

Yingiya Mark Guyula MLA
Member for Nhulunbuy, NT Legislative Assembly



1/06/2017

RE: Additional submission to the Royal Commission on Child Protection

To the Hon. Margaret White AO and Mr Mick Gooda

On the 13th of February 2017 I made a media statement about the removal of Aboriginal children from their extended family, community and culture to foster homes in Darwin (please see attached). I had been made aware of several families who had children removed to Darwin.

Following this statement I provided an alternative model of child protection (see attached). I gave this document to the Minister in the hope that it would produce further discussion. Key aspects of this model included using family conferencing process and most importantly the inclusion of an independent facilitator in this process. Another crucial factor in this model is the reliance on clan authorities in the decision making process. In Arnhem Land, clan leaders are the authorities and the decision of Government's to override their authority disempowers entire communities.

Since giving the Minister this alternative model, I have been made aware that the Department of Territory Families in Nhulunbuy are establishing a Yolngu reference group. This is a good step towards gaining advice from Yolngu community members, however this is not an independent group. Furthermore, it not empower families and clans directly.

I have also attached a letter to the Minister that outlines a Yolngu grandmothers experience with the child protection process. In particular, this highlights the difficulty of two cultures rubbing up against each other. Yolngu grandparents have always been primary carers for children, the western system of child protection does not understand extended family carers and the pivotal role they have. Many children are raised by their grandparents, not always because there is a problem but because this is normal in Yolngu culture.

Child protection relates directly to our sovereign nature and our very ability to determine our future through happy healthy future generations. This issue is central to maintaining our cultural integrity. I make this submission with the knowledge that Yolngu and Balanda must work together to make bold



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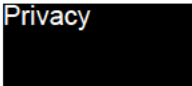


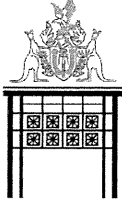
changes that will provide a future for Yolngu children that is founded on Yolngu authority. I want the Royal Commission to be part of this process.

Yours Sincerely

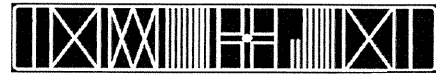
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Member for Nhulunbuy, NT Legislative Assembly



Public Statement Release Date: 13/02/2017

RE: Removal of Yolngu Children from Arnhem Land

Stolen Generation Continues- the Yolngu Nation says No to the Removal of Yolngu citizens

In the last month I have been made aware of eight children who have been taken from the lands of the Yolngu Nation and stolen away to Darwin by the NT Government. The communication I am receiving from community members is that there are many more children that have been removed. Children are being taken off their country and literally out of the arms of their family, despite protective legislation and policies.

The Yolngu kinship structure is composed of several mothers and fathers, many grandmothers and grandfathers. It is very hard to exhaust this list of people when looking for someone to provide care for a child.

In 2015, Grandmothers Against Removal reached an agreement with Department of Families and Children Services in NSW on a set of guiding principles aimed at giving Aboriginal communities more control over child protection issues. In Arnhem Land I want the same opportunity for the Yolngu Nation with the intention of giving Yolngu clans control over the welfare of Yolngu children.

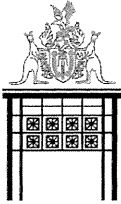
Yolngu leaders and Yolngu people – we are a sovereign nation. Without a treaty and without our consent, what makes the NT Government think they can take our citizens from our lands, especially the most vulnerable of our society- our children. I am walking in both worlds with the aim of creating a treaty whereby Yolngu people can maintain culture and have the right to self-determination while working in partnership with all Australians. We seek unity, but the NT Government is acting with cruel and oppressive behaviour.

As you can see, the issue of child removal goes to the very core of sovereignty, self-determination and Treaty. If the NT Government is taking Yolngu children off Yolngu country without the consent of the Yolngu community and placing them in a foreign community with foreign carers, then they are abusing the entire people group.

I demand the NT Government stops the practice of removing Yolngu children from their family and their country and their culture. I want the Government to engage with myself and Yolngu leadership about giving Yolngu communities the authority and resources to work in partnership to protect Yolngu children from harm: including the harm that occurs when they are removed from their culture.

Yingiya Guyula will be available for Interview on Monday the 13th at 10 am at the front of Parliament House. Monday the 13th is the Anniversary of Kevin Rudd's Apology to the Stolen Generation in 2008.

Media contact- Kendall Trudgen: 0428402929



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Supporting Documents for Media Statement

Statement Release Date: 13/02/2017

Stolen Generation Continues- the Yolngu Nation says No to the Removal of Yolngu citizens

- In Australia, ***The Aboriginal and Torres Strait Islander Child Placement Principle***, which has been incorporated in legislation and policies across Australia, outlines a preferred order for Aboriginal out-of-home care
 - Carers within the family and kinship networks
 - Non-related carers in the child's community and then
 - Carers in another Aboriginal community

(Children in Care, CFCA resource sheet – October 2016, Australian Institute of Family Studies)

- ***NT Legislation: CARE AND PROTECTION OF CHILDREN ACT 2007 (NO 37 OF 2007) - SECT 12***

Aboriginal children

(1) Kinship groups, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal children.

