) and community-based services system (pp. iii & 10). Thus, in identifying how outcomes would be measured, the Keep Them Safe Action Plan aligned the above with seven

targeted areas or ‘elements’ (p. iii) in the Plan. The identified elements each had their own Action Plan for reform in child protection services and chapters of the Keep Them Safe Action Plan were dedicated to these elements.

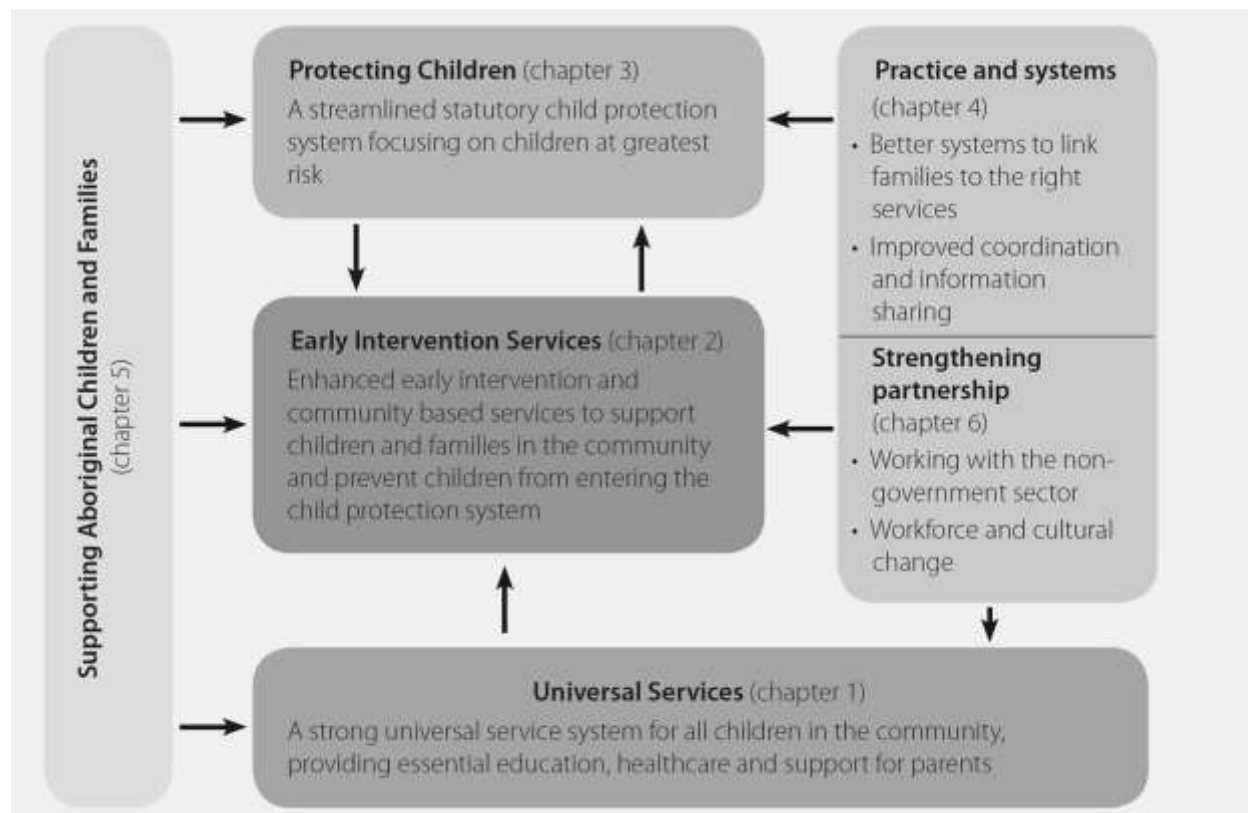


Figure 7.1 Identified elements for reform and corresponding chapters (source: KTS, p. iv)

A final chapter in the Keep Them Safe Action Plan, Chapter 7, detailed the schedule of actions identified in each of the chapters. It stated in the Keep Them Safe Action Plan that ‘the government would monitor each plan; develop specific indicators to measure outcomes; make public annual reports; and consider evidence-based programs for initiatives implemented’ (p. iv).

Chapter 5 of the Keep Them Safe Action Plan proposed a separate set of priorities for Aboriginal children and young people which included: (i) capacity building; (ii) universal services; (iii) early intervention services; (iv) child protection services; (v) statutory child protection; and (vi) the Aboriginal workforce. Although this chapter was devoted to Aboriginal children and families, Aboriginal child protection issues were also featured in other areas earmarked for reform in the Keep Them Safe Action Plan policy text. The

next section discusses how Aboriginal people were included and represented in the NSW Keep Them Safe Action Plan.

Keep Them Safe Action Plan elements aimed at supporting NSW Aboriginal children and families

The WPR analysis of Chapter 5 and the *Aboriginal Action Plan* made visible how Aboriginal child protection was problematised in the Keep Them Safe Action Plan. Thus it described the proposed reforms in policies and services for Aboriginal families. Four ‘problems’ were evident: (i) the ‘problem’ of statistical overrepresentation caused by systemic disadvantage; (ii) the ‘problem’ of Government failure to address systemic disadvantage; (iii) the ‘problem’ of building capacity of Aboriginal organisations; and (iv) the ‘problem’ of the absence of Aboriginal decision-making.

The ‘WPR’ analysis of the Keep Them Safe Aboriginal Action Plan: Problem Representations

The ‘problem’ of statistical overrepresentation caused by systemic disadvantage

Chapter 5 cited the Wood Report on several occasions. For example, it represented the statistical information provided in the Wood Report concerning Aboriginal children and young people involved in the NSW child protections system as significant. These included the statistics that showed the very high number of placements in OOHC for this group and those that highlighted the considerable disparity between Aboriginal children and young people and other children placed in statutory care. In reiterating the Wood Report, the stated problem to be addressed by the Keep Them Safe Action Plan policy is the ‘huge and unacceptable overrepresentation of Aboriginal children and young people in the child protection and juvenile systems’³³ (p. 28). In Chapter 5 various statistics from the Wood Report were cited to make sense of the causal factors

³³ The thesis concerns Aboriginal child protection and will not include Aboriginal juvenile issues.

associated with the removal of Aboriginal children and young people. The statistics showed that reports about Aboriginal children to the DoCS Helpline were triple that of others; and Aboriginal babies were five times more likely than *non*-Aboriginal babies to be reported to the DoCS Helpline. In addition, 'repeated reports to the Helpline can be 20 times more for an Aboriginal child' (p. 28), and Aboriginal children made up 30% of children in the NSW OOH system (p. 15). As in the Wood Report, the use of combined statistics on a variety of measures were used in order to shore up and solidify a representation of the 'problem' to be addressed by the policy as the 'problem' of statistical overrepresentation. The 'problem' was described as a 'serious situation for Aboriginal families' (p. 28) and it was this situation that was prompting the Government to declare its determination to reverse these 'current intolerable trends' (p. 28).

In addition, Chapter 5 recognised the Wood Report's reference to the 2006 ACSAT Report of which related to the safety of Aboriginal children and young people. It cited references to past practices, laws and policies that caused the removal of Aboriginal children from their families; making links between them and systemic disadvantage such as 'poor health, drug and alcohol abuse, unemployment discrimination, poor education, housing and the disempowerment of parents and communities' (p. 28). Thus, as in the Wood Report, the Keep Them Safe Action Plan policy linked the level of disadvantage experienced by Aboriginal people in NSW to the safety of Aboriginal children. The language in Chapter 5 repeats this logic stating that systemic disadvantage has been exacerbated by the 'ongoing generational effects of earlier laws, policies and practices' (p. 28) which are associated with 'the cumulative effects of poor health, drug and alcohol abuse, unemployment, discrimination, poor education, housing, disempowerment of parents and communities and family violence' (p. 28). These are factors that have had ongoing effects that resulted in 'poor health and developmental outcomes for Aboriginal children and young persons not only when they lived with family, but it had repercussions for when the child was placed in the Out-of-Home Care' (p. 34).

The then Minister for NSW Community Services, Linda Burney, stated that 'Government will work to address the unacceptable overrepresentation of Aboriginal children in the

child protection system' and will 'work with Aboriginal organisations to have an enhanced role in the provision of Out-of-Home Care and other services (para. 15). The implications from both the Wood Report and the Keep Them Safe Action Plan therefore, intended the direction in Aboriginal child protection to be led by the NSW Government. For example, it advised the 'need for integrated locally based services providing a full continuum of care, ranging from prevention/early intervention through to targeted and specialist support services', (p. 29).

As a result, the policy proposed an operational framework that positioned government and non-government agencies in a single service system by linking into universal services including, 'primary health care, school and early childhood education and other parent and children support services, such as programs based on developing better parenting skills, school and community support centres' (p. 31). In a sense, then, the 'solutions' to the 'problem' of overrepresentation mean that the 'problem' becomes a problem of Aboriginal people: they are represented as having poor health, poor education, and poor parenting skills. This representation is made logical through the representation of Aboriginal people being systematically disadvantaged through 'past practices'. Yet the 'problem' of statistical overrepresentation also carried with it serious issues concerning service system failure. The assumption was that reforms to the internal organisational administrative systems of the government would address the problem of overrepresentation and this could be achieved by providing Aboriginal people an enhanced role in the provision of OOHC and other services (as quoted by Minister Burney above).

