

LAWHACK 2023



RIGHTS OF THE CHILD

HACK PACK

Topic 1: Out-of-Home Care

NATIONAL
JUSTICE
PROJECT



Law Hack 2023 – Rights of the Child

HACK PACK

OUT-OF-HOME CARE

CULTURAL SENSITIVITY WARNING: First Nations readers should note that this material the names of deceased persons.

CONTENT WARNING: This submission contains content that is confronting and distressing. Please take care when reading.

THE NATIONAL JUSTICE PROJECT

The National Justice Project (**NJP**) is a proudly independent not-for-profit human rights legal and civil rights service. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners we work to create systemic change and amplify the voices of communities harmed by government inaction, harm and discrimination.

Through legal action, advocacy, education, and collaborative projects, we challenge systemic discrimination by defending and promoting the rights of people who have experienced racism and discrimination in healthcare and legal systems, immigration detention, prisons and juvenile detention, and policing.

ACKNOWLEDGEMENT OF FIRST NATIONS PEOPLES' CUSTODIANSHIP

The National Justice Project pays its respects to First Nations Elders, past and present, and extends that respect to all First Nations peoples throughout this country. The NJP acknowledges the diversity of First Nations cultures and communities and recognises First Nations peoples as the traditional owners and ongoing custodians of the lands and waters on which we work and live.

We acknowledge and celebrate the unique lore, knowledges, cultures, histories, perspectives and languages that Australia's First Nations Peoples hold. The NJP recognises that throughout history the Australian health and legal systems have been used as an instrument of oppression against First Nations Peoples. The NJP seeks to strengthen and promote dialogue between the Australian legal system and First Nations laws, governance structures and protocols. We are committed to achieving social justice and to bring change to systemic problems of abuse and discrimination.

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2. INTRODUCTION

2.1. ABOUT LAW HACK

Law Hack 2023 is co-hosted by the National Justice Project and the Jumbunna Institute for Indigenous Education and Research.

Law Hack 2023 reflects our strategy of securing systemic change through a combination of strategic legal action, social justice education, fearless advocacy and collaborative partnerships.

2.2. WHAT TO EXPECT

Law Hack 2023 brings together teams of legal professionals to develop strategies to protect the rights of First Nations children and young people impacted by the out-of-home care and youth detention systems.

During Law Hack 2023, your team will select an area to focus on within the Law Hack 2023 topic you have been allocated (out-of-home care or youth detention), develop a strategic legal strategy, and pitch your strategy to a panel of experts.

2.3. THE HACK PACK

The Hack Pack is a resource to help you navigate and prepare for Law Hack 2023. It contains essential information and resources to guide your participation and assist in developing novel legal solutions Here's how you should use it:

- **Orientation:** Start by familiarising yourself with the Hack Pack to understand its structure and contents.
- **Problem Exploration:** The Hack Pack contains crucial information about the challenges faced by First Nations children and young people in these systems. It provides insights into the legal, social, and historical context, enabling you to identify areas where strategic litigation can have a significant impact. The Hack Pack is not intended to be exhaustive, but provides plenty of stimulus to help motivate and inform you find what you need.
- **Self-Select your Focus:** Law Hack enables participants to focus on an area that you feel passionately about and that you feel confident will bring about real change. First, select an area that your team is inspired to create change in, then use the Hack Pack to inform your strategy.

2.4. HOW TO HACK

Welcome to the engine room of Law Hack 2023! You can choose how to spend your time most effectively. These four hacking sessions will guide your team through the process of developing effective legal strategies. Each session plays a unique role in building your solution.

Remember, these sessions are all about teamwork, collaboration, and innovation. Use the Hack Pack to access additional resources and information to support your journey. Your goal is to create robust legal strategies that protect the rights of First Nations children.

Identify the Problem (Hack Session 1):

- Engage in open discussions to identify the core problem you aim to address.
- Understand the legal context and relevant regulations.
- Understand the stakeholders, including community advocates, potential respondents, and involved parties.
- Determine the most critical aspects of the issue.

Brainstorm Strategies (Hack Session 2):

- Explore legal approaches and opportunities to tackle the problem.
- Identify individuals or entities who are best suited to champion your cause.
- Consider how various factors and issues intersect and affect in your strategy.
- Prioritise and select the most promising approach.

Develop a Comprehensive Strategy (Hack Session 3):

- Hone and develop the selected strategy.
- Define your objectives, tactics, resources, timeline, risks, stakeholders, and ethical considerations.

Prepare for the Pitch (Hack Session 4):

- Familiarise yourselves with the criteria upon which your solution will be evaluated.
- Assign responsibilities and spokespersons within your team.
- Structure your 4-minute pitch effectively for maximum impact.
- Polish your presentation through practice.

2.5. JUDGING CRITERIA

CHANGE: Bold and strategic, showing potential to change the status quo (law, policy, culture and public perception).

HUMILITY: Respects people with lived experience as experts, drivers, and catalysts of change.

ACHIEVABLE: Clearly defined plan and strategy to make change.

NOVEL: Using legal action and advocacy in original, creative and innovative ways.

GROUNDING: Grounded in lived experience by addressing barriers of discrimination and injustice, in particular multi-layered disadvantage and discrimination.

EVIDENCE: Informed by research, data and evidence of need.

2.6. POTENTIAL FOCUS AREAS

- How might we prevent the unnecessary and discriminatory removal of Aboriginal and Torres Strait Islander children from their families and communities?
- How might we ensure Aboriginal and Torres Strait Islander children are placed in culturally appropriate care as determined by Aboriginal and Torres Strait Islander People?
- How might we make governments responsible for preventing children from growing up with culture, community, country and family?
- How might we enforce appropriate duty of care standards owed by the responsible Department to ensure transparency and accountability for the care and support of children and their families involved in the out of home care system?
- How might we seek remedies for children for harms suffered in out-of-home care to prevent other children suffering in unsafe care environments?
- How might we ensure that families are heard before children are removed?

2.7. YOUR MENTORS

Your mentors will be available throughout the day. You can consult a mentor at any time to get feedback, insight and reflections on your problem and solution.

Dr Paul Gray

Paul Gray is a member of the Wiradjuri nation from Central New South Wales. Paul has considerable experience in advocacy, research and publishing extensively in the field of Indigenous child protection and wellbeing. Paul leads the Indigenous child protection hub at the UTS Jumbunna Institute of Indigenous Education and Research, working closely with First Nations families and advocates to critically examine and reimagine contemporary child protection systems and practice.

Dr Teresa (Terri) Libesman

Terri Libesman is an associate professor in Law at UTS. She's a researcher and writer working in the fields of children and the law, and Indigenous peoples and the law. Her work engages with the meaning and implementation of human rights with respect to child welfare, focusing on national and comparative international models for Indigenous children's wellbeing.

Professor Craig Longman

Craig Longman is a Barrister and the Head of Legal Strategies at the UTS Jumbunna Institute for Indigenous Education and Research at UTS. He has worked extensively with First Nations clients, including on high profile human rights matters such as the defence of Lex Wotton arising from the Palm Island unrest in 2004, the Bowraville murders, Black Lives Matter,

First Nation deaths in custody inquiries, and the inquest into the death in custody of David Dungay in 2015.

James Beaufils

James Beaufils is a member of the Gundungurra nation from the Pejar area of Eastern NSW, and Kanak from New Caledonia. James is a Research Fellow and PhD candidate at the UTS Jumbunna Institute of Indigenous Education and Research, and the Faculty of Law. He has examined the access and educational attainment of young people who are incarcerated and supervised in Secure Children's Homes. James is now working closely with Aboriginal children's organisations on his doctoral thesis exploring the experiences of Aboriginal people in the NSW Out-of-Home Care system.

Professor Thalia Anthony

Thalia Anthony is a Professor of Law at UTS. Her research looks at the legacy of colonisation and systemic racism in legal institutions, examining the role of criminal laws and procedures in reproducing social relations and enforcing dispossession. She also has expertise in relation to First Nations Stolen Wages claims, legal redress for the Stolen Generations, the harms of carceral systems, and coercive controls of First Nations homelands, housing and mobility.

George Newhouse

George Newhouse is co-founder and principal solicitor of the National Justice Project, as well as an Adjunct Professor of Law at UTS and Macquarie University. George has worked extensively in strategic litigation for social justice, working tirelessly to support those who are least able to access justice to advance human rights.

For more than a decade, George has advocated for reform to the youth detention system. He has led a number of cases against abuses of children's human rights in youth detention, healthcare, prisons, policing and out-of-home care.

2.8. YOUR JUDGES

Professor Robynne Quiggin

Robynne Quiggin is a Wiradjuri lawyer and consultant. Robynne holds various roles including Pro Vice-Chancellor (Indigenous Leadership and Engagement) at UTS. Robynne served as Deputy Aboriginal and Torres Strait Islander Social Justice Commissioner at the Australian Human Rights Commission from 2016-2017.

Tony McAvoy SC

Tony McAvoy is a member of the Wirdi nation of the Clermont region in Central Queensland and became Australia's first Indigenous Senior Counsel in 2015.

Tony chairs various professional committees including the New South Wales Bar Association's First Nations Committee and the Law Council of Australia's Indigenous Legal Issues Committee. He has given evidence and contributed to numerous parliamentary inquiries and events, including in including First Nations over-incarceration, treaties and truth commissions, First Nations heritage protection, constitutional reform, human rights and climate change.

Latoya Rule

Latoya Rule is a member of the Wiradjuri nation from Central New South Wales, and Te Ātiawa people from New Zealand. Latoya is a Takatāpui (Queer) Research Associate and PhD Candidate at UTS Jumbunna Institute for Indigenous Education and Research, as well as a writer and campaigner. Since the 2016 death in custody of her brother Wayne Fella Morrison, Latoya has led the National Ban Spit Hoods Coalition, campaigning to establish a legislated ban on spit hoods nationwide.

2.9. EVENT SCHEDULE

WELCOME & INTRODUCTION	
8:30am	Arrival, Coffee Cart, Registration
9:00am	Acknowledgement of Country: Aunty Glendra Stubbs
9:10am	Keynote Address: Tony McAvoy SC
9:30am	Housekeeping & Instructions
MORNING HACK	
9:45am	Hack Session 1 & 2: Teamwork
Ongoing	Mentor Consultations: Expert mentors are available throughout the day
LUNCH & PLENARY	
12:30pm	Lunch
1:15pm	Plenary: Prof. Craig Longman
AFTERNOON HACK	
13:30pm	Hack Session 3 & 4: Teamwork
Ongoing	Mentor Consultations: Expert mentors are available throughout the day
PITCHING & CELEBRATION	
4:00pm	Strategy Pitches: 4-minute pitch with 3-minutes Q&A
5:00pm	Judges confer
5:15pm	Outcome announced and prizes awarded
5:20pm	Closing remarks: George Newhouse – Director, National Justice Project
5:30pm	Networking and Celebration event
6:30pm	Event Close

3. GLOSSARY

ACCos: Aboriginal Community-Controlled Organisations

AICCAs: Aboriginal and Islander Child Care Agencies

AIHW: Australian Institute of Health and Welfare

ATSICPP: Aboriginal and Torres Strait Islander Child Placement Principle

CRC: Convention on the Rights of the Child

CRPD: Convention on the rights of Persons with Disabilities

ICCPR: International Convention on Civil and Political Rights

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

OOHC: Out-of-home care

SNAICC: Secretariat of National Aboriginal and Islander Child Care

UNDRIP: United Nations Declaration on the rights of Indigenous Peoples

4. RIGHTS OF THE CHILD

4.1. LAW

4.1.1. Key International Treaties and Instruments – An Overview

Convention on the Rights of the Child (CRC)¹

The CRC is the main international human rights treaty that details the civil, political, economic, social and cultural rights of every child. The CRC is the most widely ratified human rights treaty in the world. The rights afforded within the CRC are monitored through the United Nations Committee on the Rights of the Child.

