

‘Worse than negligence’: NSW dragging feet on Aboriginal child removal reforms

Number of Aboriginal children in care is rising and government delay on reviewing laws is creating further damage, say Greens



‘We’re subjecting Aboriginal children to a child protection system that we know doesn’t adequately safeguard their rights or interests,’ says psychologist Dr Paul Gray.

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Thu 21 Oct 2021

New South Wales government has been accused of condemning another generation of Aboriginal children to trauma and suffering by “putting off” vital changes to child protection laws.

A review was recommended in the state government’s own Family is Culture report, released in 2019.

The NSW government said it would review the laws in 2024 but the Greens, backed by Aboriginal childcare and legal organisations, say that is too long to wait. They will introduce a draft bill into parliament on Thursday to speed up the process.

“The government’s own report found alarming failings yet it is refusing to change the law,” Greens MP David Shoebridge said. “This is worse than negligence because we know the lasting damage this is causing.”

Labor said the government’s response so far has been “woefully inadequate” and looks forward to seeing the bill.

“The government has failed to take this detailed report seriously, and their three-page response simply kicked the can down the road,” Labor’s spokesperson for family and community services, Kate Washington said.

In 2019-2020, 952 Aboriginal children were taken into care in 2019-20, up 2.7% on the previous year, comprising 41.3% of all children in out-of-home care in NSW.

More than 1,100 of those children are on guardianship orders, a rise of more than 20% on the previous year. While 74% of all Aboriginal children in care are placed with an Aboriginal caregiver, these orders often mean they remain in care until the age of 18, with limited opportunity for restoration to their families.

UTS Associate Prof Dr Paul Gray, a Wiradjuri man and chair of the Family Matters campaign, was critical of the government’s decision to “put off” law reform for another three years.

“It means we’re subjecting Aboriginal children to a child protection system that we know doesn’t adequately safeguard their rights or interests,” Gray, a psychologist with long experience in the child and family sector, said.

“So in that sense, failing to act on making these necessary changes is in itself systemic neglect of Aboriginal children and young people.”

NSW has commissioned two major reviews of its out-of-home care system since 2016, and both were scathing portraits of a system in crisis, under families minister Pru Goward.

The Tune report in 2016 found the child protection system was “ineffective and unsustainable”, its escalating costs were “crisis-driven” and it was “failing to improve long-term outcomes for children and families” with complex needs.

The report, by the former senior public servant David Tune, estimated the government spent \$1.86bn on vulnerable families in 2015-16 but spending was “crisis-oriented” and had “evolved in an ad hoc way”.

Then in 2019, University of NSW pro-vice-chancellor professor Megan Davis delivered the “Family is Culture” report, a three-year study of the case files of 1,144 Aboriginal children who entered the out-of-home-care system between 2015 and 2016.

Prof Davis found that NSW child protection workers regularly gave “misleading” evidence to the children’s court, often took the most traumatic option by removing Aboriginal children – including newborns – from their families, and operated in a “closed system” that needed urgent reform to make it more transparent and child-friendly.

Davis made 125 recommendations, to which the NSW government responded in 2020. It has created a new deputy children’s guardian for Aboriginal children and young people, and set up an “Aboriginal knowledge circle” to provide independent advice to the minister for families, communities and disability services.

NSW minister for families, communities and disability services Alister Henskens said the government will stick to its deadline of 2024.

“The voices of Aboriginal people are at the heart of the NSW government’s response to the Family is Culture report. We continue to work closely with the community to drive better outcomes for Aboriginal children in out-of-home care,” Henskens said.

But Gray said there was “a big difference” between the report’s recommendations, and the government’s response.

“The report called for a bigger oversight and accountability of the child protection system, including the establishment of an independent commission,” he said. “So once again, this is a government-led approach, rather than working in partnership with Aboriginal and Torres Strait Islander communities and stakeholders, towards transforming the child protection system for our children.”

The draft “Family is Culture review” bill proposes changes to eight different pieces of legislation. It mandates early intervention and support for Aboriginal families, prevents adoption of Aboriginal children without parental consent and is based on the “fundamental principle that First Nations children belong with kin and on country,” Shoebridge said.

“The reforms would mean that more of our kids and families get the early support they need so that they are less likely to enter the statutory system, and those that do are more likely to be restored to their families,” CEO of the NSW Peak Aboriginal child and family organisation, John Leha said.

Acting CEO of the Aboriginal legal service, Nadine Miles, said she was disappointed in the NSW government’s lack of “substantive” action on child protection.

“Once the state removes a child from home, that child is far more likely to experience homelessness and incarceration as they grow up. By and large, out-of-home care does not set kids up for a happy, healthy life. That’s why we’ve long called on the government to support Aboriginal families and community-controlled organisations to keep children safe and supported within their own home, community and culture.

“While politicians and bureaucrats delay action, more Aboriginal children are experiencing the trauma of being torn from their family and culture,” she said.