The 'problem' of Government failure to address systemic disadvantage

The WPR analysis of Chapter 5 found that 'tackling systemic disadvantage is critical to improving outcomes for Aboriginal children and their families' (p. 28). Furthermore, stating that the 'State Plan includes commitments on reducing rates of child abuse and neglect and on improved health, education and social outcomes for Aboriginal people' (p. 28). The chapter also focused on solutions to reduce systemic disadvantage by highlighting the importance of the collaborative arrangement between relevant State

and Commonwealth Government departments. This distinction was exemplified in Chapter 5 in claiming that the 'State, Commonwealth and Territories are working together through COAG to address the systemic disadvantage of Aboriginal people' (p. 28). Here, the relationship between governments is implicitly problematised.

Therefore, in providing how the *Aboriginal Action Plan* would function, it linked the NSW State Plan to a set of measured outcomes specifically aimed at 'reducing rates of child abuse and neglect ...for Aboriginal people' (p. 28). They included:

- Safe Families – ensuring Aboriginal families are supported to live free from violence and harm
- Education – increasing the readiness to learn of Aboriginal children prior to school entry
- Environmental health – ensuring that all Aboriginal communities have equitable access to environmental health systems
- Economic development – increasing Aboriginal employment, and
- Building community resilience (p. 28).

In addition, Chapter 5 referenced the *NSW Aboriginal Affairs Two Ways Together Plan* led by the NSW DAA. This initiative was based on two things: the 'wellbeing of Aboriginal people and encouragement of Aboriginal involvement through the establishment of partnerships with the Aboriginal community' (p. 29). Furthermore, it refers to an agreement reached nationally by the 'Council of Australian Governments' (p. 29), which included measured outcomes in the 'National Framework for Protection of Australia's Children' (p. 29) also associated with Aboriginal systemic disadvantage. These outcomes centred on closing the gap in life expectancy, mortality rates, access to early childhood education, numeracy and literacy levels, retention in senior grades and unemployment statistics (p. 29). Therefore, underpinning the way forward in the reform in Aboriginal child protection service delivery, a collaborative approach to improve the lives of Aboriginal people was to be precipitated by a bipartisan agreement between the State and Commonwealth Governments, again problematising governmental relationships.

Consequently, a reduction of the overrepresentation of Aboriginal children and youth in the NSW child protection system would rely on a 'platform for developing policies and reforms' (p. 28). The platform would be 'complemented by the NSW Aboriginal Affairs *Two Ways Together*, the *NSW State Plan* and whatever National Agreement was in place with the Council of Australian Governments' (p. 28). The implied problem was the absence of Aboriginal people and organisations to lead the reform in Aboriginal child protection business. Indeed, current policies are still based on the historical duplication of systemic control in finding solutions to the overrepresentation problem. Thus, the problem of systemic disadvantage systematically reduced the intended implementation of the Wood Report's list of targeted principles, (p. ii) that focused on the participation of Aboriginal decision-making; self-determination and empowering local communities; which in a genuine relationship between government and Aboriginal people, would systematically empower Aboriginal people and communities.

Therefore, a serious weakness with this proposal was that there was too much emphasis on the internal systems of government rather than taking it externally to link the involvement of Aboriginal people to the new service delivery framework of universal provision of child welfare services. Thus, it conflicted with the abovementioned statements made by the Premier and the Minister; that the intention of the *Aboriginal Action Plan* was to work with Aboriginal people, implying that they would be included in the reform for Aboriginal child protection services. In addition to dismissing the Wood Report's recognition of the significance of securing greater participation of Aboriginal agencies to take on a more active role in making decisions about Aboriginal children involved in the NSW child protection systems.

The 'problem' of building capacity of Aboriginal organisations

The WPR analysis identified how capacity building positioned a solution to systematic disadvantage for Aboriginal children involved in the NSW child protection system. The implied problem, therefore, is the lack of capacity of Aboriginal organisations. For example, the term 'Aboriginal capacity building' (pp. 28, 29, 30, 34, 35 and 36) is repeated, plus it linked capacity building to 'working in partnership' (pp. 28, 29, & 36)

and 'empowering local Aboriginal communities to participate in decision-making' (pp. 29- 31). It also included discourse that appeared to instil a culturally appropriate service delivery system that would be included in the *Aboriginal Action Plan*. For example, statements like 'effective in consultation with the young person's family or kinship group' (pp. 30, 31 & 34); 'culturally appropriate services for Aboriginal children and families' on pages 30, 31, 32, 33, 34 and 35, also that agencies need to improve cultural awareness and cultural competence of non-Aboriginal staff, by respecting the contemporary cultural beliefs and practices of Aboriginal people' (p. 36).

Hence, the analysis identified that a stated goal was to 'broaden the responsibility for child protection' and to find 'a greater role in the child protection system for community organisations, both Aboriginal and non-Aboriginal' (p. 30). However, the use of language such as 'broaden responsibility' and 'a greater role for community organisations' (p. 30), has the potential to relay an erroneous view that the reform in child protection service delivery is inclusive to Aboriginal people's involvement, whereas, clearly it is a reform that concentrates on finding ways to fix mainstream service systems.

Furthermore, Chapter 5 cited how the Wood Inquiry viewed capacity building of Aboriginal organisations as central for developing and implementing strategies to reduce the overrepresentation of Aboriginal children in the NSW OOHC system. It also stated that 'capacity building in Aboriginal communities is crucial to allow Aboriginal community members to play critical roles in the protection of their children' (p. 34); further citing from the Wood Report claims that 'capacity building is central to ensuring that Aboriginal people can play significant and successful roles in the new system' (p. 30). In addition, it was stated in this chapter that there were 'many strengths in Aboriginal communities', and further recognised the Wood Report's recommendation that 'leadership from both the Government and community is essential' (p. 28) in building a case for reform in Aboriginal child protection service delivery. The implications for recognising a partnership approach was to 'reverse these trends for the next generation of Aboriginal children' (p. 28).

In consolidating the above discussion, Chapter 5 focused on ways to build the capacity of engagement with key stakeholders, such as government and non-government agencies, Aboriginal people and organisations. It claimed it would ‘...strengthen Aboriginal organisations so that they are engaged more generally in-service delivery and have a stronger voice in shaping service structures, rather than being perceived as providers of specialist services only (p. 42).

Clearly, capacity building of Aboriginal organisations was framed within a collaborative and integrated framework that included a whole of government and community engagement approach. Yet the collaboration was represented as one that positions government as external to Aboriginal people and organisations: the government will be ‘engaging effectively’ (3 references); and is committed ‘to consulting closely with Aboriginal organisations and others’ (p. 34). Importantly, the chapter had drew from Point 6 of the Wood Report’s set of principles, the need for building the capacity of local Aboriginal communities, to develop service system inclusivity for Aboriginal people. It was recommended by Commissioner Wood that this strategy was central to finding solutions to overrepresentation. However, the discourse in this chapter cautiously conceded that it will be ‘especially important for the capacity of Aboriginal NGO’s to be increased’, but it proposed that more development in this area is needed as ‘Aboriginal NGOs need access to adequate infrastructure and training’ (KTS, 2009, p. 42). Indeed, the response included questioning the skills set of Aboriginal people/organisations.

Therefore, the analysis identified that on the one hand the Government wanted capacity building of Aboriginal organisations to happen, but on the other, it questioned the ability of Aboriginal people to manage Aboriginal child protection services. Thus, Chapter 5 put forward solutions but destroyed the potential to develop this part of the reform by including in the acceptance the significance in building capacity of Aboriginal organisations; they lack the infrastructure and require training; further ignoring the recommendation in the Wood Report and ignoring the significance of Aboriginal decision-making.

The 'problem' of the absence of Aboriginal decision-making

As mentioned above, the then Minister for NSW Community Services, Linda Burney stated that 'Government will work to address the unacceptable overrepresentation of Aboriginal children in the child protection system' and will 'work with Aboriginal organisations to have an enhanced role in the provision of Out-of-Home Care and other services' (KTS, 2009, para. 15). Her statements signified that government would be responsible for addressing Aboriginal child overrepresentation and that the reform would focus on specific after removal service delivery; which is OOHC. Thus, the enhancement of the capacity of Aboriginal OOHC agencies or communities underscored the objective of strengthening Aboriginal decision-making. Further problematising how Aboriginal decision-making is seated within the context of building the capacity of Aboriginal organisations in the *Aboriginal Action Plan*, the analysis identified that Chapter 5 also discussed the 'problem' of Aboriginal decision-making in suggesting that the overall aim of the Plan was to incorporate a collective responsibility that would make 'child protection everyone's business' (p. i), hence it is 'critical to engage and work in partnership with Aboriginal communities to identify the best approaches that will work in local areas and communities' (p. 23).

The analysis identified that the 2008 Wood Report recognised that Aboriginal self-determination hinged on Aboriginal decision-making, thus empowering Aboriginal decision-making in service delivery, as identified previously in Point 7 of the Principles adopted from the Report (see Chapter 6). So, how did the discourse in Chapter 5 represent the issue of empowering Aboriginal people through decision-making process and procedures?