Countries that have ratified the CRC have an obligation to report to the Committee within two years of ratification and usually every five years thereafter. Within the reports, State parties are to comment on the steps they have taken to put the Convention into effect and on progress in the enjoyment of children's rights. Australia's most recent [submission](#) to the Committee was on 15 January 2018 (upcoming report is due to be submitted on 15 January 2024).

Domestically, the dominant way the report is prepared is through the co-ordination of the Commonwealth Attorney General's Department. The Attorney General's Department will consult states, territories and relevant government departments. Community members are usually consulted in the process as well. After consultations and the collating of information and evidence, the Attorney General will then report to the Committee.

Relevant articles within the CRC include:

- Article 3.1 – ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’;
- Article 19.1 – ‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’;
- Article 37.1 – ‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’;
- Article 37.2 – ‘No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time’;
- Article 37.3 – ‘Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action’;
- Article 44 – ‘States must submit to the Committee reports on the measures they have adopted which give effect to the rights recognised herein and, on the progress, made on the enjoyment of those rights:
 - Within two years of the entry into force of the Convention for the State Party concerned;
 - Thereafter every five years’.

United Nations Declaration on the rights of Indigenous Peoples (UNDRIP)²

Adopted in 2007, the UNDRIP is the most comprehensive international instrument on the rights of First Nations Peoples. The UNDRIP establishes a universal framework of minimum standards for the survival, dignity and well-being of First Nations Peoples globally and elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situations and circumstances of First Nations people.⁵¹ The UNDRIP sets out fundamental principles for addressing historical injustices and fostering respect for unique cultures, traditions and lands, and specifically provides for the right to self-determination⁵² and a life free of discrimination,⁵³ as well as the right to liberty and security of person,⁵⁴ the right to the highest attainable standard of health⁵⁵ and the right to effective remedy.⁵⁶

Australia endorsed the UNDRIP in 2009, after originally voting against its adoption in 2007. While declarations are not legally binding, certain declarations, including the UNDRIP (and the UDHR), are considered binding to the extent that they reflect and build on existing well-established human rights obligations in international treaty and customary law. Despite its obligations, Australia has yet to incorporate the UNDRIP principles into domestic legislation.

Relevant articles include:

- Article 7.2 – ‘Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.’
- Article 14.2 – ‘Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.’
- Article 14.3 – ‘States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.’
- Article 17.2 – ‘States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.’
- Article 22.1 – ‘Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.’
- Article 22.2 – ‘States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.’

International Covenant on Economic, Social and Cultural Rights (ICESCR)³

The ICESCR was adopted by the UN General Assembly in 1966. Australia signed the ICESCR in 1972, and ratified in 1975.

The primary purpose of the ICESCR is to recognise and protect a range of essential economic, social and cultural rights for individuals and communities worldwide. These protected rights include the right to work, education, health and an adequate standard of living.

While some rights and protections contained in the ICESCR have been implemented domestically at Commonwealth and state and territory levels, overall implementation has been piecemeal and inconsistent across jurisdictions.

As a signatory, Australia has reporting obligations to the Secretary-General of the UN.

Australia’s fifth report was submitted in 2016, with the sixth report due in [September 2023](#).

Articles relevant to the rights of the child include:

- Article 10 – ‘The States Parties to the present Covenant recognize that:
 - 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.'
- Article 14.4 – 'In the case of juvenile persons, the [criminal legal] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.'
- Article 24.1 – 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.'
- Article 24.2 – 'Every child shall be registered immediately after birth and shall have a name.'
- Article 24.3 – 'Every child has the right to acquire a nationality.'

International Convention on Civil and Political Rights (ICCPR)⁴

The ICCPR, as adopted by the UN in 1966, sets out to establish and safeguard a wide range of fundamental civil and political rights for individuals. Some of the key protected rights include freedom of expression, religion and due process.

Despite signing the ICCPR in 1972 and ratifying it in 1980, Australia has not adopted the ICCPR into domestic law (although some rights and protections have been implemented domestically at Commonwealth and state and territory levels, albeit inconsistently).

Signatories have an obligation to report to the UN Human Rights Committee. An initial report became due one year after implementation, with reports thereafter required whenever requested by the Committee. The sixth Australian report under the ICCPR was submitted in 2016, with the seventh report due in [2026](#) (initially due in [2023](#)).

Relevant articles include:

- **Article 10.1** – 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'
- **Article 10.2** – '(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.'
- **Article 10.3** – 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile

offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.'

- **Article 24 –**

- '1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- 2. Every child shall be registered immediately after birth and shall have a name.
- 3. Every child has the right to acquire a nationality.'

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁵

ICERD is a crucial international human rights treaty with the primary purpose of combating and eliminating all forms of racial discrimination. Adopted by the UN in 1965, ICERD aims to promote equality among all individuals, regardless of race, ethnicity or nationality. Australia ratified ICERD in 1975, and implemented domestic racial discrimination legislation with the [Racial Discrimination Act 1975 \(Cth\)](#).

Parties to ICERD are required to submit a report to the UN Committee on the Elimination of Racial Discrimination within one year initially, and every two years thereafter. The 18th-20th Australian report under the ICERD was submitted in 2017, the 21st-22nd report was due in [October 2020](#).

No articles specifically refer to the rights of the child, however the instrument as a whole protects the rights of children, and their families and communities, who may be susceptible to discrimination or infringement of rights due to race, ethnicity or nationality.

Convention on the rights of Persons with Disabilities (CRPD)⁶

The purpose of the CRPD treaty is to ensure the full and equal enjoyment of human rights and fundamental freedoms for people with disabilities. Some of the fundamental rights protected by the CRPD include non-discriminatory access to civil and political freedoms, accessibility and equal participation, and independent living and inclusion in the community.

The CRPD was adopted by the UN in 2006, and ratified by Australia in 2008. Parts of the CRPD are implemented domestically within the [Disability Discrimination Act 1992 \(Cth\)](#), however full implementation has not yet been accomplished. Similar to ICERD, state parties are expected to submit reports to the Committee on the Rights of Persons with Disabilities, initially two years after enactment, subsequently every four years. Australia's [combined fourth and fifth reports](#) are due in 2026.

Articles relevant to the rights of the child include:

- **General Principles:**

- **Article 3.h. –** Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

- **Children with disabilities:**

- **Article 7.1** – States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
- **Article 7.2** – In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
- **Article 7.7** – States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.
- **Respect for home and the family:**
 - **Article 23.3** – States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
 - **Article 23.4** – States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
 - **Article 23.5** – States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

4.1.2. List of Key Legislation – Domestic and International

International Treaties

[Convention on the Rights of the Child](#) (1989)

- Article 3
- Article 19
- Article 20
- Article 21
- Articles 44 – 45 (reporting obligations)

[United Nations Declaration on the Rights of Indigenous Peoples](#) (2007)

- Article 3
- Article 4
- Article 7

- Article 8
- Article 9
- Article 13
- Article 14
- Article 18
- Article 19
- Article 21
- Article 22
- Article 23
- Article 24.2

[International Covenant on Economic, Social and Cultural Rights](#)

- Article 1
- Article 3
- Article 10
- Articles 16 – 25 (reporting obligations)

[International Convention on Civil and Political Rights](#)

- Article 1
- Article 2.3
- Article 3
- Article 24
- Article 26
- Article 27
- Articles 40 – 45 (reporting obligations)

[International Convention on the Elimination of All Forms of Racial Discrimination](#)

- Article 1.1
- Article 2.1
- Article 9 (reporting obligations)

[Convention on the rights of Persons with Disabilities](#)

- Article 3
- Article 7
- Article 23.2 – 23.5

[Convention on the Prevention and Punishment of the Crime of Genocide](#) (1948)

- Article 2(e)

[Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally](#) (1986)

- Articles 4 – 6
- Articles 10 – 12
- Articles 13 – 24 (on adoption)

Guidelines set by the United Nations

[United Nations Guidelines for the Alternative Care of Children](#) (2010)

Applies to children in foster care, does not apply to children already adopted

- Paragraph 30(b)
- Paragraphs 118 – 119
- Paragraphs 120 – 122

Commonwealth Legislation

[Family Law Act 1975 \(Cth\)](#)

- [Family Law Regulations 1984](#)

This is the key piece of Commonwealth legislation that sets out how child protection concerns raised in federal family law proceedings should be managed. It also includes reporting obligations for family law court staff and mechanisms for courts to obtain information from child protection agencies.

The key guiding principles of the Family Law Act are:⁷

- best interest of the child,
- early intervention and support for families,
- culturally appropriate care and Aboriginal and Torres Strait Islander Child Placement Principles, and
- participation of children and young people in decision-making processes.

State and Territory Legislation

State and Territory child protection legislation differs according to local needs. Broadly, legislation regulates the Aboriginal and Torres Strait Islander Child Placement Principles, licensing, protection and placement of children in out-of-home care (OOHC) facilities and support services for children.

Australian Capital Territory

- [Children and Young People Act 2008 \(ACT\)](#)
 - [Children and Young People \(ACT Out of Home Care\) Standards 2016 \(No 1\)](#)

- [Children and Young People \(Care and Protection Organisation\) Standards 2018 \(No 1\)](#)
- [Human Rights Act 2004 \(ACT\)](#)
- [Human Rights Commission Act 2005 \(ACT\)](#)

New South Wales

- [Community Welfare Act 1987 \(NSW\)](#)
- [Children and Young Persons \(Care and Protection\) Act 1998 \(NSW\)](#)
- [Anti-Discrimination Act 1977 \(NSW\)](#)

Northern Territory

- [Care and Protection of Children Act 2007 \(NT\)](#)
 - [Care and Protection of Children \(Placement Arrangement\) Regulations 2010](#)
 - [Care and Protection of Children \(Mediation Conferences\) Regulations 2010 \(NT\)](#)
- [Anti-Discrimination Act 1992 \(NT\)](#)

Queensland

- [Child Protection Act 1999 \(Qld\)](#)
 - [Child Protection Regulation 2011 \(Qld\)](#)
- [Human Rights Act 2019 \(Qld\)](#)

South Australia

- [Family and Community Services Act 1972 \(SA\)](#)
- [Children and Young People \(Safety\) Act 2017 \(SA\)](#)
- [Equal Opportunity Act 1984 \(SA\)](#)
- [Disability Inclusion Act 2018 \(SA\)](#)

Tasmania

- [Children, Young Persons and their Families Act 1997 \(Tas\)](#)
- [Anti-Discrimination Act 1998 \(Tas\)](#)

Victoria

- [Child Wellbeing and Safety Act 2005 \(Vic\)](#)
- [Children, Youth and Families Act 2005 \(Vic\)](#)
 - [Children, Youth and Families Regulations 2017 \(Vic\)](#)
- [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#)
- [Equal Opportunity Act 2010 \(Vic\)](#)

Western Australia

- [Children and Community Services Act 2004 \(WA\)](#)
 - [Children and Community Services Regulations 2006 \(WA\)](#)
- [Equal Opportunity Act 1984 \(WA\)](#)

4.2. OVERVIEW

4.2.1. Historical Context

The Stolen Generations

The movement towards state intervention into the protection of children began in the late 19th century as a result of concern of child abuse and neglect amongst families experiencing poverty.⁸ This movement of ‘rescuing children’ that had gathered pace in Europe and the United States, and which coincided with the development of Children’s Courts in most Australian States and Territories, also led to the development of interventionist policies designed to support the State’s regulation of Aboriginal people and more specifically, Aboriginal children.⁹

In the 1860s, Victoria became the first State to pass laws authorising Aboriginal children to be removed from their parents. In 1883, in New South Wales, the Board for the Protection of Aborigines was established to provide “the duty of the State to assist in any effort which is being made for the elevation of the [Aboriginal] race.”¹⁰ The 1915 amendments to the [Aborigines Protection Amending Act 1909 \(NSW\)](#) gave the Protection Board power to remove Aboriginal and Torres Strait Islander children without having to first establish a legal basis for their removal in the courts. Meanwhile, the only recourse for parents seeking to appeal a decision or action made by the Board to remove their child or children was in the courts. Removal orders could also be made by an [Aboriginal station manager or local police](#).¹¹ Across all jurisdictions, the justification for removals on the basis of low threshold and nebulous classifications like ‘neglect’ was, and continues to be, grounded in assimilation, racism and cultural ignorance.