(2) In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.

(3) An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:

- (a) a member of the child's family;
- (b) an Aboriginal person in the child's community in accordance with local community practice;
- (c) any other Aboriginal person;

(d) a person who:

(i) is not an Aboriginal person; but

(ii) in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

(4) In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

- In 2010 the NT Children's Commissioner Howard Bath conducted an inquiry that recommended that a family placement be adopted - which empowers and resources the extended family of an at risk child, in decision making about their protection. The Inquiry report articulates "the need for Aboriginal controlled child and family service organisations... Building on its commitment to self determination, the Inquiry proposes a comprehensive conceptual model for consideration of and participation by Aboriginal people in the delivery of programs and services to Aboriginal children and young people involved in the child protection system and in all aspects of decision-making."

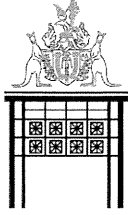
(Growing them strong, together: Promoting the Safety and Wellbeing of the Northern Territories Children, Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010, page 18)

- Further to this, the current NT Children's Commissioner, Colleen Gwynne has also made a statement to the current Royal Commission into the Protection and Detention of Children stating that " more indigenous children should be placed with Aboriginal families. The NT has the highest child placement rate in the country but a comparatively low rate of placement of Aboriginal children in kinship care."

(NT Aboriginal Survival Rest on Inquiry, news.com.au, 12 Oct 2016)

- **Article 23 of the UN Rights of Indigenous People:** "In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. "

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DRAFT DOCUMENT FOR DISCUSSION

Returning Power and Responsibility to Community in Child Protection – Recommendations

The following draft document outlines recommended phases of action that acknowledge a Yolngu worldview and move towards greater Yolngu authority in the area of child protection. Throughout this process it should be acknowledged and understood that the safety of the child is paramount and that the engagement of Yolngu institutions and leadership is identified as the safest pathway for Yolngu children. This pathway is about placing the children's needs with the right authority group to make holistic decisions from the child's cultural perspective: with the family, the clan, the land, the ancestors and within Yolngu Rom.

Recommendations Initial phase:

- No children should be removed from Arnhem Land without clan leadership consent
- From the outset of engagement with parents of a notified child, the Department should include the Mari, N̄athi, Momu, M̄ari'mu, N̄andi and N̄apipi mala, B̄apa and Mukul mala in any discussion about identified problems and reasons for notification as well as suggested solutions/support to address these problems (see attached kinship chart)
- Where alternative care is sought: the child/ren are placed with family who can then be assessed as a carer immediately without removal of children from community or region.

Recommendations - Intermediate phase:

- The Department implement an approach to child protection that applies restorative practice methods, such as family conferencing – Gurrutmirr Dh̄aruk-bakthun (family discussions to create an agreement) for every child and family that are identified as requiring ongoing intervention.
- This method should utilise an independent agency to provide family conferencing or Gurrutmirr Dh̄aruk-bakthun facilitators and work in partnership with extended family, clan leadership, Community Leader forums and the Department and empower families and clans to create solutions to the problems being identified. Note: There is at least one existing organisation that could fulfil this role in East Arnhem Land.

- The outcome of the partnership should result in a binding agreement – A Care and Supervision Agreement.
- This agreement must then be ratified by senior clan leaders of the affected child/ren.
- Where an agreement is broken or cannot be reached a conference including the clan leadership can be held – Bāpurruw Dhāruk -bakthun (clan discussions to create an agreement)
- This process should unfold with the engagement of an independent Yolngu advisory group.
Note: We recommend the Makarr Dhuni forum framework

Recommendations - next phase:

- Future phases can include the incorporation of the Regional Community forums to ratify agreements and oversee problems arising - Dhāruk-bakthun (Community clan leaders representing all clans discussing to create an agreement). Note: We recommend the Makarr Dhuni forum framework.

Recommendation – Final phase:

- Creation of a Yolngu Family Agency whereby Yolngu child protection comes under the authority of the Yolngu Nation. Many Indigenous models overseas have developed a consensus system of “customary care” whereby concerned parties draw up an agreement for each case – in a conciliatory conferencing approach. The agreement is formally sanctioned by Clan Leaders and a Community Leaders forum.

1. Next of kin – parents and grandparents- Mari, Ŋathi, Momu, Māri’mu, Ŋāndi and Ŋapipi, Bāpa and Mukul.
2. Gurrutumirr Dhāruk-bakthun
3. Bāpurruw Dhāruk-bakthun
4. Community leaders Dhāruk-bakthun