Chapter 5 of the Keep Them Safe Action Plan policy text recognised the Wood Report's' recommendation to empower Aboriginal communities, by referring to the regulations of the *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles* in the *Children and Young Persons (Care and Protection) Act 1998*. In so doing, the analysis identified that the NSW Government 'recognises the Principles are significantly broader and can provide a foundation for the way government agencies consult with

families, organisations and communities; develop, design and fund programs; prepare guidelines for service delivery and develop partnerships' (p. 30).

For example, the NSW Government recognised that the reform in child protection services aimed to help Aboriginal children live 'healthy lives, full of promise and opportunity' (para. 10) and that this concept was important to strengthen local Aboriginal services to provide input to decisions made about Aboriginal children at risk; and channel referrals to specialist EI programs at a local level. In practice, a couple of initiatives were cited as being related to Aboriginal decision-making. For example, in response to serious child abuse cases, Chapter 3 of the Keep Them Safe Action Plan included a commitment to recognise the Joint Investigation Response Teams³⁴ (JIRT) 'guidelines for facilitating Aboriginal community engagement' (p.11) and supported the recommendation concerning a pathway to prevent the removal of Aboriginal children by extending the already established 'Intensive Family-Based Services [IFBS]³⁵ to Aboriginal and non-Aboriginal families' (p. 14). Chapter 5 also followed the Wood Reports' suggestion that because the Victorian Lakidjeka³⁶ model is a tried and tested method of Aboriginal decision-making, the NSW 'peak body for Aboriginal child protection issues, AbSec, would be included in this process' (p. 24). The JIRT and the IFBS initiatives are current programs and the Lakidjeka model is an identified initiative for future consideration. Thus, Chapter 5 revealed a similar view as the Wood Report that Aboriginal people should be included in decision-making concerning Aboriginal children.

However, Chapter 5 disregarded empowering Aboriginal people. Instead the future direction in reforming Aboriginal child protection services is in fact represented as empowered Government agencies, and dismissed the principle of empowering

³⁴ Joint Investigation Response Teams (JIRT) enable inter-agency collaboration in responding to serious cases of child abuse, including sexual assault and neglect' (KTS, 2009, p. 11).

³⁵ IFBS is based on the successful evidence-based US Homebuilders model – it provides intensive support for families so that children are not removed (Keep Them Safe, 2009, p. 14).

³⁶ Lakidjeka Aboriginal Child Specialist Advice and Support Service (Lakidjeka) is an Indigenous specific response to child protection intervention in Victoria (Wood Report, p. 292).

Aboriginal communities to become part of the decision-making process. There was no discussion of turning the responsibility of Aboriginal child protection services into an Aboriginal controlled and managed system; thus, defeating the purpose of sections 11-13 of the *Children and Young Persons (Care and Protection) Act 1998* and recommendations from the Wood Report and opportunity to achieve the intention of including Aboriginal people in the reform.

In Chapter 5, the concept of empowering Aboriginal people simply meant that an internal-based system empowers government agencies to solve the problem of the high removal rate of Aboriginal children in the NSW child protection system. Thus, ignoring a more genuine social justice perspective, in establishing 'an effective child protective system' (p. 29) with Aboriginal organisations, for Aboriginal families, their children and young people.

To further explain the misrepresentation of Aboriginal child protection service delivery in the Keep Them Safe Action Plan, the next section discusses the *Aboriginal Action Plan*. There was a 'disjuncture' between the 'problem' represented and the 'solutions' that were proposed. This section problematises the *Aboriginal Action Plan* to demonstrate that while the 'problem' of statistical overrepresentation; the 'problem' of Government failure to address systemic disadvantage; the 'problem' of building capacity of Aboriginal organisations; and the 'problem' of the absence of Aboriginal decision-making were canvassed, in Chapter 5, the *Aboriginal Action Plan* contained misrepresentations of these issues.

Problematising the Misrepresentation of the Keep Them Safe Aboriginal Action Plan

The *Aboriginal Action Plan* was focused on the development of a network of Government agencies to lead the implementation of the reform for Aboriginal children. Therefore the solutions to the problem of overrepresentation were remade in the policy into a service system problem; in particular, by proposing that the way to reduce the removal of Aboriginal children and young people was through a new organisational restructure and accountability process. Indeed, the Plan isolated Aboriginal people from

the decision-making process and leadership procedures, to deliver the reform in child protection services for Aboriginal babies, children and young people. Although the Plan was intended to guide the reform in Aboriginal child protection service delivery. It clarified the “what and how” of the NSW Government’s agenda to reform Aboriginal child protection service delivery. The *Aboriginal Action Plan* (see Appendix 1) is underpinned by specific principles and measured outcomes concerning an integrated services system and monitoring network, based on a shared approach to child wellbeing for Aboriginal children and young people; as included in Chapter 5 of the Keep Them Safe Action Plan.

The NSW Government declared that:

In developing this Action Plan, we have considered not only the specific recommendations in the Inquiry’s Report relating to Aboriginal children, but also the benefits for Aboriginal children and their families of all the Reports’ recommendations, and what further action might be necessary to reduce the overrepresentation of Aboriginal children and young people in the child protection, Out-of-Home Care and juvenile justice systems. (p. iii)

The set of priorities for the *Aboriginal Action Plan* were connected to the Government’s intention to reverse the high number of removals of Aboriginal babies, children and young people from their parents. Consequently, in Chapter 5 it stated that ‘A key commitment of the Government in implementing this response to the Inquiry will be to consider how each action will contribute to improving outcomes for Aboriginal children and their families and reversing the current intolerable trends (p. 28).

The objective of the implementation of the *Aboriginal Action Plan* for Aboriginal children and families is included in Appendix 1. It is a visual that illustrates the implementation framework of a Plan that describes what each agency will do. A count of what agency will be involved is shown to include: the NSW Community Services was allocated 14 actions, the NSW DAA 12 actions, moreover, NSW Health was given the responsibility for six actions and the remaining agencies were allocated one and two each. Indeed, 10

agencies were delegated the implementation responsibility of the *Aboriginal Action Plan*. The *Aboriginal Action Plan* identified each agency's responsibility.

Implementation of the Aboriginal Action Plan

Key factors associated with the *Aboriginal Action Plan's* implementation process emphasised more than the overrepresentation of Aboriginal babies, children and young people is a NSW service system problem. Close analysis of the Plan identified four categories that were used in Chapter 5. The categories are:

1. **A Whole of Government approach** (pp. 30 & 32) related to 100% Government managed, including implementation.
2. **An Engagement/consultation approach** (pp. 33 & 37) is when the Government and Aboriginal people or agencies come together for a discussion.
3. **A Capacity building approach** (pp. 30, 31, 33, 34, 35 & 37) related to the development of strategies to build the capacity for Aboriginal people to be involved in OOHC and child protection and for Government to build their capacity to be culturally competent.
4. **An Aboriginal decision-making approach** (pp. ii & 29-31) relates to empowering Aboriginal people to participate in child protection and OOHC decision-making.

The abovementioned approaches identified how the NSW Government envisaged the involvement of Aboriginal people and organisations in the implementation process of the *Aboriginal Action Plan*. Table 7.1 below implicitly distinguishes the number of times a Government engagement strategy was included in the *Aboriginal Action Plan*. The Table best illustrates how the above approaches were linked to a specific action from the Plan.

Table 7.1

Aboriginal Action Plan approaches to include Aboriginal people in the reform

Action	Whole of government	Engagement/ consultation	Capacity building	Aboriginal decision- making
Action 1	✓			
Action 2	✓			
Action 3		✓		
Action 4		✓		
Action 5		✓		
Action 6	✓			
Action 7	✓			
Action 8	✓			
Action 9	✓			
Action 10	✓			
Action 11	✓			
Action 12		✓		
Action 13	✓			
Action 14		✓		
Action 15	✓			
Action 16		✓		
Action 17	✓			
Action 18	✓			
Action 19	✓			
Action 20		✓		

Table 7.1

Aboriginal Action Plan approaches to include Aboriginal people in the reform

Action	Whole of government	Engagement/ consultation	Capacity building	Aboriginal decision- making
Action 21	✓			
Action 22		✓		
Action 23		✓		
Action 24		✓		
Action 25		✓		
Action 26		✓		
Action 27	✓			
Action 28	✓			

Although the NSW Government committed to the inclusion of Aboriginal people in the reform, a major misrepresentation of this fact was quite evident in that Aboriginal OOHC agencies and organisations were nearly all but dismissed in the implementation of immediate, short or long-term stages of the Plan to reform Aboriginal child protection services. For example, Chapter 5 promotes Aboriginal inclusion; however, the content of Chapter 5 did not carry over into the *Aboriginal Action Plan*. The analysis identified that only the government agency, the NSW DAA was included and that input from other Aboriginal Government departments such as 'NSW Aboriginal Housing' (p. 32) were not. In fact, non-Government agencies like the 'Indigenous Community Housing Sector' (p. 32) and AbSec were relegated to only 'consultative' (Actions 3, 5, 11, 15, 16, 17, 22, 23) or 'supporting policy advice' (p. 31), and/or 'partnership' (Actions 2, 14) capacity roles; and without any delegated lead role in the implementation of the Keep Them Safe *Aboriginal Action Plan*.