In the 1960s and 1970s, the formation of national Aboriginal organisations, including the Aboriginal and Islander Child Care Agencies (**AICCAs**), followed localised struggles for Aboriginal and Torres Strait Islander peoples’ rights, including the rights of families and children.¹² AICCAs, along with other grassroots Aboriginal organisations advocated fiercely during the 1980s, becoming the catalyst for the early development of Aboriginal child placement principles, and the eventual formalisation of the [Aboriginal and Torres Strait Islander Child Placement Principle \(ATSICPP\)](#).¹³ The ATSICPP principles have been enacted in all Australian states and territories through legislation, policy or regulation. For example, section 13 of the [Children and Young Persons \(Care and Protection\) Act 1998](#) (NSW) implements ATSICPP in NSW.

The tabling of the ‘Bringing Them Home Report: The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’ ([Bringing Them Home Report](#))¹⁴ in Federal Parliament on 26 May 1997, marked a pivotal moment in the healing journey of many Stolen Generation survivors and their families. The Bringing Them Home Report documented the devastating experiences of the Stolen Generations, from the inception

of assimilation to the continuing impacts on Aboriginal and Torres Strait Islander communities' outcomes – from poverty and socioeconomic disadvantage, poor mental health, substance reliance and family violence.

At the time, the Secretariat of National Aboriginal and Islander Child Care (**SNAICC**) in their submission to the Bringing Them Home Report stated:¹⁵

“There are no studies solely devoted to opposition by Aboriginal people to the removal of their children. It is a history that demands to be written, one that would provide a fascinating and tragic account of a struggle that has been at the core of the battle for survival of Aboriginal people. It is a subject that would highlight the role of Aboriginal women – and men in the protection of the only guarantee for their survival when they had little or no material possessions and negligible civil rights. Resistance, moreover, did not occur in confrontational ways alone; more often than not it was through evasive means, given the absolute lack of power of Aboriginal People”.

The Bringing Them Home Report labelled the act of forcibly removing Aboriginal children from their families as a gross violation of human rights and genocide:¹⁶

“The policy of forcible removal of children from Indigenous Australians to other groups for the purpose of raising them separately from and ignorant of their culture and people could properly be labelled ‘genocidal’ in breach of binding international law from at least 11 December 1946.

...

Official policy and legislation for Indigenous families and children was contrary to accepted legal principle imported into Australia as British common law and, from late 1946, constituted a crime against humanity”.

The Bringing Them Home Report made [54 recommendations](#) to redress the impacts of the Stolen Generations. Among them was an official acknowledgment and apology from all Australian Parliaments and police. The inaugural National Sorry Day was held on 26 May 1998. Despite these acknowledgements and recommendations, since then, federal, state and territory governments have continued to fail to address the over-representation of children in OOHC, and the increasing rates of Aboriginal and Torres Strait Islander children being removed from their families and communities presents profoundly troubling parallels to the Stolen Generations.¹⁷

4.2.2. Contemporary Landscape and Critique

The strong link between contact with child ‘protection’ services and experiences of long-term socio-economic disadvantage, adverse health outcomes and subsequent and repeat contact with the legal system is well established.¹⁸ Despite this, Aboriginal and Torres Strait Islander children continue to be disproportionately over-represented in the out-of-home care (**OOHC**) and legal systems in every jurisdiction in Australia. This over-representation is a direct result of the persistent systemic issues that plague the operation of Australia’s public systems.

Ongoing connection to kin, community, culture and Country has been proven critical to the social and emotional wellbeing of Aboriginal and Torres Strait Islander children.¹⁹ Despite this, Aboriginal and Torres Strait Islander children spend longer periods in OOHC²⁰ and are less

likely to be reunified with their families when compared with their non-Indigenous counterparts.²¹ The rate of permanent care and adoption orders for Aboriginal and Torres Strait Islander children is high and escalating, with a significant majority being placed with non-Indigenous adoptive parents.²² The rate of Aboriginal and Torres Strait Islander children placed with kin rather than non-Indigenous family has also been steadily declining since 2006.²³

The intersection of these and other factors, including inadequate, discriminatory and culturally unsafe health care, education and other services, puts Aboriginal and Torres Strait Islander children and young people at unacceptable risk of coming into contact with police and the criminal justice system at a young age.

The impacts of the Stolen Generations

Child removal remains one of the most enduring and traumatic areas of government intervention in Aboriginal and Torres Strait Islander lives. Undoubtedly, the impacts of colonisation, past and present discriminatory policies and practices, coupled with underinvestment in community-led solutions, have created a legacy of disproportionate intervention in Aboriginal and Torres Strait Islander families and communities. Moreover, colonisation and systemic discrimination have caused large socioeconomic inequities between Aboriginal and Torres Strait Islander people and non-Indigenous Australians, including disparities in health, housing, employment, education and justice. These inequities in socioeconomic outcomes contribute to Aboriginal and Torres Strait Islander families being more likely to have contact with child protection systems.

The transgenerational impacts of Stolen Generations have also been recognised as a significant factor contributing to the continued removal of children. And as such, forcing Aboriginal and Torres Strait people to interact with the very systems that have perpetrated the greatest acts of harm against them is highly problematic.

This was acknowledged by the Northern Territory Government who said in 2010:

“Societal, environmental and poverty-related risk factors for children exist across all of society. However, when looking at risk factors impacting on Aboriginal children in child welfare the impacts of intergenerational experiences of dispossession, cultural erosion and policies of child removal must be considered. These issues not only impact on families, but also on the ability of families to seek or accept help from a system perceived to have caused or contributed to problems in the first place”.²⁴

Research confirms that survivors of the Stolen Generations face poorer health and wellbeing outcomes than other Aboriginal and Torres Strait Islanders and non-Indigenous Australians. A recent Australian Institute of Health and Welfare (AIHW) Report ([2021](#)), commissioned by the Healing Foundation, found that there were an estimated 33,600 Stolen Generations survivors in 2018–19 and that 27,200 were aged 50 and over. The report also found that those aged 50 and over were:

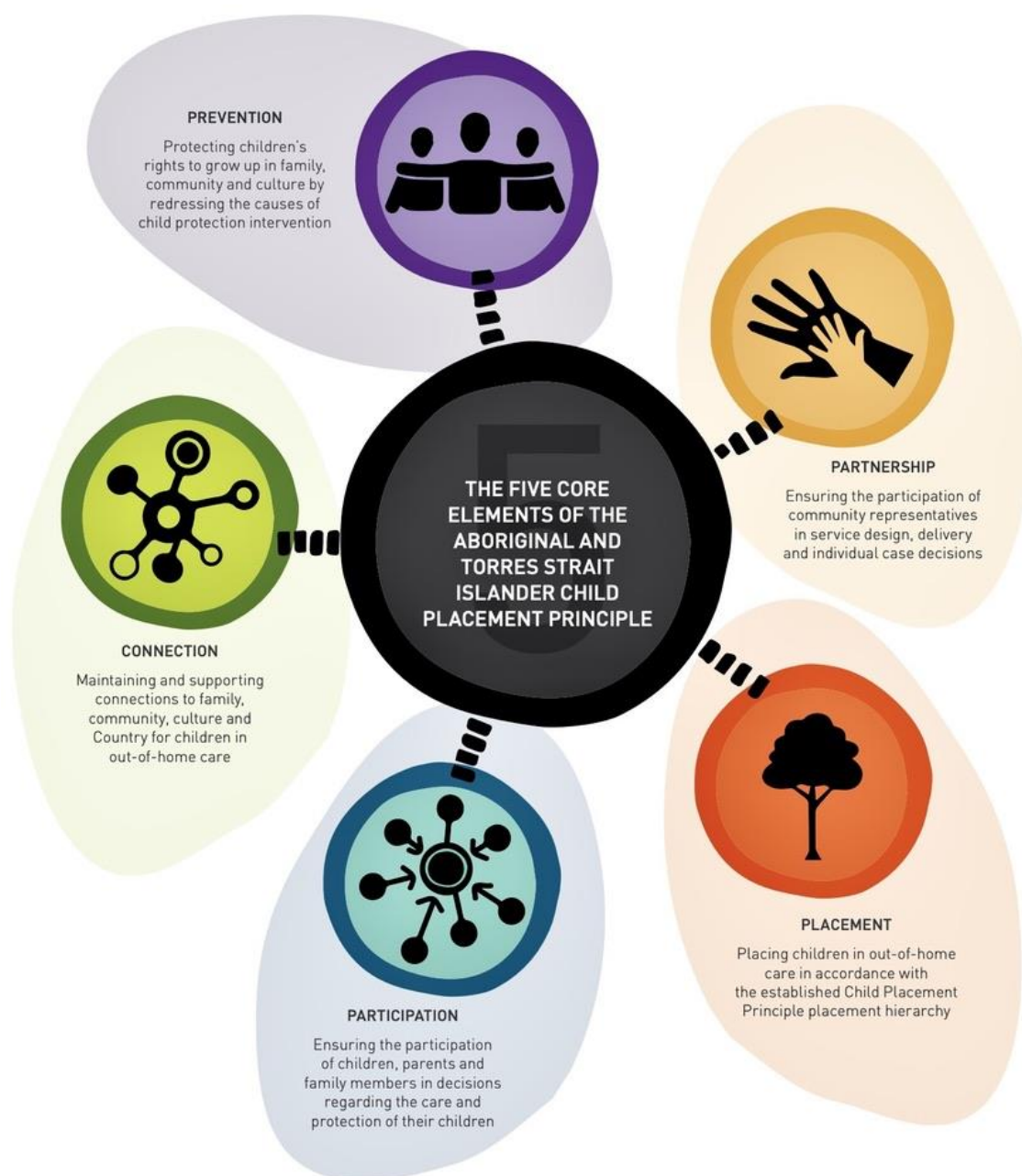
- 1.7 times as likely to experience discrimination
- 1.4 times as likely to have a severe or profound disability
- 1.4 times as likely to have poor mental health, and
- 1.8 times as likely not to own a home.²⁵

Young people with grandparents or great grandparents who survived the Stolen Generations are 50% more likely to be charged by police than other Aboriginal and Torres Strait Islanders and non-Indigenous Australians.²⁶

The Aboriginal and Torres Strait Islander child placement principle (ATSICPP)

ATSICPP is recognised as the '[cornerstone of Australian law and policy acknowledging the importance of family, culture and communication connections to \[identity\] and wellbeing](#)' and is supposed to [guide policy across Australia](#).