Obviously, the NSW Government had intentions to involve Aboriginal people, however the Plan was positioned within a framework that empowered government agencies and

disempowered Aboriginal people. The Plan's operational structure was grounded on a system that was previously identified as the most significant causal factor of socio-economic disadvantage; social disadvantage and systemic disadvantage (see Chapters 5 & 6). Historically, this system had oppressed Aboriginal Australians, in terms of the Government not meeting the social welfare needs of Aboriginal people, as highlighted in all three public documents.

Therefore, although the *Aboriginal Action Plan* included key principles that centred on the availability of support services for Aboriginal children to ensure the safety and connections to family and that Aboriginal people should participate in decision-making; the analysis identified that the *Aboriginal Action Plan* was indeed a repeat of a social welfare system of government-controlled policies to do with Aboriginal families that have become entrenched since the colonisation of Australia. The analysis linked the Plan to the generational impact of discriminatory practices, such as those earlier policies (see Chapter 2) that Aboriginal people endured. It failed to include Aboriginal involvement in the decision-making process for Aboriginal children and young people, at a larger scale than was presented and it failed to recognise the inclusion of Aboriginal people; it contradicted what the NSW Government said it would do in terms of empowering Aboriginal people and dismissed key recommendations included in the Wood Report. So, it was very difficult to hear any Aboriginal voice in the Plan at all. Indeed, the message was that the *Aboriginal Action Plan* was mere rhetoric.

Conclusion

This chapter analysed the *Keep Them Safe – A shared approach to child wellbeing* policy and procedures text that was the final stage of the Wood Inquiry. The overall document took into consideration the three key reasons for undertaking the Inquiry: the safety of children in NSW; the drivers of demand on child welfare services in NSW; and how the DoCS managed that high demand. Thus, it was identified that the key focus of the reform in NSW child protection services was underpinned by the configuration of an integrated child protection service delivery system that required collaborative relationships between key Government and non-Government sectors. The prominent

issues represented in the reform policy ranged from the shortage of a universal support system; absence of community-based EI programs; lack of a more consolidated approach in providing the best care for children in OOHC; gaps in the referral system; the overrepresentation of Aboriginal children; and the absence of a partnership approach between the Government and the non-Government sector. The implementation of the Action Plans for each of the targeted areas within the Government's child protection services framework, centred on a safe and healthy living environment for all children and young people in NSW, that would operate within the framework of a universal support service system again governed by key Government and non-Government agencies responsible for child welfare. The strength of this objective centred on an EI approach that would be led by an integrated case management and service delivery system.

Therefore, in response to Question One: "How were Aboriginal people included and represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?"; the WPR analysis identified four core 'problem representations': (i) the 'problem' of statistical overrepresentation caused by systemic disadvantage; (ii) the 'problem of Government failure to address systemic disadvantage; (iii) the 'problem' of Aboriginal capacity of Aboriginal organisations; and (iv) the 'problem' of the absence of Aboriginal decision-making. The *Aboriginal Action Plan* was indeed identified to be extremely problematic, in terms of misrepresenting the problems represented and the solutions that were proposed in Chapter 5.

The analysis revealed that the *Aboriginal Action Plan* was in fact a duplication of previous Aboriginal child protection policies that consisted of a government bureaucratic reform process that dismissed the inclusion of Aboriginal people. The critical problem is that the implementation of the *Aboriginal Action Plan* was the responsibility of government agencies, thus assuring government monopoly on policy development procedures and processes; and in decision-making regarding Aboriginal child protection. Thus, it empowered *non-Aboriginal* people and agencies to deliver the NSW Government's reform in child protection services for Aboriginal babies, children and young people and disempowered Aboriginal agencies, because it isolated key

Aboriginal child and social welfare agencies and denied them responsibility in the actions included in the *Aboriginal Action Plan*. Therefore, the analysis identified that the reform in policy for Aboriginal child protection services, as stated in Chapter 5, provided control in decision-making again to a Government based decision-making infrastructure that dismisses Aboriginal inclusion.

Chapter 8: Conclusions: How Aboriginal self-determination was excluded in the NSW Child Protection policy reform processes.

Introduction

This thesis has followed a policy making trail commencing with the call for a *Special Commission of Inquiry into Child Protection Services in NSW*, through to the final set of policies that were used to reform child protection services for Aboriginal families in the Keep Them Safe Aboriginal Action Plan. It has provided a close analysis of how the NSW Government problematised Aboriginal child protection business and how it included – and excluded – Aboriginal people and organisations in the reform process. The analysis is distinctive in its focus on the policy texts themselves and this enabled the investigation of the very different ways that policy issues are represented in policy documents. This focus on texts is regarded as deeply significant, as it enables analysts to see how oppressive ways of thinking about Aboriginal people, organisations, and practices come to be taken for granted in policy processes. It also enables analysts to see how issues that are important for Aboriginal people and organisations can be reframed or disappear in policy processes.

Consequently, the thesis showed what government does and why, when decisions are made to amend or create new policies. A key component of my thesis however, was to redirect the conversation from the formalities of the processes and procedures involved in the Keep Them Safe Action Plan policies, to a much more broadened view of what the new policies meant for one of the most disadvantaged groups involved in the NSW child protection system in NSW. To do this I deployed Bacchi's (2009) WPR policy analysis approach, to closely scrutinise and question both the making of government policy and what government policy was produced for Aboriginal families in the Keep Them Safe Action Plan.

This chapter considers how the analysis of the AbSec Submission, the Wood Report, and the Keep Them Safe Action Plan, using the WPR approach, has assisted in answering the second research question of this thesis: “How was the Aboriginal child protection problem represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan”? The findings described in this chapter shed light on how the policy developments impacted on the goals and aspirations for Aboriginal self-determination. Thus, the next section (Key Findings) provides a summary of the major problematisations found in the analysis of three key documents.

These findings provide an impetus to create an alternative policy agenda. The thesis has demonstrated that Aboriginal Australians have had to contend with policies and initiatives for many years that have failed to make a difference to their quality of life, generally. The final sections of this chapter propose that an alternative framework is needed to make a difference to Aboriginal families and their babies, children and young people and communities. This is a call for an Aboriginal governed framework tailored specifically for Aboriginal child protection business.

Key Findings:

The research approach, as it was applied to the three policy documents, identified some of the implicit problems in each of the documents. This involved: clarifying the implicit problem representations; questioning the underlying assumptions; interrogating how the ‘problem’ had come about; exploring the silences and omissions that unfolded in the analysis; and examining what the discursive and real, lived effects of the child protection policy reform proposed in the document, might be for Aboriginal babies, children and young people.

Following is the condensed range of ‘problem representations’ identified through the WPR analysis in order to think through how Aboriginal child protection business was positioned in the reform process.

Problematising Overrepresentation

The analysis identified that the stated problem of Aboriginal overrepresentation in the child protection system was a dominant and restated issue in all three texts. Put simply, the statistical overrepresentation of Aboriginal babies, children and young people in the NSW child protection in comparison to *non*-Aboriginal babies, children and young people was cast as problematic in all three documents, and the ‘problem’ was linked – albeit in different ways in the different documents – to the ‘problem’ of disadvantage. The analysis shows that this way of thinking and representing the ‘problem’ to be solved by child protection policy reform has emerged historically, but has become regular in what now seems an accepted commentary on Aboriginal children in child protection discourse. The ‘problem’ of overrepresentation had been articulated for many decades in various literatures, such as NSW DoCS reports; Commonwealth Government Aboriginal family and child protection reports; NSW Ombudsman reports; media representations of child welfare; and social welfare research, and all three policy documents drew on previous evidence of the problem. The Wood Report, in particular, provided extensive data, from a range of sources, to verify the ‘problem’ of overrepresentation as statistically incontrovertible.

Therefore, the analysis revealed that the ‘problem’ of statistical overrepresentation was convincingly established as a predominant problem, with all three texts stating concern and proposing solutions. In this sense, all three texts constituted the disparity between Aboriginal children and others involved in the NSW child protection system as unconscionable, as something in need of remedy. However, there were also major differences in how the ‘problem’ of overrepresentation was represented in the texts, and the following discussion of these differences highlights how problematisations shape policy reforms. For example, the AbSec Submission confronted the ‘problem’ of overrepresentation from an Aboriginal perspective that focused on the need for more Aboriginal involvement in Aboriginal child protection and OOHC service provision. Thus, the ‘problem’ of overrepresentation was linked to the exclusion of Aboriginal expertise in early intervention initiatives and general Aboriginal child welfare service delivery and to inadequate funding for Aboriginal controlled services. This kind of representation of the

'problem' of overrepresentation as a problem that was caused by governmental action was not evident in the Wood Report. The 'problem' of overrepresentation was attributed to something more amorphous; to disadvantage, for example, or to past government practices. This is one way that the Aboriginal self-determination aspirations were minimised in the policy process.

Problematizing Disadvantage

In all three texts, Aboriginal child protection issues were linked to the 'problem' of disadvantage. For example, all of the texts described a relationship between disadvantage and the decisions made by government to remove an Aboriginal baby, child or young person from their parents. This is, thus, one of the ways that disadvantage was linked to the 'problem' of overrepresentation. The analysis showed that each text included an outline of what were considered the characteristics of the 'problem' of disadvantage. For example, the AbSec Submission presented two key forms of disadvantage that included: disadvantage as social disadvantage and disadvantage as produced by systemic failures of the DoCS. Interestingly, social disadvantage was framed as an issue that resulted from government's failure to respond adequately to key recommendations made in previous government reports and inquiries. In addition, the AbSec Submission focused on how poorly the DoCS managed the cultural care of Aboriginal babies, children and youth after separation from their parents and placed in statutory care. Thus, the AbSec Submission emphasised the ways in which Aboriginal children are positioned in a system that exacerbates a "hidden problem" of institutionalised disadvantage, implying that disadvantage was a 'problem' of systemic failure.