At the core of the ATSICPP are the [five elements](#): Prevention, Partnership, Placement, Participation and Connection:



Source: [Family Matters Report 2022](#)

While the ATSICPP has the potential to reduce and prevent removals, and minimise harm to the wellbeing of children and families, in reality it is not respected and applied appropriately.²⁷

SNIACC reports annually on State and Territory implementation of the ATSCIPP. In 2021, SNIACC found that:

“Although there have been some efforts made in the reporting period and over recent years to embed the ATSCIPP across policy, programs, processes and practice, there remain gaps in implementation that must be urgently addressed to improve outcomes.

...

Aboriginal and Torres Strait Islander community leaders and families have said they have lost hope, feel disempowered, and that practitioners are continuing to assess families through a biased, Western lens”.²⁸

Data suggest systemic problems with the implementation of the Placement element of the ATSCIPP. The proportions of children placed with Aboriginal and Torres Strait Islander relatives or kin in each state and territory have remained unacceptably low across all jurisdictions. Further, there has been an increase in children being placed with non-Indigenous carers, with a consequent decrease in children being placed with Aboriginal and Torres Strait Islander carers.

Nationally, there has been no significant change in the proportion of children placed in accordance with the ATSCIPP in the last five years. Aboriginal and Torres Strait Islander children were more likely than non-Indigenous children to suffer all types of abuse (physical, sexual or emotional) in OOHC, and equally likely to experience neglect.

Data point towards a crucial need for child protection systems to dramatically reduce the rates at which children are removed into OOHC, and focus efforts on providing therapeutic, holistic and culturally safe supports to parents and families to reduce any risks to child wellbeing.²⁹

Self-determination is enshrined in child protection law to various degrees, and ATSCIPP holds that partnership with Aboriginal Community-Controlled Organisations (**ACCOS**) is required in all child protection decision-making. However, Aboriginal and Torres Strait Islander peoples report being largely excluded from decisions on child removal and placement.³⁰ The community remains rightfully skeptical of a child welfare system that is not attuned to ATSCIPP, and where Aboriginal participation in decision-making is superficial rather than deeply engrained in practice.

Reducing the over-representation of Aboriginal and Torres Strait Islander children in OOHC will require simultaneous community-led initiatives targeted at children entering, in and exiting care. Crucially, the evidence supports that the greatest effort needs to occur even earlier, before children are in contact with the system.³¹

4.2.3. Preventing the unnecessary and discriminatory removal of Aboriginal and Torres Strait Islander children from their families and communities

Aboriginal and Torres Strait Islander children are taken from their families and placed in OOHC at disproportionate rates (see Key Statistics below).

Preventing the ongoing discriminatory and harmful removal of Aboriginal and Torres Strait Islander children from their families will protect the wellbeing of young people and their families, and help prevent their contact with the legal system. To stop this practice, meaningful changes are needed to overcome the causes, which are linked to multiple factors, including:

- cultural bias against parenting models, inadequate and inappropriate services and discriminatory treatment before the law³²
- discriminatory understanding of ‘risk’ and parenting³³
- poor access to safe housing, overcrowded housing, exposure to domestic violence and maternal and child health inequities³⁴
- socioeconomic disadvantage³⁵

Part 6 of the [Bringing Them Home Report](#) (1997)³⁶ analysed ‘the extent, nature and causes of contemporary removals of Aboriginal children from families and communities’. It noted that Aboriginal children were over-represented in OOH, particularly in long-term foster care arrangements. They were also more likely to be ‘notified’ to a child welfare department on the ground of abuse and neglect and were often placed in non-Indigenous environments. When examining the contemporary context, the report noted that there were multiple reasons for the high rate of removal of Aboriginal children from their families, including “continuing cultural bias against [Aboriginal] modes of parenting, inadequate and inappropriate services for [Aboriginal] families and discriminatory treatment of young [Aboriginal] people before the law.”³⁷

Socioeconomic disadvantage is a key driver of child removal, and the links between poverty and child intervention involvement are extensively documented. In 2020-21, more than one-third (34.8%) of children who were the subject of a substantiated child protection notification resided in the bottom quintile (that is, the most disadvantaged 20%) of socioeconomic areas. The over representation was even more significant for Aboriginal and Torres Strait Islander children, at 42.5% of substantiations relating to Aboriginal children living in the bottom quintile of socioeconomic areas.

Specifically, the [Family Matters Report](#) (2022)³⁸ noted that poor access to safe housing and overcrowded housing, exposure to domestic violence and maternal and child health inequities increases the risk of intervention and removal. Specifically, it was noted:

- **Housing** – Aboriginal and Torres Strait Islander people are more likely to experience [insecure housing, live in overcrowded dwellings and experience homelessness, including intergenerational homelessness](#), than non-Indigenous Australians. As of 2020-21, Aboriginal and Torres Strait Islander people were [10 times more likely to access specialist homelessness services](#) than non-Indigenous people, and the total number of Aboriginal and Torres Strait Islander clients accessing specialist homelessness services [increased by an average annual rate of 5.9%](#) between 2010-11 and 2020-21. Aboriginal and Torres Strait Islander people are almost [four times as likely to live in overcrowded homes](#).
- **Domestic Violence** – it is estimated that Aboriginal and Torres Strait Islander women experience family violence much more frequently than non-Indigenous women.³⁹ There are limited pathways to stable accommodation for Aboriginal and Torres Strait Islander women and children who flee their homes due to domestic violence. One of the reasons for this is acute shortages in crisis accommodation and long-term housing, particularly in regional and remote areas. These shortages can often lead to the forced separation of children from victim-survivors of family violence⁴⁰. Further, witnessing family violence is typically categorised by child protection as a form of emotional abuse – which is the most

common type of substantiated abuse or neglect for Aboriginal and Torres Strait Islander children. Witnessing family violence as a form of emotional abuse represented [47.7% of all substantiations in 2020-21](#). In some jurisdictions, such as the Northern Territory, mandatory reporting requirements are also preventing Aboriginal women from seeking safety or support as they fear the involvement from child protection authorities.⁴¹

- Andrew Jackomos PSM (Commissioner for Aboriginal Children and Young People in Victoria) said in 2016:
 - *“Family violence is a foreign curse and a criminal act impacting from time of invasion, colonisation and disempowerment that today encompasses most Aboriginal communities.*

There is no doubt and no question from the evidence that in Victoria, the primary victims of family violence are Koori women and children and the level of violence is growing worse by the day. It is eating away at our communities and destroying our families, some over many generations that have been victims of family violence, from birth to death. It is the number one driver, along with alcohol and drug abuse, of Victorian Koori children being removed into out of home care. Its continuation is a major reason why many Koori children cannot be reunited with their parents.”⁴²

- **Maternal Healthcare** – Aboriginal and Torres Strait Islander mothers and babies have [substantially worse health outcomes](#) than non-Indigenous mothers and babies. For example, over the period from 2012-2019, the maternal mortality rate for Aboriginal and Torres Strait Islander mothers (17.5 deaths per 100,000 women giving birth) was [3 times higher than that of non-Indigenous mothers](#) (5.5 deaths per 100,000 women giving birth). Economic disadvantage and social exclusion also impacts on the development of healthy babies and children. Aboriginal mothers are understandably apprehensive about accessing antenatal care for fear of intervention. This fear is supported by data that confirms Aboriginal and Torres Strait Islander infants are being removed at increased rates.⁴³

In [Sullivan v Prosser \[2014\] FCCA 3129](#), Justice Harman of the Federal Circuit and Family Court of Australia found that:

“The level of disadvantage and overrepresentation in communities of disadvantage of Aboriginal children in out of home care, juvenile detention and other categories is tragic, indeed criminal. The fact that it is ignored by the community, the media and those who might take some action to change it is all the more criminal”⁴⁴

The Aboriginal and Torres Strait Islander child placement principle (ATSICPP)

ATSICPP operates in all Australian jurisdictions and recognises the rights of Aboriginal and Torres Strait Islander children affected by the child ‘protection’ system. (See above for a general overview of the ATSICPP).

With respect to preventing the unnecessary and discriminatory removal of Aboriginal and Torres Strait Islander children from their families and communities, ATSICPP provides the following:

- **Prevention** – Protecting children’s rights to grow up in family, community and culture by redressing causes of child protection intervention.
 - Reducing the over-representation of Aboriginal and Torres Strait Islander children in OOHC will require simultaneous initiatives targeted at children entering care, in care and exiting care. Crucially, the evidence supports that the greatest effort needs to occur even earlier, before children are in contact with the system.⁴⁵
 - Prevention is critically important for minimising child protection involvement and upholding the rights of Aboriginal and Torres Strait Islander children to grow up within their own family and community.
- [More specifically:](#)
 - Removal of any Aboriginal child must be a last resort.
 - If, after consultation with a community controlled Aboriginal welfare organisation, removal of a child from their family is unavoidable then the authorities must have regard to the direction of the Aboriginal welfare organisation.
 - If such a removal is necessary, then the child must be placed within the extended family, or if this is not possible, the child may be placed within the Aboriginal community within close proximity to the child’s natural family.
 - If there is not an Aboriginal placement available, then, in consultation with Aboriginal and Islander Child Care Agencies, the child may be placed with a non-Indigenous family on the assurance that the child’s culture, identity and contact with the Aboriginal community are maintained.

Any promising developments to prevent the removal of Aboriginal and Torres Strait Islander children, for example through regional grant rounds for Aboriginal organisations, or non-Indigenous organisations in partnerships with Aboriginal-led organisations, to deliver Family Support Services (as at 2022, there were seven ACCO-led Child and Family Centre centres across the NT providing prevention and early intervention supports to families), have been dwarfed by the removal rates.⁴⁶ Over 90% of all children in OOHC in 2020-21 in the Northern Territory were Aboriginal, the highest percentage in any jurisdiction.⁴⁷

The [Family Matters Report](#) (2022) attributes this to:

“[A] lack of culturally safe and responsive service systems results in Aboriginal and Torres Strait Islander children and families being under-represented in universal prevention and early intervention services, which contributes to over-representation in statutory service systems.

In SNAICC’s consultations throughout 2021 and 2022... one of the most consistently identified barriers to families accessing support was fear of an interventionist system that drives towards the removal of children without offering sufficient supports to families, even when they are actively reaching out for help.

And the national data confirms that most child protection systems predominantly drive in one direction – towards permanent removal of Aboriginal and Torres Strait Islander children – which causes intergenerational harm, rather than pursuing healing for families and communities.”⁴⁸

The proportion of child protection funding provided to culturally safe prevention services was minimal compared to the need. For example, the Australian Capital Territory's spending on family support and intensive family support services comprised only 10.73% of total funding spent on child protection in 2020-21.⁴⁹ In Western Australia, the 2021 spending on family support services accounted for only 5.62% of the state's total expenditure on child protection services. This is a decrease from 6.7% in 2016-17.⁵⁰ Both are well below the national average of 16.92%.⁵¹ Investment proportions into family support and intensive family support services increased most significantly in Tasmania (from 18.5% in 2019-20 to 25.2% in 2020-21) and the Northern Territory (from 23.7% in 2019-20 to 26.5% in 2020-21). However, funding and resourcing continues to remain inadequate across all Australian jurisdictions.⁵²

Despite socioeconomic disadvantage as an indicator and key predictor of child removal, Jacyнта Krakoue, Alex Bhathal and Dr. Paul Gray et al., argue that *“child protection systems continue to operate on assumptions about race and class that increase inequalities and injustices against First Nations families”* and that these assumptions can result in oversurveillance and a “flawed notification system”.⁵³

- A 2018 study on the recurrence of child protection notifications to the formal child protection in Australia found that “While race, in general, may not be associated with recurrence, Indigenous status has been found to be in a number of studies across jurisdictions [...] Indigeneity was the greatest predictor of subsequent child protection reports and investigations.”⁵⁴ “Indigenous Australian children were significantly more likely to be subject to all types of recurrence measured”.⁵⁵
- A 2019 study on the removal of Aboriginal infants from their mothers in Western Australia found “Aboriginality was associated with almost double the risk of infant removal”⁵⁶ and “The disparity between Aboriginal and non-Aboriginal infant removals needs to be seen as a priority requiring urgent action to prevent further intergenerational trauma.”⁵⁷ The authors conclude that the rate at which Aboriginal infants are being removed from their mothers could lead to another Stolen Generation.