This kind of attribution of responsibility for the 'problem' of disadvantage was also identified in the Wood Report. The Wood Report stated a concern with the 'problem' of NSW Government agencies lack of commitment to Aboriginal child protection, which was represented as having an impact on achieving better measurable outcomes for Aboriginal families. This stated concern led the analysis to scrutinise how the 2007

Special Commission of Inquiry in NSW Child Protection Services had problematised disadvantage for Aboriginal families.

For example, the Wood Report identified socio-economic disadvantage as a ‘problem’ generally, for all children. But, in the Inquiry Report, Commissioner Wood introduced another concept, “Aboriginal disadvantage”, that was represented as having resulted from extensive inefficiencies in government service delivery and complex intergenerational social welfare practices. Similar to AbSec, the Wood Inquiry problematised the government agencies as having failed to respond properly to significant reports relating to Aboriginal social welfare. Thus, links were made in the Wood Report between this specific concept, Aboriginal disadvantage, and Aboriginal child removal. Consequently, the Wood Report focused on the State Government’s inability to achieve appropriate outcomes for Aboriginal people, and it was this ‘problem’ that was picked up in *Keep Them Safe*. In Chapter 5 of the *Keep Them Safe* policy text there was a major focus on repairing the broader government services administrative system, that is, the services within and between government systems, however suggested solutions to the ‘problem’ meant that the current arrangements between the State and Commonwealth Governments would be maintained. In doing so the ‘problem’ of government failure to address systemic disadvantage was identified, but in *Keep Them Safe* the major concern is with fixing the ‘problem’ of disadvantage by concentrating on reforming the NSW government’s service system. Most importantly for my analysis, the focus of the solution-driven strategy to maintain government service delivery silenced key aspects of the way disadvantage had been framed by AbSec (and even Wood), including the need for commitments to collaborate with Aboriginal people to reverse the removal of Aboriginal children.

Problematising the Capacity of Aboriginal Organisations and Communities

All three texts included a discourse on Aboriginal capacity. For example, the Wood Report argued for building Aboriginal capacity to undertake a more active role in Aboriginal child protection service delivery. The analysis of the Report found that the idea of building the capacity of Aboriginal organisations/communities was represented

as paramount to the delivery of culturally appropriate services to Aboriginal children. In broadening this notion, a key principle conveyed in the Report was that an integrated services delivery system should include Aboriginal involvement, in conjunction with ensuring Aboriginal people had the capacity to do so.

Chapter 5 of the Keep Them Safe Action Plan included similar views to the Wood Report in recognising a need to build Aboriginal capacity, and coupled with it was an identified 'problem' of Aboriginal decision-making. The two concepts provided an impetus for more involvement from Aboriginal people in the child protection system. However, the linking of building Aboriginal capacity to increasing Aboriginal decision-making involved the presumption that Aboriginal people needed to develop skills, for example, in delivering child protection services. The underlying 'problem' therefore, was that Aboriginal people were incapable of managing or delivering Aboriginal child protection services. Consequently, Chapter 5 diverged significantly from the recommendations of the Wood Report and from the representations in the AbSec Submission: the confidence in Aboriginal people and organisations that was evident in the AbSec Submission and Wood Report was displaced in Keep Them Safe by the suggestion that Aboriginal child welfare organisations "require help" or need to "build skills" for managing Aboriginal child protection business.

Interestingly, although the AbSec Submission had problematised the capacity of Aboriginal organisations, it did not see capacity building in the sense of developing skills as the solution. Rather, the Submission argued for more funding so that services could increase their capacity to manage Aboriginal child protection business. The inadequacy of the funding provided to Aboriginal ACCOs had two consequences; it excluded the voice of AbSec, and it led to government controlling the supervision of Aboriginal children in care. Inadequate funding diminished the AbSec organisation's roles and responsibilities in Aboriginal child protection business and inadequate funding of Aboriginal ACCOs had resulted in the demise of other Aboriginal child welfare agencies and had impacted on Aboriginal service delivery. The 'problem' of inadequate funding of Aboriginal organisations had also affected the management of child welfare services by Aboriginal organisations to Aboriginal families, their babies, children and young people,

thus creating more opportunities for *non*-Aboriginal people to control decision-making and service delivery to Aboriginal families. Consequently, in the AbSec submission the solution to the ‘problem’ of Aboriginal capacity was to better financially position ACCOs to manage Aboriginal child protection business.

From the perspective of Bacchi’s (2009) WPR policy analysis approach, it is clear that the concept capacity building has very different meanings in the policy documents. In the Wood Report and in the Keep Them Safe Action Plan, Aboriginal capacity is represented as a ‘problem’ that can be solved through capacity building reforms that build the skills and abilities of Aboriginal people and organisations. In contrast, the AbSec Submission recognised key elements of government policy that lessened capacity of Aboriginal people and organisations and which restricted the involvement of Aboriginal people, thus impacting on the significance of reaching appropriate outcomes for Aboriginal families involved in the NSW child protection system. The Submission’s perspective differed from the Wood Report and from the Keep Them Safe Action Plan in that it was made clear that Aboriginal organisations have capacity; the ‘problem’ is that they do not have the financial resources to put that capacity into practice. In contrast, the representation of Aboriginal people and organisations as lacking capacity involves an implicit repositioning that has made it possible for governments to deny Aboriginal self-determination of child protection business.

Problematizing the Absence of Aboriginal Decision-making

The ‘problem’ of the absence of Aboriginal decision-making was raised at a number of points in the AbSec Submission. For AbSec, this ‘problem’ was represented as overt exclusion from child protection business in NSW. The Submission was clear, for example, that DoCS’ engagement with the lead agency in Aboriginal OOHC in NSW was unsatisfactory. This was a ‘problem’ because it silenced the voice of Aboriginal child welfare expertise and intensified *non*-Aboriginal decision-making processes around Aboriginal children. The absence of Aboriginal decision-making consequently places the cultural identity of Aboriginal babies, children and young people at risk, and this process occurs from the moment of removal through to when the DoCS child

protection regime commences the case management process. Case work practice in NSW child protection is governed by a westernised bureaucratic system that installs and repeats colonial values and practices. For Aboriginal families the absence of Aboriginal input into decision-making not only impacts on case work practice for Aboriginal children, it augments long-standing processes of *non*-Aboriginal control of basically anything to do with the management of Aboriginal child protection business, even simple things such as developing resources that target cultural learning instruction for carers of Aboriginal children, who have been displaced from their cultural lifestyle. Thus, underpinning the ‘problem’ represented in the absence of Aboriginal decision-making, as seen by AbSec, was the overt action of dismissing Aboriginal voice and the unavoidable interruption of sustaining the cultural learning and the cultural identity of an Aboriginal child after removal, which was one of the main findings of the 1997 *Bringing Them Home* Report.

It appears that the exclusion of Aboriginal people from decision-making at all levels of child protection business was not the focus of the NSW child protection reforms, despite AbSec’s insistence that inclusion in decision-making was key to addressing the problem of overrepresentation and the systemic disadvantaging of Aboriginal people by existing child protection institutions. In Chapter 5 of the Keep Them Safe Action Plan, Aboriginal participation in inclusion was linked with the ‘problem’ of capacity building. As above, this way of representing the issues renders the exclusion of Aboriginal people and organisations from decision-making appear reasonable, yet must also be seen as a way of denying AbSec’s calls for reforming the child protection system so that Aboriginal voices are included.

The *Aboriginal Action Plan* further demonstrated the ways in which Aboriginal self-determination was lost in the policy process. For example, the Plan gave responsibility for the implementation of the *Aboriginal Action Plan* to a network of ten established government agencies (a detailed analysis is provided in Chapter 7). This approach to implementation excluded Aboriginal involvement in the future development and implementation of key policies and strategic directions of services associated with Aboriginal child protection business. The Plan thus repeated the practice of Government

control of the management of Aboriginal child protection policies, similar to the systemic control of Aboriginal people during the *Aborigines Protection Act* 1909 era. In addition, the Plan, once again, involved a failure to comply with key recommendations for Aboriginal people as put forward in the AbSec Submission and the Wood Report. The *Aboriginal Action Plan* maintains government control of an issue that was revealed in the Wood Report as requiring Aboriginal involvement to make necessary change in the overrepresentation of Aboriginal babies, children and young people in the NSW child protection system.

Therefore, the *Aboriginal Action Plan* contained a NSW Government management approach to service delivery; thus, retaining the historical “status quo” of government-controlled policy processes for Aboriginal people in NSW.

Overview of the Chapters

This thesis produced new insights into how policy processes and procedures can dismiss the most important aspects of how to improve outcomes for Aboriginal families involved in child protection in NSW. Following is an overview of the key findings, as included in each chapter.