Jacyнта Krakoue, Alex Bhathal and Dr. Paul Gray et al., further argue that:

“Australian child protection systems were built around white, middle class standards of parenting. This means they often ignore cultural differences in how children are raised... It needs to be accepted that understandings of ‘risk’ in Australian child protection systems have been built on racial discrimination and biased understandings of ‘good parenting’.”⁵⁸

The authors point to statistics on child protection intervention:

- For example, in 2019-20, emotional abuse was the most common form of abuse substantiated by child protection authorities for both Aboriginal and Torres Strait Islander (46.9%) and non-Indigenous (57.4%) children. However:

“Understandings of neglect and emotional abuse are subject to interpretation by child protection practitioners. These interpretations can be based on societal and cultural values often incompatible with collective child rearing, and do not account for the impacts of material poverty when raising children.”⁵⁹

- Moreover, rather than focusing on the structures driving problems such as emotional abuse in Aboriginal households, blame is placed on parents and families.

The [Family is Culture Review](#) (2019), commissioned by the New South Wales Government in 2016 and led by Professor Megan Davis – a Cobble Cobble woman, constitutional lawyer and public law expert – examined the case files of 1,144 Aboriginal children between 2015-16. The findings identified a “*system not only deep in chaos, but often in breach of its own laws*”.⁶⁰

- “The report found that at times ‘children who did not appear to be at risk of harm were removed from their families’ by department caseworkers who “regularly” provided “false or misleading” evidence to the children’s court.”⁶¹
- The Review recommended an independent Child Protection Commission to oversee the child protection system, that the adoption of Aboriginal children in OOHHC should be banned, and funding in the system should be redirected to early intervention.⁶²

4.2.4. Ensuring Aboriginal and Torres Strait Islander children are placed in culturally appropriate care as determined by Aboriginal and Torres Strait Islander People

Ongoing connection to community, culture, Country and kin has been proven critical to the social and emotional wellbeing of Aboriginal and Torres Strait Islander children.⁶³ Despite this, Aboriginal and Torres Strait Islander children spend longer periods in OOHHC⁶⁴ and are less likely to be reunified with their families compared with non-Indigenous children.⁶⁵ The rate of permanent care and adoption orders for Aboriginal and Torres Strait Islander children is escalating, with a significant majority being placed with non-Indigenous adoptive parents.⁶⁶ The rate of Aboriginal and Torres Strait Islander children placed with kin has also been steadily declining.⁶⁷

Aboriginal and Torres Strait Islander mothers and babies have substantially worse health outcomes than non-Indigenous mothers and babies.⁶⁸ Aboriginal and Torres Strait Islander families are understandably apprehensive about accessing antenatal care for fear of intervention, a fear justified by the evidence confirming that Aboriginal and Torres Strait Islander infants are being removed at increased rates.⁶⁹

The effects of Aboriginal separations and placement with non-Indigenous adoptive and foster carers were the focus of the first, second and third Australian Adoption Conferences in 1976, 1978 and 1982 and at the First Aboriginal Child Survival Conference in 1979. Delegates at the first Australian Adoption Conference in 1976 encouraged the formation of the Victorian Aboriginal Child Care Agency (**VACCA**) in 1977. It was said at the conference:

“[VACCA] is geared to service delivery and community development. It aims at ultimately providing an autonomous community centred service for children, based on the notion that there already exists within the Aboriginal community, multiple and diverse resources which can be integrated into the Aboriginal Child Care Agency Program ... can be easily sensitised to and reflective of the needs of Aboriginal families and children. This is vital as a breakdown between State welfare delivery and the participation of Aboriginal people, suspicious of programs stigmatised by child removal, has paralysed welfare

*operations. The Aboriginal Child Care Agency then, bridges this gap and operates outside the fear of 'Welfare'.*⁷⁰

The most effective way to provide cultural care is to support and build the capacity of Aboriginal and Torres Strait Islander families to keep children at home.⁷¹ Where this is not possible, kin or carers of Aboriginal and Torres Strait Islander heritage should be employed to foster Aboriginal and Torres Strait Islander children. The *Bringing Them Home Report* (1997) said:

"In Aboriginal communities responsibility for children generally resides with an extended kinship network and the community as a whole. Children are important for the future of the culture and their community has a right to their contribution. Raising children in Aboriginal communities commonly involves children living with kin and the extended family taking responsibility for them.

*Children are the responsibility of the entire family rather than the biological parents alone. Many Aboriginal people have been 'grown up' by members of the family other than their biological mother and father and this practice of growing up children is still very widespread today ...*⁷²

It is known that *"culture underpins and is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children."*⁷³ Culture is also a protective factor, with Canadian research indicating that cultural connection may help to reduce rates of suicide among Indigenous young people.⁷⁴ In a 2007 study on Aboriginal young people in OOHC, the respondents described culture as being incredibly important, noting that: *"culture holds you together, keeps you going" / "it's like what helps you through" / "culture is who you are, so if you don't know it you don't know who you are" / "it's like your family, where you come from, something you've got in common, it's like everything" / "culture's the thing that makes us different to other [young people]."*⁷⁵

Sharron Williams – a Narungga/Kaurna woman and a former Chairperson and Board Member of the SNAICC – said in 2012 of culture:

*"Culture, land and spirit are tied together so closely that you can't have one without the other, but it's not a complete story without family – it's like building a house without mortar, it makes it the right shape but there's nothing to hold it together."*⁷⁶

Best Interest of Child

The best interest of the child is a fundamental principle in Australian [family law](#) and is a primary consideration in all decisions and actions concerning children in OOHC. This principle is enshrined in both international conventions (eg CRC) and domestic legislation (eg [Family Law Act 1975](#) (Cth)) and is the common test used in State and territory youth justice and family law acts.

Most state and territory legislations make explicit reference to the protection of a child's cultural identity either as one the Act's guiding principles or as an integral part of determining the best interests of the child. For example:

- The *Children and Young People (Safety) Act 2017* (SA) (previously Children's Protection Act 1993 (SA)) provides "account should be taken of the culture, disability, language and religion of children or young people and, if relevant, those in whose care children and young people are placed."⁷⁷

- The *Care and Protection of Children Act 2007* (NT) similarly provides that in determining the best interests of the child, consideration should be given to the child's cultural, ethnic and religious background:
 - *"The family of a child has the primary responsibility for the care, upbringing and development of the child. In fulfilling that responsibility, the family should be able to bring up the child in any language or tradition and foster in the child any cultural, ethnic or religious values."*⁷⁸
 - *"Consideration should be given to the following matters in determining the best interests of a child ... the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds."*⁷⁹
- The *Children and Community Services Act 2004* (WA) recognises that the "child's cultural, ethnic and religious identity (including the need for cultural support to develop and maintain a connection with the culture and traditions of the child's family or community)" must be taken into account in determining the best interests of the child.⁸⁰

The Aboriginal and Torres Strait Islander child placement principle (ATSICPP)

ATSICPP operates in all Australian jurisdictions and recognises the rights of Aboriginal and Torres Strait Islander children affected by the child 'protection' system, including the rights to maintain connections to family, community, culture and Country – rights recognised in the [CRC](#) (articles 12, 19 and 30) and [UNDRIP](#) (articles 3-5, 11-13 and 18-19). (For a general overview of the ATSICPP see section 4.2.1 above).

[Family Matters](#) has said that ATSICPP:

"... was designed to recognise the importance of safe care within family and culture to the best interests of children and to ensure that actions that caused the Stolen Generations are not repeated.

Its elements span both prevention of entry to out of home care and reunification to ensure culturally connected placements and enable the participation of Aboriginal and Torres Strait Islander families and communities in child protection decision making."

[Australian Childhood Foundation](#) (in collaboration with SNAICC) has said:

"[ATSICPP] exists as a key measure to ensure connections with family, community, culture, and country are prioritised in legislation, policy and practice.

It was founded on an intent of systemic change to counter embedded racism that caused the Stolen Generations by explicitly recognising the value of culture and the vital role of Aboriginal and Torres Strait Islander children, families and communities to participate in decisions about the safety and well-being of children."

ATSICPP is often conceptualised as the "placement hierarchy", in which placement choices for Aboriginal and Torres Strait Islander children start with family and kin networks, then Indigenous non-related carers in the child's community, then carers in another Aboriginal or Torres Strait Islander community. If no other suitable placement with Aboriginal and/or Torres Strait Islander carers can be sought, children are placed with non-Indigenous carers as a last resort, provided they are able to maintain the child's connections to their family, community and cultural identity.⁸¹

The placement principles are enshrined in legislation:⁸²

- *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 13
- *Children and Community Services Act 2004* (WA), s 12
- *Children, Youth and Families Act 2005* (Vic), s 13
- *Child Protection Act 1999* (Qld), s 83
- *Children and Young People (Safety) Act 2017* (SA), s 12
- *Children and Young Persons and Their Families Act 1997* (Tas), s 10G.
- *Care and Protection of Children Act 2007* (NT), s 12.

However, the aims of ATSICPP are much broader and include:

- Recognition and protection of the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters,
- Increasing the self-determination for Aboriginal and Torres Strait Islander people in child welfare matters, and
- Reduction in the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system.⁸³

With respect to culturally appropriate care and involvement of Aboriginal and Torres Strait Islander people in decision-making, ATSICPP requires:

- **Partnership** – Ensuring the participation of community representatives in service design, delivery and individual case decisions.
 - Partnerships with Aboriginal and Torres Strait Islander peoples and organisations need to be developed through active efforts and a shared commitment to building deeper, respectful and more genuine relationships.
- **Placement** – Placing children in OOHC in accordance with the established Aboriginal and Torres Strait Islander Child Placement Principle placement hierarchy.
 - When an Aboriginal or Torres Strait Islander child is not able to remain safely at home and a placement is required, all efforts must be made to ensure a child in care is able to maintain the highest level of connection possible to their Aboriginal and Torres Strait Islander family, community, country and culture. The decision-makers need to exhaust all possible options at one level of the hierarchy before considering the next.⁸⁴
- **Participation** – Ensuring the participation of children, parents and family members in decisions regarding the care and protection of their children.
 - It is important to ensure that all children, young people, parents and family members have the opportunity to participate in all decisions affecting them. This is based on the principle that families have the best knowledge about what does and does not work for them. Children should be encouraged to participate in decision-making processes and be kept informed of matters affecting them, giving

consideration to their age, developmental stage and any other factors that may affect their ability to participate.

- **Connection** – Maintaining and supporting connections to family, community, culture and country for children in OOHC.
 - The connection element maintains our focus on ensuring children who are in care are supported in maintaining or re-establishing their connection with family, kin, culture, country and community.

The implementation of ATSICPP has been beset by many systemic and practice challenges. Notably, a significant number of Aboriginal and Torres Strait Islander Children continue to be placed with non-Aboriginal carers and are dealt with by non-Aboriginal organisations / care agencies.⁸⁵ Neither has the implementation of ATSICPP been within the control of Aboriginal and Torres Strait Islander families, communities and community-controlled organisations.

Concerning the unacceptably low rates of children being placed with an Aboriginal or Torres Strait Islander relative or kin, the [Family Matters Report](#) (2020) notes:

“[The] use of a broad interpretation of ‘kin’ or ‘family’ [e.g., Care and Protection of Children Act 2007 (NT), section 19] means that in most if not all jurisdictions, some Aboriginal and Torres Strait Islander children are being raised by non-Indigenous, non-family members deemed by the state to be ... part of their social network or a person of significance to the child. The result from such a placement can be the varying degree of separation from family and culture, which cannot rightly be deemed as compliant with the intent of the Child Placement Principle.”⁸⁶

[CREATE Foundation](#)’s 2013 National Survey on Aboriginal children and young People in OOHC in New South Wales revealed that 35% of Aboriginal and Torres Strait Islander children *“reported having no one to teach them about their culture.”⁸⁷*

Family Matters, a national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture, release annual reports that highlight trends in child protection policy and practice. The Family Matters Report (2022) shows that while state and territory governments have made progress, implementation of the ATSICPP is still limited.⁸⁸ Legislative changes have also not yet reduced the significant overrepresentation of Aboriginal and Torres Strait Islander children and families in child protection systems. The report said that in order to achieve *“full implementation and maximise the benefits of all five elements, governments need to confront institutional racism and ritualism, and continuously apply active efforts.”⁸⁹*

Other criticisms of ATSICPP include:

a) With respect to **culture**:

- There is a lack of understanding and appreciation of the significance of cultural care and how it impacts on all aspects of an Aboriginal child’s wellbeing. Cultural care is addressed as an “add on” in planning for children’s well-being and that it is seen as less important than health, education or other areas of their lives which are more obviously measurable.⁹⁰

- Fiona Arney and Marie Iannos et al., (2015) also point out that cultural care planning is often as a “...tick-the-box process, with plans being limited in scope (e.g., being limited to participation in activities such as NAIDOC events)”.⁹¹
- Respondents to a 2009 SNAICC research said:⁹²
 - *“Cultural support should be in the front of the care plan. Not something that is tacked on.”*
 - *“Culture and identity is always the last point – pushed down the ‘pecking order’ when for Aboriginal children it should be the first point.”*
 - *“There is a lack of cultural identity focus when in a non-Aboriginal and Torres Strait Islander placement with a non-Aboriginal and Torres Strait Islander agency.”*
- Liddle and Gray et al., reported that in 2019-20, 71.2% of all Aboriginal and Torres Strait Islander children in OOHHC who were required to have cultural support plans were reported as having a current plan. However, the authors question the accuracy of this data, including as to a plan’s quality or practical implementation.⁹³
- The independent [Family is Culture](#) review in 2019 reported that in New South Wales for about half of the children who had a cultural plan (53.7%) this plan included evidence of promoting connection to country, and in just under half of plans there was no connection to country promoted by the plan (46.3%).⁹⁴ For 40% of Aboriginal children in the cohort who had a cultural plan, the plan did not promote any engagement with Aboriginal services (39.8%). Engagement with Aboriginal services was included in 60.2% of children’s cultural plans.⁹⁵ In many cases where children did not have cultural plans, Family and Community Services (**FACS**) had no records indicating how the children were having their cultural connections sustained while in OOHHC.⁹⁶
- Another common issue identified with cultural plans was that they were not developed in consultation with family members. As a result, they often lacked detail and specificity with regards to cultural connections.⁹⁷ Incarceration of the parent(s) is not an impediment to developing a cultural plan.
- The Family is Culture review surmised that “many of the cultural plans prepared for children in the cohort were not of an acceptable standard and reiterates the view that the department should ensure that Aboriginal children in OOHHC have high-quality, up-to-date and individualised cultural plans that are designed by the children and their families.”⁹⁸

b) With respect to **self-determination**:

- “The existence of [ATSICPP] in legislation is itself not a measure of self-determination ... strategies to promote Indigenous autonomy and self-determination within child protection systems have themselves not challenged the prevailing form of mainstream child protection systems.”⁹⁹ In fact, implementation of ATSICPP has not been within the control of Aboriginal and Torres Strait Islander families, communities and community-controlled organisations.
- Aboriginal and Torres Strait Islander Child Care Agencies (**AICCAs**) across Australia provide support and services based on an understanding of Aboriginal and Torres Strait Islander childrearing practices to promote family preservation, prevent family breakdown,

assist in child protection investigative processes, support children who may need to be placed in OOHC, utilise a holistic approach by supporting families to engage with other services (e.g., health, education, domestic violence and legal), provide family reunification services and advocacy. However, the involvement of Aboriginal and Torres Strait Islander agencies in this range of services varies on a jurisdictional and regional basis.

Some provisions on the need for consultation with AICCAs and community-controlled organisations are found in legislation. The strength of these provisions varies depending on the language used. For example:

- In South Australia, s 12(3)(c) of the Children and Young People (Safety) Act 2017 (SA) provides that: “before placing an Aboriginal or Torres Strait Islander child or young person under this Act, the Chief Executive or the Court (as the case requires) must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.”¹⁰⁰
- In Victoria, s 12(1)(c) of the Children, Youth and Families Act 2005 (Vic) provides that: “in making a decision to place an Aboriginal child in [OOHC], an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.”¹⁰¹
- The *Children and Young Persons (Care and Protection) Act 1998* (NSW) provides that all families must be offered alternative dispute resolution, preferably family group conferencing.¹⁰² In 2019-20, 47% of these conferences (n=331) were for Aboriginal families.¹⁰³ However, there are no requirements to implement a distinct Aboriginal family-led decision-making model that is designed and facilitated by Aboriginal people and organisations:
 - *“Although often dressed in the guise of self-determination, what is intended by these legislative changes is not Aboriginal self-government or even self-management over child welfare but the much more limited vision of ensuring greater Aboriginal involvement in the decisions of the non-native child welfare authorities.”*¹⁰⁴

The [Bringing Them Home](#) report envisioned that AICCAs would help bridge the gap between state and territory welfare agencies and community and address the needs of Aboriginal and Torres Strait Islander families. The issue remains that legislation sometimes hampers any potential for real self-determination. As noted above, the South Australian legislation says, “*where reasonably practicable...*”, and thus does not confer actual decision-making authority. Other issues, such as policy development and budget for AICCAs remain in the hands of non-Indigenous / the state-led child welfare system.¹⁰⁵

Some AICCAs also feel that consultation processes are ad-hoc, with insufficient time and resources dedicated to the individual case and hampered by information-sharing restrictions.¹⁰⁶

There remain grave concerns about the removal of Aboriginal and Torres Strait Islander children from their families and communities, the absence of connection of Aboriginal and Torres Strait Islander children to culture, country, language and family and the effect on future generations.¹⁰⁷

As stated in the [Australian Institute of Family Studies](#) (2015) review of ATSICPP:

- *“There are clear imperatives to redress the wrongs of the past by acknowledging the impact of past policies and the abuse and traumatising of generations of Indigenous Australians, to provide healing for those who have suffered as a result of these policies, to find solutions within culture and community and to take clear steps to prevent children being disconnected from family, community, identity and language and from suffering further abuse and trauma. These imperatives are recognised through human rights mechanisms including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child.”¹⁰⁸*

4.2.5. Enforcing appropriate duty of care standards to ensure transparency and accountability for the care and support of children and their families involved in the OOHC system

State and Territory governments have responsibility for funding and/or providing child protection services in Australia. Each jurisdiction has its own legislation that defines ‘a child in need of protection’ and determines the policies and practices of its child protection system.¹⁰⁹

The Productivity Commission (2023) has reported on the performance of governments in providing child protection services across a number of key performance indicators.¹¹⁰ They found that:

- **Across the ‘children with current documented case plans’ indicator** – Nationally at 30 June 2022, 87.6% of children required to have a current documented and approved case plan,¹¹¹ had such a plan. In 2021 and 2022, the proportion of children (all) in Victoria with documented case plans was over 99% – the highest in the country. Tasmania had the lowest proportion of children (all) with documented case plans in 2021 and 2022. In all States and Territories, the proportion of Aboriginal and Torres Strait Islander children with documented case plans was lower than non-Indigenous children.¹¹²
- **Across the ‘improved safety’ indicator** – the objective being to protect children and young people who are at risk of abuse and neglect within their families, or whose families do not have the capacity to provide care and protection. The data reveals that children who are subject to safety investigations are still falling through the cracks.
 - Nationally the proportion of substantiations that occurred within 3 and 12 months of a decision not to substantiate in 2020-2021 was under 6% and 15% respectively in all jurisdictions.
 - In Queensland in 2020-2021, the proportion of children who were the subject of an investigation in 2019-2020 that led to a decision not to substantiate, and who were later the subject of a substantiation (in 2020-2021) was 9.7%.
 - After Tasmania, the jurisdiction with the lowest proportion of children who were the subject of a substantiation after an investigation – i.e., least likely to be left in an unsafe environment following an investigation – was New South Wales. Victoria had the highest proportion of children who were the subject of an investigation in 2019-2020 that led to a decision not to substantiate, and who were later the subject of a substantiation (in 2020-2021) at 14.6%.¹¹³

- Data on indicators such as ‘continuity of case worker’ and ‘improved health and wellbeing of the child’ have not yet been made available.

To strengthen, control and ensure compliance with child protection law, State and Territory governments have also developed standards and frameworks for departments and agencies responsible for child protection.

- The Commonwealth Government has developed [national standards](#) for OOHC,¹¹⁴ which the [Australian Capital Territory has adopted](#).¹¹⁵
- New South Wales has developed its own quality assurance framework for OOHC which complements the New South Wales standards for statutory OOHC.¹¹⁶
- Tasmania has the [Tasmanian Out of Home Care Standards](#) but OOHC providers will not be formally monitored or audited against the standards until an OOHC accreditation framework is in place.¹¹⁷
- The Northern Territory has introduced a [Charter of Rights for Children in Care in the Northern Territory](#) and Victoria has introduced spot audits for residential care units to strengthen oversight of the system.¹¹⁸

As an example, in Western Australia the *Children and Community Services Act 2004* (the **WA Act**) provides the legislative framework for the development of standards for children and young people in care, or where there may be concerns regarding a child’s safety. The WA Act contains a range of objects and principles that must be regarded in administering the functions under the WA Act.