Chapter 1 provided the rationale for the study and introduced the research questions. This chapter began with an account of how I came to the research through my professional experience as a person working within the NSW child protection system. This account established the rationale for focusing my research on policy processes and policy discourses, rather than, for example, Aboriginal family or service provider experiences. For example, the chapter explained how policies enacted by colonisers in Australia have historically shaped Aboriginal people’s experiences of social injustice, thus drawing attention to the power of policy. Chapter 1 also explained the specific positioning of the child protection policy reforms which were the object of the empirical study, described in the thesis as the Wood Reforms. This chapter set the scene for why finding solutions to Aboriginal child protection issues are crucial, and positioned the key ideas that underpin the two key research questions this thesis seeks to address:

Q1: How were Aboriginal people included and represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?

Q2: How was the Aboriginal child protection problem represented in the NSW child protection policy reform processes from the Wood Inquiry to the Keep Them Safe Action Plan?

This account included an Aboriginal perspective on the effects of the misrepresentation of an Aboriginal self-determined service delivery, in addition to reports that centred on Aboriginal self-determination. The concept of Aboriginal self-determination by demonstrating what it looked like in action for previous and current Aboriginal organisations; and how it exists within the parameters of the DoCS system. Underpinning the outcome of making the concept of Aboriginal self-determination visible, the chapter establishes the significance of Aboriginal controlled governance in Aboriginal child protection business.

Chapter 2 contextualised the study of the NSW child protection reforms by providing a history of child protection policy development in Australia. The account included information about the historical establishment of child protection policies both globally and in Australia, as well as discussion of the colonial child protection legislation that was put in place in NSW from the 1800s. In keeping with the Aboriginal perspective of the thesis, Chapter 2 focused on how Aboriginal children, families and communities have been considered in legislation including the *Children (Care and Protection) Act 1987* and the *Children and Young Persons (Care and Protection) Act 1998 Aboriginal and Torres Strait Islander Principles*. This chapter explained the significance of the Principles, and how this fits in with demands for Aboriginal self-determination. The really important work on how Aboriginal self-determination frameworks have been developed in relation to child protection business, as well as the literature on how Aboriginal self-determination in areas such as child protection has been eroded, demonstrated the need to analyse the policy processes in more detail. Aboriginal self-determination involved Aboriginal people managing and controlling decision-making processes around issues specifically to do with Aboriginal people. While historically there have been important developments initiated by Aboriginal people to develop Aboriginal self-

determination frameworks in order to secure control of, and to intervene in, Aboriginal child protection business, this chapter summarised the ways in which Aboriginal self-determination gains were lost in the NSW child protection policy reform processes.

Chapter 3 explained my approach to analysing child protection policy reform. The chapter was divided into two parts. The first part introduced the fundamentals of policy making in Australia, including how successive policies have substantiated how the power of government policy impacts Aboriginal families. Thus, it explained how government policy involves a systematic and system-driven decision-making process that is led by government and relevant agencies that have authority to implement policies, or put simply, to “govern” populations. The second part of Chapter 3 explained the WPR policy analysis approach developed by Bacchi (2009) and introduced the key policy texts in the Wood policy reforms process that were subjected to analysis. As explained in Chapter 3, the WPR six question analytic strategy enabled me to ‘read off’ (Bacchi, 2009, p. 32) implicit problems representations in the policy texts. This process enabled me to peel back the layers of the three texts to consider what the effects of particular problem representations may be for those on the receiving end of policy. The WPR approach provided the tools to scrutinise the reforms in NSW child protection policy and provision in terms of their impacts for Aboriginal governance, as well as for Aboriginal families.

Chapter 4 provided a detailed account of the establishment of the 2007 *Special Commission of Inquiry into Child Protection Services in NSW*, and how this Special Commission operated. Thus, this chapter provided key background information on the purpose of the Inquiry and its aims and objectives. This chapter provided some of the first concrete insights into the extent to which Aboriginal people and organisations were included and represented in the reforms processes. The analysis undertaken paid careful attention to how many Aboriginal people and organisations were included in the Inquiry workforce, public forums, public submissions, community visits, and so forth. The chapter found that right from the start of the Wood Inquiry, Aboriginal people were marginalised in key processes and discussions regarding the child protection system or service provision to children and young people.

Chapter 5 applied the Bacchi (2009) WPR policy analysis approach to the Submission from the peak Aboriginal child protection organisation, AbSec. The analysis of this submission introduced the claims being made by the specialist Aboriginal OOHC, child protection and child welfare service provider, into my policy analysis. It provided the opportunity to consider how an Aboriginal organisation represented the need for reforms of the child protection system. This analysis was very important to the thesis: Demonstrating how an Aboriginal organisation represented the ‘problems’ and how it proposed solutions to those problems, in the context of the major government Inquiry, made it possible to make comparisons between problem representations in the two other key policy documents – the Wood Report and the Keep Them Safe Action Plan policy text.

The analysis identified seven different problems identified by AbSec: (i) the problem of disadvantage as social disadvantage; (ii) the problem of disadvantage as produced by systemic failures of the DoCS; (iii) the problem of inadequate funding: impact on AbSec; (iv) the problem of inadequate funding: impact on Aboriginal children and young people in OOHC; (v) the problem of excluding the role of AbSec; (vi) the problem of excluding Aboriginal decision-making in case work practice and (vii) the problem of excluding Aboriginal decision-making in the development of culturally appropriate care resources.

Chapter 6 showed how the Wood Report anchored the reforms of the NSW child protection service system. As with all the documents interrogated in the study, the analysis explored the concepts, categories, language, logic, and rationales used within the report with a particular focus on representations of Aboriginal people and communities; Aboriginal babies, children and young people; and Aboriginal child protection. The Bacchi (2009) WPR analysis demonstrated how the Aboriginal child protection ‘problem’ was constructed in this important policy document through embedding particular ways of thinking and talking about Aboriginal people and issues.

The overlaps and differences between the Wood Report and the AbSec Submission contributed to the case made in this thesis that Aboriginal self-determination came to be silenced and marginalised in the Wood child protection reform process. Four specific problematisations were identified in the analysis of the Wood Report: (i) the problem of

statistical overrepresentation; (ii) the problem of disadvantage as Aboriginal disadvantage; (iii) the problem of NSW government agencies' lack of commitment to Aboriginal child protection, and (iv) the problem of Aboriginal capacity.

Chapter 7 applied the WPR analysis approach to Chapter 5 of the Keep Them Safe Action Plan policy to ascertain how the NSW Government problematised the inclusion of Aboriginal families and children in the reform. The chapter included an action plan for Aboriginal child protection business, thus it created an opportunity to closely examine how the Government would reform child protection service delivery for Aboriginal babies, children and young people. The analysis revealed a Plan that misrepresented the problem representations as identified in the analysis. The problem representations included: (i) the problem of statistical overrepresentation caused by systemic disadvantage; (ii) the problem of government failure to address systemic disadvantage; (iii) the problem of building capacity of Aboriginal organisations; and (iv) the problem of the absence of Aboriginal decision-making.

Chapter 8 has revisited the six interrelated WPR policy analysis questions and also summarised the 'problems' that were represented in the AbSec Submission; the Wood Report; and the Keep Them Safe Action Plan. The analysis shows some of the ways that the response to the Wood Report recommendations for Aboriginal child protection business resulted in strategies and initiatives in the *Aboriginal Action Plan* - the policy implementation document - that not only excluded the involvement of Aboriginal people in crucial parts of the implementation process, but also produced an *Aboriginal Action Plan* that was at odds with Aboriginal self-determination goals. This chapter ends with my reflection and concluding comments.

Reflection and Concluding Comments

The goal of this thesis was to apply an Aboriginal perspective to government child protection systems and State welfare practices in Australia. The concern throughout has been how Australian Aboriginal babies, children, young people, families, communities and organisations have been governed through policies and policy processes. Consequently, the thesis examined the way successive State policies have dismissed

the significance of Aboriginal self-determination in the development and implementation of child protection policy. Thus the research has basically strengthened the proposal for relevant Aboriginal organisations, people and communities to determine the lives of Aboriginal families, their babies, children and young people involved in the NSW child protection system.

The analysis had identified that Aboriginal self-determination was misrepresented in the development and implementation of past and current policies for Aboriginal child protection business. Thus my concluding comments draw on the presumption that *Aboriginal governance* is a significant element that will improve outcomes for Aboriginal families. It also draws on another presumption, and that is, it is ethically and morally wrong to continue to subjugate a small group of Australians with a permanent label of having the highest removal rates from their parents, per capita of any group in NSW. Therefore, this thesis has presented the significance of finding solutions to persistent ongoing issues to do with Aboriginal child protection.

Bacchi's (2009) WPR analysing policy approach provided me with an analytical procedure to systematically question things like the overrepresentation of Aboriginal children in the NSW child protection system; to probe identified 'problems' such as disadvantage and to interrogate decisions made by policy makers. Thus, throughout the analytical process "hidden" or "silenced" issues and perspectives in 'problems' that have rarely been discussed in previous research to do with Aboriginal child protection, were made visible. Such as making visible the 'problem' raised in the AbSec Submission that concerned the organisation's relationship and experience with DoCS. This perspective, that the role and responsibility of the lead agency in Aboriginal OOHC and Aboriginal child welfare issues was marginalised in NSW government policy making, is not visible in other accounts included in the Wood Report or the Keep Them Safe Action Plan. Yet the AbSec submission demonstrated the impact this 'problem' has on Aboriginal people having input to Aboriginal child protection policies.