- Foremost of these are the principles that the best interest of the child is the paramount consideration and that the child participates in the decision-making process. The WA Act details a number of guiding principles that must be observed when determining the best interests of the child and child participation.
- The Better Care, Better Services Standards: Safety and Quality Standards (**WA Standards**) complements the WA Act. It also draws on Western Australia’s obligations under the United Nations Convention on the Rights of the Child, National Standards for OOHC, Charter of Rights for Children and Young People in Care (WA) and the Royal Commission into Institutional Responses to Child Sexual Abuse. The WA Standards provides a contemporary context for working with children and young people in OOHC.¹¹⁹ The objectives of the WA Standards are to:
 - Protect the children and young people’s safety, wellbeing and stability,
 - Meet the needs of children, young people and their families and deliver positive outcomes,
 - Provide a guide to best practice increase consumer confidence and expectations, and enhance the sector’s image,
 - Provide consistent policy and process information to all staff and carers within the sector,
 - Provide a basis for staff and carer training; provide a reference model for continuous improvement and evaluation of services,

- Provide a vehicle for the measurement of achievement in relation to the Standards, and
- Provide a means of satisfying government funding and service accountability requirements.
- Of note are two quality standards for children and young people in OOHC:
 - **Standard 8** – Children and young people are provided high quality and safe care by well trained and supported staff and carers, and
 - **Standard 9** – Organisations are child focused and accountable.¹²⁰
- The WA Standards say that Department of Communities (WA) has a duty to:
 - **Standard 11** – Undertake comprehensive assessments of child protection concerns and, if required, takes action to safeguard or promote the child or young person's wellbeing. This also requires the Department of Communities to be transparent and accountable in their dealings with children and their families involved in the OOHC system:
 - **Standard 11.6** – Recording of approval of decisions will occur as outlined in Department policies and practice guidelines.
 - **Standard 11.10** – Staff respond in a transparent manner using professional judgement and apply relevant legislation and Department frameworks, policies and practice guidance to their assessment and response. All decisions are child focused and in the best interests of the child or young person.
 - **Standard 11.11** – Where appropriate, feedback on the outcome of a SWA and/or an investigation is provided in a timely manner to the agencies that raised the concern with the Department and to those adults responsible for the child or young person's safety.
 - **Standard 11.12** – Where appropriate, families are referred to relevant social services to enhance the wellbeing of children and young people, including Aboriginal families referred to culturally appropriate services.¹²¹
- To improve independence of oversight, the Ombudsman of Western Australia also monitors all organisations in the community services sector (including the Department of Communities) against the WA Standards.¹²²
- However, a major criticism of the WA Act is that while it aims to make decisions regarding children's placements as soon as possible, i.e., to minimise a child's time spent in residential or temporary care, it does not sufficiently mandate it.¹²³ Children can be in temporary care for many years without a court decision. This means that the Department of Communities are in breach of their duties under the WA Act and WA Standards; namely, to prioritise the child's best interests and wellbeing. As at January 2016, more than 650 children had been in temporary care for longer than two years without a permanent order.¹²⁴
- In 2022, it was revealed that more than 1000 children and young people in Western Australia's child protection system did not have a designated case worker.¹²⁵ The reason

cited was a lack of resources, which led to case workers having to handle multiple cases (up to 15) simultaneously and across a wide spectrum of issues from: arranging contact between the child and their biological family, approving or denying medical assessments and therapies, legal issues regarding child placement and working with the NDIS. The result is that young people and families are at an increasing risk of not getting access to the assistance that they need.

In New South Wales there are 23 minimum requirements for the accreditation of OOHC and adoption service providers. These standards are based on the statutory responsibilities of OOHC and adoption service providers, as set out in the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and the *Adoption Act 2000* (NSW). The NSW Office of the Children's Guardian guide (2015) states that: "The accreditation system is underpinned by the assumption that OOHC and adoption service providers have systems in place to support children and young people and that agencies have a commitment to providing quality services to children and young people."¹²⁶

- Of note is **Standard 23** – Strategic planning and evaluation requires agencies to continuously assess the quality of their services and develop strategies to address gaps in practice. Agencies that perform well have strong, effective leadership, transparent and robust decision making processes and create a child-focused culture that embraces continuous improvement. This requires agencies (including the Department of Communities and Justice) to demonstrate the quality of their systems and provide evidence of improvements to practice over time.¹²⁷
- The New South Wales child protection system continues to be hampered by inadequate funding and resourcing. In late November 2022, the Public Service Association of NSW reported that Department of Communities and Justice (**DCJ**) Western NSW District had not fulfilled all standards for accreditation meaning that children in OOHC could not be visited by case workers until the accreditation was completed.¹²⁸ Most children are already being visited every 6-8 weeks when more 'complex' cases require monthly visits.
- In February, the New South Wales Ombudsman – Paul Miller – delivered a scathing report on the state's strategy to reduce the over-representation of Aboriginal children on OOHC (**Ombudsman Report**).¹²⁹
 - In 2017, the New South Wales Government launched a strategy that aimed to improve outcomes for Aboriginal and Torres Strait Islander people in five areas including, reducing the over-representation of Aboriginal children and young people in OOHC.¹³⁰
 - To achieve this goal, the Aboriginal Outcomes Strategy (**AOS**) 2017-2021 set four targets:
 1. 10% reduction in the number of Aboriginal children in OOHC by 30 June 2020.
 2. Over 5 years, reduce the number of Aboriginal children entering OOHC by 20%.
 3. Over 5 years, transition 1,200 Aboriginal children from OOHC to guardianship orders.

4. Over 5 years, restore 1,500 Aboriginal children from OOHC to their families.

- The Ombudsman Report found that “the strategy did not reduce Aboriginal over-representation in OOHC. None of the four targets were achieved” and “it was apparent ... that at some point within its five-year timeframe, DCJ effectively abandoned the [Aboriginal Outcomes Strategy] [...] [DCJs’] plans should have been made explicit and transparent.”¹³¹
- The Ombudsman Report found, amongst other issues, that it was not clear how the targets had been determined, monitoring and progress reports on the targets ceased in mid-2019, some districts did not know about the targets or about how to implement the targets and public reporting (via the DCJ Annual Report) on the targets stopped in 2019.¹³²
- The targets were not achieved. And indeed, the proportion of Aboriginal children in OOHC only increased during the AOS period from 38.4% to 43.8%.¹³³

Several States and Territories also have oversight committees, departmental branches or have extended the role of external oversight bodies in relation to system monitoring, as well as new or improved systems for managing adverse incidents and complaints.¹³⁴ Examples include, the Advocate for Children and Young People in New South Wales, the Queensland Family and Child Commission, the Commissioner for Children and Young People, Tasmania and the National Children’s Commissioner.

The Children’s Commissioner of Northern Territory, for example, is an independent statutory officer. The Office of the Children’s Commissioner (**OCC**) shares its core functions between two teams: the Monitoring and Investigations (**M+I**) team and the Strategy, Rights and Advice team. The M+I team receives complaints relating to a vulnerable child where services fail to provide, or do not meet the service standard reasonably expected. The team undertakes informal and formal inquiries and investigations relating to the care and protection of children and monitors places where children live in institutionalised settings such as youth detention facilities, residential OOHC accommodation and bail support accommodation.¹³⁵

- In 2020-2021, the OCC was contacted 410 times regarding concerns relating to vulnerable children (an increase of 147% from 2019-2020).¹³⁶
- In 2020-2021, 73 of the complaints received by the OCC related to 114 unique vulnerable children and young people.¹³⁷
 - 70% of the children and young people were Aboriginal or Torres Strait Islander (noting that Aboriginal and Torres Strait Islander children and young people account for 90% of Territory children and young people in OOHC),
 - 13% of the children and young people were the subject of more than one complaint, and
 - 44% of the children and young people who were the subject of a complaint lived in OOHC and 5% in a residential care facility.
 - There was a 79% increase in complaints received in relation to children and young people in OOHC. Complaints were about standard of reunification plans, gaps in

provision of transition plans and adherence to Signs of Safety procedures (see below for further detail on Signs of Safety).

- Section 10(1)(f) of the *Children's Commissioner Act (2013)* (NT) sets out that one function of the OCC is to monitor the way in which the CEO of Territory Families, Housing and Communities (TFHC) deals with suspected instances of children in OOHC experiencing harm or exploitation.¹³⁸ The *Care and Protection of Children Act (2005)* (NT) (CAPCA) also requires the CEO of TFHC to notify the Children's Commissioner 'as soon as practicable' in all cases where a child protection investigation has substantiated allegations of harm or exploitation of a child living in OOHC.¹³⁹
- CAPCA empowers the CEO of TFHC to take action to inquire about concerns of a child in OOHC.¹⁴⁰ Concerns about a child in care means 'concerns relate to the standard of care a child is receiving, which is affecting or likely to affect their wellbeing' and are categorised as: the care provided to the child is not consistent with the standards defined in *Care and Protection of Children (Placement Arrangement) Regulations (2010)* and this is affecting, likely to affect, or there are significant concerns for the child's wellbeing.¹⁴¹
 - In 2020-2021:
 - TFHC received 972 notifications regarding concerns about a child in OOHC (some children had multiple notifications).¹⁴²
 - TFHC received 204 notifications of children experiencing harm while in OOHC and 80% of notifications were screened for investigation by TFHC. Harm in OOHC was substantiated on 45 occasions.¹⁴³
 - TFHC commenced 65% of investigations within the required priority timeframe based on the risk of further harm to the child (either within 24 hours or 3 days). 35% of investigations did not commence within the required priority timeframe. Only 43% of harm in OOHC investigations were completed within the required 42 day period.¹⁴⁴
 - Where harm in OOHC was substantiated by TFHC, 91% were Aboriginal children, 42% of children were under the age of 10 years and 16% were children with a disability.¹⁴⁵
 - Foster care was the highest placement type for harm in care substantiations. Of the 31 harm in care substantiations provided to the OCC, on 77% of occasions the person believed responsible for the harm was a foster carer or home based carer, a relative or person who had a duty of care responsibility. Eight children experienced harm whilst living in residential care. In all of these instances a residential care worker or organisation operating the residential facility, was identified as the person believed responsible for the harm.¹⁴⁶
- To examine how TFHC addressed inquiries regarding the welfare of children and young individuals in OOHC care in 2020-2021, the OCC conducted a random audit by selecting 28 notifications/individual cases. This audit aimed to determine the responses and support provided, as well as the preventive measures taken to mitigate potential harm to children in care.¹⁴⁷ They found that:

- 54% of cases were in breach of TFHC procedures Responding to Concerns for the Safety and Wellbeing of Children in Care,¹⁴⁸ specifically as face-to-face interviews with children were not conducted. Face to face contact with a child is key to determining their immediate safety and for gathering information about the alleged harm and any further risk of harm to the child,
- 58% of cases did not include people involved with the child and their placement (i.e., Aboriginal Community Worker or Carer Services) which severely impacted efforts to gather information and conduct proper safety planning, and
- 87% of cases had a significant missed opportunity to assess the ‘worries’ of children and others in the child’s life and to identify and build a safety network around the child.¹⁴⁹
- In conducting the audit, the OCC concluded: “The theme of not consistently using the Signs of Safety Framework¹⁵⁰ is of concern for the OCC, as is the high percentage of inquiries and investigations which breached TFHC Procedure Responding to Concerns for the Safety and Wellbeing of Children in Care to conduct face to face interviews with children suspected of being harmed. As with other sections of this report this audit identified the impact of ongoing and cumulative harm on children of the Northern Territory with 86% of children subject to an s84A notification having had more than one notification of harm in 2020-21 [...] The cumulative effect of ongoing harm is particularly acute for the children subject of this audit as they are living in [OOHC] and therefore have already experienced levels of harm deemed significant enough for them to be removed from their families care.”¹⁵¹
- A 2020 report by the Children’s Commissioner of the Northern Territory also highlighted “serious deficiencies” in the operation of several agencies responsible for overseeing OOHC in the Territory.¹⁵² The report further found that 12 children – all of whom were Aboriginal or Torres Strait Islander – were subject to sexual and physical harm and racism at the hands of two foster carers over a 16-year period in Central Australia, dating back to 2004.¹⁵³ Other key shortcomings and policy breaches uncovered included:¹⁵⁴
 - Life Without Barriers (a service provider contracted by TFHC) and the TFHC failed to maintain adequate historical records in relation the placement of vulnerable children;
 - TFHC failed to report the allegations of sexual abuse to police and failed to adequately investigate the allegations, and allowed a child to return to the care of his foster family without a proper assessment of the future risk of sexual harm;
 - TFHC investigations into the physical and emotional harm of a number of children in the care of the foster family were inadequate;
 - TFHC failed to provide sufficient oversight and monitoring to a number of children in the care of the foster family; and
 - TFHC did not conduct ‘standard of care reviews’ in a timely manner, address key concerns identified in harm in care investigations and did not record follow up reviews as required in the NT conducting Standard of Care Reviews Procedure.
- The report surmised that:

- “[At] some point in the accumulation of these concerns and reports, [TFHC] should have enacted an earlier more robust examination of the standard of care provided.
- All Departments including [TFHC] failed to provide a consistent level of case management and collaborative planning with key stakeholders to adequately support the children in care ... FACS and Life Without Barriers failed in basic record keeping of essential information to allow stakeholders access to historical information when conducting investigations, carer re-authorisations or transferring cases to new workers.
- Furthermore, [TFHC] continually placed children in [the carer’s] care above the assessed capacity that put vulnerable children at risk and breached their own policy and procedures. The children in [the carer’s] care were exposed to multiple safety concerns due in part to the fact the carers were caring for an overwhelming amount of children at any given time; some with very complex needs.” ¹⁵⁵
- The OCC made 14 recommendations, including with respect to duty of care standards owed by the TFHC and service providers.¹⁵⁶ Note that these recommendations have been ‘recommended’ countless times by the OCC.