Some of the 'problems' identified through references included in the analysis were repeat problematisations raised by, for example, the range of social welfare and child protection researchers: Libesman (2008; 2011; 2015/16); McMahon (2007); Ban (2010);

Ah Kee & Tilbury (1999); Cadd (2002); Yeo (2003); Higgins et al. (2006); Williams et al. (2007); Bamblett & Lewis (2010); Bamblett (2013); Bamblett (2018); Lewis (2018) and Herring & Spangaro (2019); and in significant reports that include factors associated with the removal of Aboriginal babies, children and young people: *Bringing Them Home* Report (1997); ACSAT Report (2006); and the *Ampe-akelyernemane Meke Mekarie – Little Children are Sacred* Report (2007). These include the problem of disadvantage, Aboriginal disadvantage, socio-economic disadvantage and systemic failure, plus problems faced by (or caused by) services provided by government and non-government agencies. All these factors have been identified in previous literature, as key indicators associated with *Aboriginal child protection business*.

Therefore, the analysis clearly identified the presence of common discourse included in most literature such as those above. Thus creating specific *Aboriginal child protection discourse* that has become a regular type of discourse that has encapsulated a permanent place in many public reports; in social welfare research; statistical reports; and media such as the print media; online discussions; radio broadcasts; documentaries; and movies. Rather than simply accept this discourse at face value, this research has provided me with an opportunity to think about other ways to move forward in finding solutions to appropriately manage Aboriginal child protection business.

The following section offers a view to improve the current unjustified and unjust management system of Aboriginal child protection policy matters. It closes my discussion of how policy discourses and policy processes have shaped Aboriginal child protection business in NSW, Australia. It does, however opens up the conversation to further thinking about solutions to a critical situation facing Aboriginal Australians today; Government and relevant service providers.

Moving Forward

This part of Chapter 8 presents how critical Aboriginal child protection issues can be reframed to provide a more culturally appropriate service system for Aboriginal families; and to increase much needed involvement from relevant Aboriginal OOH and child

protection organisations. One strategic move would be to consider the implementation of an *Aboriginal governed decision-making* system for Aboriginal families involved with the NSW child protection system. Thus, it is a personal reflection that focuses on how I think Aboriginal child protection business could be reformed through the development of an *Aboriginal-controlled decision-making framework*.

Aboriginal Voices need to be heard and to be involved

One key point of contention is that Aboriginal families do not have culturally appropriate representation in what is known as being one of the most historically entrenched and powerful decision-making systems in NSW; a system that has embedded within it a *non-Aboriginal* controlled decision-making system for young Aboriginal families, their babies, children and young people and already established Aboriginal OOHC and child protection services. As a consequence, the voices of Aboriginal families involved in the NSW child protection system are silenced. These are the voices of those described by Commissioner Wood (2008), as the 'most disadvantaged group involved in child welfare' and who I think are most weakened by the power of policy. This is the group that sits alone when confronted with the removal of an Aboriginal baby or child or a young person and have to cope in silence in their lives without their children; and who suffer mental health issues, through the trauma experienced from Aboriginal child removal.

My analysis showed that (at least) three major key reform stakeholders have put forward ways to consider more involvement of Aboriginal people in decision-making procedures, however, as stated above, key recommendations that might have led to more involvement were not considered in the *Aboriginal Action Plan*. The analysis clearly demonstrated that Aboriginal voices in policy processes and procedures have been silenced for too long to the extent that the seriousness of Aboriginal child removal has become a most prominent issue for Aboriginal Australians. Thus, the inclusion of Aboriginal people to find solutions is critical, and an essential part of the way forward. It is reasonable to suggest therefore, that the Aboriginal voice needs to be heard to be

involved in finding solutions, and I believe it starts with the development of a new set of policies specifically for Aboriginal child protection business.

Therefore the thesis recommends a separation of the management of Aboriginal child protection policy from the DoCS decision-making regime. This strategic move would decrease the management control that DoCS and other *non*-Aboriginal agencies have and increase the Aboriginal control of the governance of child protection, including policies, resource distribution, service provision and practice framework. There is a pool of expertise to take over this role already located within Aboriginal peak organisations.

Evaluation of Aboriginal child protection services

I believe it is time to evaluate how the ‘problem’ of Aboriginal child protection business is managed by the NSW Government and DoCS. There are two elements of an evaluation that could be undertaken to improve the outcomes for Aboriginal families involved in the NSW child protection system. The first component includes an evaluation of what outcomes DoCS have achieved for Aboriginal families involved in the NSW child protection system and those involved in DoCS funded initiatives. This evaluation would include a review of established initiatives and programs to ascertain what is working and what is not working, within the already established structure of services that are provided by DoCS for Aboriginal families, their babies, children and young persons involved in the NSW child protection system. Secondly, I propose that an audit must be undertaken on the *non*-Aboriginal NGOs that receive funding to provide services to Aboriginal families. An evaluation would provide information on, for example, the amount of funding allocated; the number of Aboriginal people receiving services; and outcomes achieved for each family. An evaluation of both elements would then, allow for a ‘new way’ in Aboriginal child protection service delivery to be then established.

Through problematising the absence of Aboriginal representation within child protection policy development, I believe that for a reduction in the removal of Aboriginal babies, children and young people to occur a more equitable service delivery system has to be implemented by the NSW Government. Currently, an inequitable funding system

impacts the opportunity for Aboriginal people to enter into the decision-making process regarding NSW Aboriginal child protection policies. To improve Aboriginal involvement in the overall child protection system and to improve and amend the current funding allocation system, an increase in funding allocation to Aboriginal child welfare organisations would increase Aboriginal involvement. Perhaps then the NSW Government should consider quarantining enough funding for specifically focused Aboriginal child protection business that would be managed by a pool of Aboriginal child welfare experts. This would instantly increase the involvement of Aboriginal people in the decision-making process of the NSW child protection system.

Aboriginal-led child protection policy framework

This thesis conceptualised Aboriginal self-determination for Aboriginal child protection business in the same way as Mick Dodson and others fortify the meaning for an Aboriginal self-determined approach to be applied to Aboriginal service delivery (see Chapter 2). Perhaps it is time to consider extending the more traditional terminology of Aboriginal self-determination to include a specific type of “self-determination” that focuses specifically on Aboriginal child protection.

For example, instead of using the regular term of “Aboriginal self-determination”, I like to describe specific child protection Aboriginal governance as *Aboriginal-led policy instruction*. This phrase involves the current hidden concept of self-determination but positions Aboriginal people as leading policy and also instructing *non*-Aboriginal people on policy. This is my understanding of what is involved in Aboriginal governed child protection policy. Perhaps what needs to happen is an amendment to the current DoCS Aboriginal child protection policy framework, to include an Aboriginal-led policy instruction framework and this would automatically involve Aboriginal decision-making; as a result, Aboriginal people would instruct, design, develop, implement, monitor and evaluate Aboriginal child protection policies.

This type of Aboriginal child protection service delivery framework would be underpinned by a system that incorporates a *100% Aboriginal managed* and operated service delivery. In practice, services for young Aboriginal families facing the challenges

of child protection issues would be managed from *Aboriginal child protection facilitation hubs*, to be established in regions and outreached to respective sites. These hubs would be responsible for responses to crisis events, in addition to, implementing family focused, Aboriginal controlled Early Intervention initiatives for young Aboriginal parents, to avoid the displacement of Aboriginal babies, children and young people removed from a family unit setting, Aboriginal community and/or taken off traditional country. The new way of Aboriginal child protection service delivery therefore, would consist of funding Aboriginal child welfare services to do the work of Aboriginal child protection business.

This is an approach that recognises the capacity of Aboriginal people to lead policy direction; and leadership would consist of a Ministerially-appointed Aboriginal Advisory Group made up from NSW Aboriginal community-based child welfare agencies that would facilitate the operations of an Aboriginal child protection service delivery. Thus, the Group would work directly with the Minister for Community Services. This approach would increase the leadership role of already established Aboriginal child protection and NSW OOHC experts and ACCOs. Consequently, the governance of Aboriginal child protection business would include the involvement of a well-advised Aboriginal representative group that is external to the DoCS system, to lead the decision-making process in policies and policy procedures of Aboriginal child protection business.

Conclusion

In conclusion, my final comments have extended the conversation from an analysis of the policy reforms to a set of recommendations about how to reform the current system responsible for Aboriginal child protection business, within the context of Aboriginal people having more control of the management of Aboriginal child protection business and in the development and implementation of policy. I have suggested this could happen through an evaluation of current Aboriginal child protection service delivery; through an audited review of current funded Aboriginal and *non*-Aboriginal organisations who are responsible for delivering services to Aboriginal families; and quarantining funding for specific Aboriginal-managed child welfare services to operate within an Aboriginal-led policy instruction framework. My hope is that my thesis can contribute to

the development and establishment of a more equitable service system by incorporating an Aboriginal-led policy instruction framework within the Government's policy processes, procedures and practices for Aboriginal families involved in the NSW child protection system.

This chapter has revisited the 'problems' that were represented in the AbSec Submission; the Wood Report; and the Keep Them Safe Action Plan policy text. It condensed the range of problem representations identified through Bacchi's (2009) WPR analysis in order to think through how Aboriginal child protection business was positioned in the reform process. The analysis showed some of the ways that the response to the Wood Reports' recommendations for Aboriginal child protection business resulted in policies that not only excluded the involvement of Aboriginal people at significant intervals of the implementation process, but also produced a Plan that was at odds with Aboriginal self-determination goals.

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Attachment 1: Keep Them Safe Aboriginal Action Plan

Actions	Timeframe for commencement (within 6 months)	Lead Agency
Action 1	<p>Develop an Aboriginal Impact Statement in relation to all actions described in this Government Response, which details how the needs and interests of Aboriginal children, young people, families and communities have been elicited and incorporated into implementation of the actions:</p> <ul style="list-style-type: none"> - Use the Statement to assess how each action will contribute to improving outcomes for Aboriginal children and young persons and their families and reversing over-representation in the child protection and juvenile justice systems. 	Community Services/NSW Health/DAA (SOG)
Action 2	<p>The Department of Aboriginal Affairs' Two Ways Together Partnership Community Program will be implemented:</p> <p>Program improvements will be developed in conjunction with the Department of Community Services to support family-strengthening activities in Partnership Community locations.</p>	DAA
Action 3	<p>Develop strategies for further capacity building with Aboriginal communities and organisations as well as government agencies in consultation with key Aboriginal stakeholders:</p> <p>In seeking to bring about lasting change, the Government will have regards to work already being done in this area in NSW as well as the international best practice models (for example, the Most Significant Change model developed by Davies and Dart and Stephen and Cornell's Building and Sustaining Indigenous Governance)</p>	Community Services/NSW Health/DAA
Action 4	Finalise the development of guidelines for fostering Aboriginal community engagement in JIRT matters by June 2009.	NSW Health/Community Services/Police
Action 5	Consider making a greater use of night patrols in smaller and more remote communities in consultation with Aboriginal people	AGD

	(Rec.18.2d).	
Timeframe for commencement (within 12-18 months)		
Action 6	Ensure that, in establishing the new Child Wellbeing Units and Regional Intake and Referral Services, appropriate referral pathways are put in place to link Aboriginal children and their families with the culturally responsive human and Justice services available in their local community to meet their needs.	DPC/SOG
Action 7	Any model developed for OOHC assessments and referral pathways, will specifically consider the cultural needs of Aboriginal children.	NSW Health
Action 8	Continue to give priority to implementing the NSW Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011 (18.3): Agencies will collectively identify the actions in the Interagency Plan relating to direct service delivery and review the milestones and measures for these actions to ensure the reforms are in place by June 2011.	DAA/Interagency
Action 9	Identify Aboriginal children and young people who are frequently encountered by child protection and other human and justice services agencies and develop and integrated case management plan to provide more effective services to address their risks and needs (Rec.10.7). Central support will be provided through DPC and seconded project team members for setup phase and as required to overcome barriers, share learning's across locations and develop a State-wide model: Identification of two or three locations for a pilot study. Establish locally based project teams, within a regional and central governance system.	DPC/Regional Director/CEO/NGOs from each location DPC/SOG DPC RJHSC

	Regional Human Services and Justice Co-ordination Committee to report quarterly to Human Services and Justice Chief Executive Officers Group (refer to Chapter 7 for detail).	
Action 10	<p>Support the development of a learning exchange for communities and government to share experience and good practice information through resource services and workshops:</p> <p>Explore possible NSW initiatives to build on the national Indigenous clearinghouse – providing expert information, resources and advice on developing and supporting the wellbeing of Aboriginal people and communities. This will assist in development of a research or evidence base on what interventions work and make a difference.</p>	Community Services/DAA/SOG
Action 11	Develop the Aboriginal consultation practice guide and implementation strategy to ensure all Department of Community Services' casework practice is conducted in line with the Aboriginal and Torres Strait Islanders Principles contained in the Act and to help build the cultural competency of the Department of Community Services workforce (Rec. 11.5).	Community Services
Action 12	<p>Reform funding arrangements for Aboriginal services, commencing with organisation funded by Community Services, to simplify processes and provide more scope of local tailoring and innovation:</p> <p>Provide scope for services to be developed within a whole of community and place based model which will better suit many Aboriginal organisations. In addition, identify the existing Aboriginal programs which need a transition plan to move them into Aboriginal community organisations over time.</p> <p>Include a specific component focused on the funding of Aboriginal programs and organisations in the proposed review of funding programs, to consider ways of better matching the funded service system to Aboriginal community and family needs and cultural practices.</p>	Community Services/DAA/SOG
Action 13	Implement the commitment to establish the Safe Families Program –	DAA/interagency

	Orana Far West, which is an example of a location specific program with potential for being adapted in other communities in the State (Rec. 10.i).	
Action 14	<p>Establish a partnership with peak Aboriginal child welfare organisations and other peaks that:</p> <p>Provides advice on developing a service system to respond to the needs of Aboriginal children, families and communities</p> <p>Includes building the capacity of Aboriginal organisations and communities</p> <p>provides better support to foster and kinship carers</p> <p>Investigates establishing Aboriginal NGOs in each Community Services Region that could act as a linkage point between the Department of Community Services and communities with the eventual possibility of taking on case management responsibilities.</p>	Community Services
Action 15	<p>Consider the provision of services for men such as healing programs and men's groups:</p> <p>The Government will consider existing practice models and the role of this type of program in consultation with Aboriginal communities.</p>	DAA/Corrective Services
Action 16	The provision of parenting programs which are specifically targeted at Aboriginal families will be considered as part of implementation of this Government response, in consultation with Aboriginal communities and the non-government sector.	Community Services (Families NSW)
Action 17	Consider how parenting courses for adult Aboriginal offenders might be delivered as a way of improving parenting capacity of Aboriginal offenders, in consultation with key Aboriginal stakeholders and government agencies.	Corrective Services/DAA
Action 18	Develop strategies to ensure that forensic and medical sexual assault services are provided in a culturally appropriate way for Aboriginal children:	NSW Health

	This will include consideration of support and training for medical practitioners employed by the Aboriginal Medical Services to equip them to provide these services.	
Action 19	Strengthen the provision of culturally appropriate models of sexual assault counselling for Aboriginal children and families, including ensuring the cultural competence of the existing network of child sexual assault counsellors across the State.	NSW Health
Action 20	Increase the number of Aboriginal Student Liaison officers (from 11 to 26) to work with an expanded number of Aboriginal communities to develop locally identified solutions to the non-attendance of Aboriginal students and to improve their connections to education.	DET
Action 21	Examine the feasibility of the recommendation to establish boarding type accommodation for Aboriginal children and young persons at risk and develop more detailed options for providing care and education for (Rec.18.2e).	DAA/Community Services
Timeframe for commencement (within 2-3 years)		
Action 22	<p>Develop the capacity of NGOs, Aboriginal and non-Aboriginal, to staff and deliver a full range of primary, secondary and tertiary services to children, young persons and families, particularly those who present with a range of needs including those which are complex and chronic (10.6):</p> <p>Develop an approach in construction with AbSec.</p> <p>Develop accredited training and support to build Aboriginal cultural capacity in workforce.</p> <p>Apply the principles underpinning performance based contracting and implement flexible funding arrangements to allow for local innovation.</p>	Community Services/DAA/SOG

Action 23	<p>Consider establishing a Lakidjeka type model of consultation to provide an Aboriginal perspective in relation to the best ways of keeping Aboriginal children and young people safe (rec.8.5):</p> <p>Conduct a pilot of the Lakidjeka model.</p> <p>Consider the lessons gained from the implementation of the Victorian model of an Aboriginal Child Specialist Advice and Support Service (Lakidjeka) in establishing such referral pathways.</p> <p>Consult AbSec in this process.</p>	Community Services
Action 24	<p>Consider the feasibility of a state-wide roll-out of Family Group Conferencing based on the Dhum Djirri Mode. Conferencing aims to encourage family members, extended family, Elders, significant people in the child's life, and where appropriate, the child or young person themselves, to meet and make decisions about the safety and wellbeing of children and young people who are involved in the child protection system:</p> <p>Complete evaluation of current model.</p> <p>Consider appropriate State-wide model.</p>	Community Services/DAA
Action 25	<p>Continue to monitor and evaluate the Nowra Care Circle Pilot and if successful, consider its extension to other parts of the State with significant Aboriginal populations (Rec. 12.2).</p>	AGD
Action 26	<p>Develop a clear strategic direction for Aboriginal service delivery based on the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles set out in the Children and Young Persons (Care and Protection) Act.</p> <p>Within this context, the current Aboriginal Strategic Commitment Framework will need to be reshaped.</p> <p>This may also for the impetus for a Memorandum of Understanding, similar to the Victorian model, to be developed between the Minister for Community Services, Department of Community Services, AbSec and SNAICC. (This would be a driver to establish a Lakidjeka</p>	Community Services

	type model and the roll out of Family Group Conferencing).	
Action 27	Explore the creation of Specialist Aboriginal Child Protection Teams in each Department of community Services Regions that would also have an external focus on working with any Aboriginal child protection focused service that was developed in the NGO sector.	Community Services
Action 28	Examine the need for a second Rural New Street service to provide programs for children aged 10-17 years who sexually abuse. This will include Aboriginal children and young people who are in this group.	NSW Health

(Keep Them Safe: A shared approach to child wellbeing, 2009, p. 37-41)