In June 2022, the ABC published ‘[Bad Parent](#)’, a damning investigation about the state child protection systems in Australia:¹⁵⁷

- “Every year, Australia’s child safety departments remove thousands of children from their parents on the grounds they are not safe at home and need urgent protection. In doing so, the government becomes their guardian, taking responsibility for their lives. But the state can be an uncaring parent, in whose hands children can live with dozens of strangers a year, be raped by those sent to protect them, and stay ‘warehoused’ in group homes that are seen as training grounds for prison ... more than 700 people from around the country have come forward with concerns about Australia’s failing child protection system.”
- The investigation details how despite child protection policy and the Aboriginal and Torres Strait Islander Child Placement Principle dictating that Aboriginal and Torres Strait Islander children should be placed with Aboriginal carers to maintain contact with their culture, that doesn’t always happen. Instead, “Aboriginal children can languish in care hours from their land while some workers dismiss signs of sexual abuse in First Nations children as ‘cultural’ behaviour.”
- Department workers who also challenge how a child’s case is handled can find themselves “performance managed” out of the departments. “The ABC heard from more than 200 current and former workers, many of whom say they are unable to keep children safe in departments where management is more concerned with cutting corners and manipulating statistics to manage public opinion than protecting children.”
- Ms Bell, a former case worker from Tasmania gave the following reports of malpractice in Tasmania’s Department of Communities to the ABC:
 - “Staff displayed ‘an ongoing and chronic dislike’ of Indigenous families – who were ‘treated and talked about as though they were less than human’”

- “Departmental workers often presented court with documents that had been copy-pasted from another child’s file, bearing little, if any, relevance to the child in question. ‘I’ve seen that happen that an affidavit was used from another child and just changed the birth date, and maybe the gender if that was needed, and changed very little of the facts’”, and
- “Department workers also engaged in a practice known as ‘sleeping cases’ – opening investigations so they’d disappear from the ‘unallocated’ cases list, which is released to the public. ‘[It’s done] so it looks better when there’s a parliamentary inquiry or something ... They’re open but nobody is doing any work on them. “Unless something really serious happened, a child death or something — and then there would be a big flurry of activity — I would say for years they just stayed open, but nothing was done.”
- Ms Ingram who left the New South Wales DCJ in 2018, having worked as a case worker, manager and policy adviser to then Labor minister Reba Meagher, also told the ABC:
 - “It’s not about the best interests of children anymore. It’s all about being able to have an annual report that shows we’ve opened this many cases, we reacted to this many things. But it doesn’t show outcomes. You can play with the system, so it looks like work is being done, when actually nothing’s being done to protect children and help families.
 - Matters go before the court with little understanding of the legislation and the opportunities that they’ve got to help families, rather than just remove children.
 - We hand over to NGOs [non-government organisations] with things that probably should be more fully addressed by the department itself. We’ve got the legislative responsibility to do that.”
- Kayla (not her real name), a current case worker at the Department of Communities (WA) told the ABC that “far from protecting children ... Western Australia’s Department of Communities puts children in harm’s way.” Kayla recalled how:
 - “Primary school-aged children, who should be nurtured by caring grown-ups, are dropped in group homes with much older children exhibiting at-risk behaviour.
 - She remembers leaving a child under the age of 10 in one of these homes. ‘This sweet little person, just absolute sweetheart, I felt like I was just throwing them into the den of wolves and walking away ... The thing that upsets me the most is when they got to the [residential] group home, they got their pyjamas out and wanted to put a movie on and have a shower and get ready in front of the TV — like they would have at home with all their younger siblings. And to the other kids at the group home that’s laughable, that’s ridiculous’.
 - The child was ‘constantly’ beaten and bullied by the older children. ‘Within six months, they were talking about wanting to kill themselves’.
 - [Kayla] said the excuse that departments lacked time, money and staff was not good enough for the children who were driven to suicide in their care.”

- Duty of care standards are also held within mandatory reporting obligations. Mandatory reporting means that a designated ‘mandatory reporter’ has a statutory obligation to report abuse of a child, where there is actual knowledge of the abuse or the mandatory reporter has reasonable grounds to believe that the child is being abused.¹⁵⁸
- The legislation governing mandatory reporting in Western Australia – for example – is the *Children and Community Service Act 2004* (WA) (**CCS Act**). The CCS Act was amended by the *Children and Community Services Amendment Act 2021* (WA) (**CCS Amendment Act**) as part of a suite of changes to expand the mandatory reporting obligations in Western Australia. Over the course of 2022-2025, the list of mandatory reporters (for child sexual abuse) in Western Australia will broaden to include a minister of religion, departmental officer of the Department of Communities, OOHC worker, school counsellor, psychologist, early childhood worker and youth justice worker. The Australian Capital Territory, Queensland and Victoria have also broadened the occupational groups designated as mandatory reporters in recent years.¹⁵⁹
 - However, an ABC investigation has revealed that mandatory reports are not always acted on by the respective Department and/or police. For example, a Principal at a remote Western Australian school where the majority of students are Aboriginal or Torres Strait Islander, claimed to have made mandatory reports for up to two-thirds of the students to the Department of Communities (WA) and police, but none of the reports were followed-up on or lead anywhere. The Principal told the ABC:

“I was sending those children back home, knowing full well that I’d done whatever I could do, but knowing full well that there was going to be further abuse in the home [...] That’s the level that the system’s broken at, where that’s acceptable.”¹⁶⁰

4.3. KEY STATISTICS

4.3.1. Overview

- As at 30 June 2021, there were 22,297 Aboriginal and Torres Strait Islander children in OOHC in Australia.¹⁶¹ This is an increase of 774 children from the previous year:
 - As at 30 June 2020, there were [21,523](#) Aboriginal and Torres Strait Islander children in OOHC.
- Aboriginal and Torres Strait Islander children were 10.4 times more likely to be in OOHC than non-Indigenous children – this overrepresentation that has increased consistently over the last 10 years despite a [National Agreement](#) to reduce over-representation by 45% by 2031.¹⁶²
- The proportion of Aboriginal and Torres Strait Islander children aged 0-17 years in OOHC in each State and Territory were:¹⁶³
 - Northern Territory – 90.7%
 - Western Australia – 57.5%

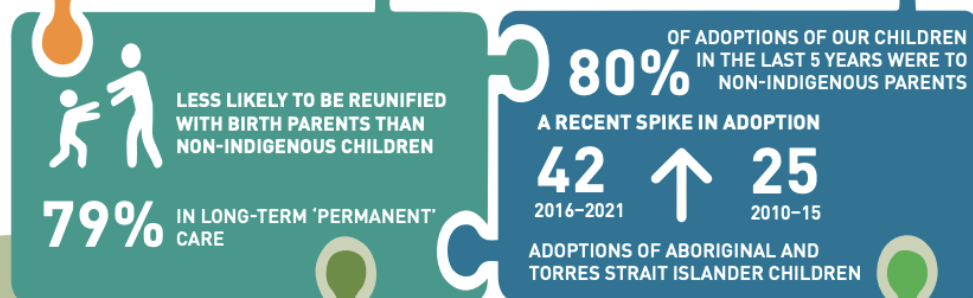
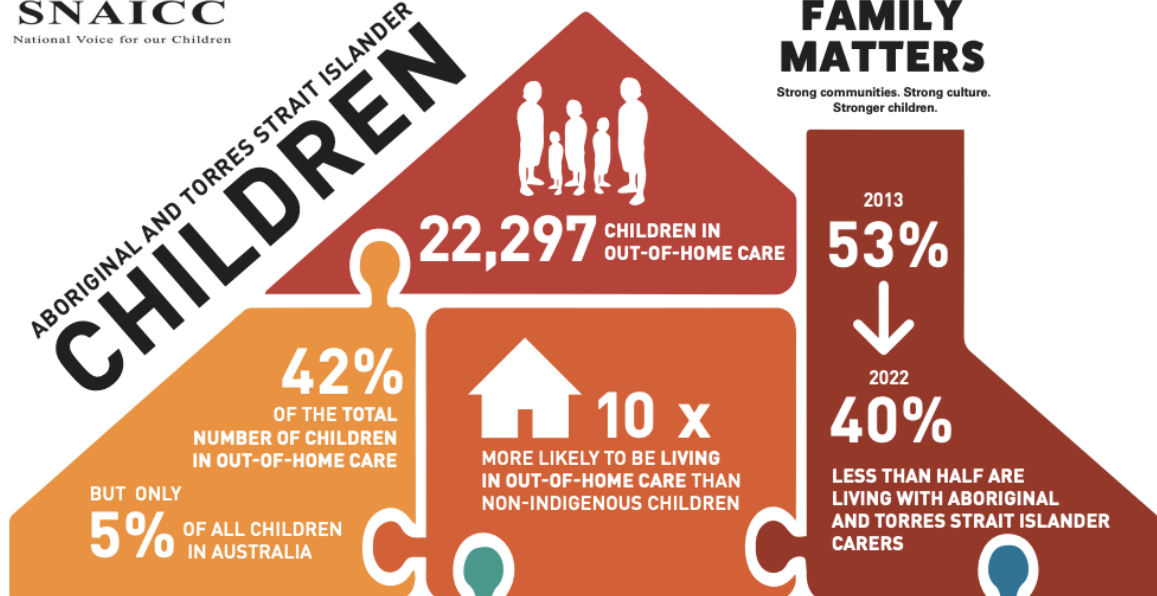
- Queensland – 45.5%
- New South Wales – 43%
- South Australia – 37.5%
- Tasmania – 37.4%
- Australian Capital Territory – 29%
- Victoria – 28.1%
- The number of Aboriginal and Torres Strait Islander children in OOHC care is projected to increase by 50% over the next decade – compared to 13.5% for non-Indigenous children.¹⁶⁴
- Aboriginal and Torres Strait Islander children were also over-represented in permanent care arrangements – a staggering 79.3% of Aboriginal or Torres Strait Islander children in OOHC.¹⁶⁵
- Aboriginal and Torres Strait Islander children account for a staggering [42% of children in OOHC](#), despite accounting for [just 5% of all children](#) in Australia.¹⁶⁶
- Between 2001-21, 104 Aboriginal and Torres Strait Islander children were adopted from OOHC, with 69 (66.3%) of these children adopted by non-Indigenous parents.¹⁶⁷
- Between 2010-20, adoptions of Aboriginal children almost doubled: from 23 adoptions in 2010-15 to 40 adoptions in 2015-20.¹⁶⁸
 - In 2021-22 there were five adoptions, of these four went to non-Indigenous parents. This is the lowest number since 2016-17, ostensibly due to the COVID pandemic.¹⁶⁹



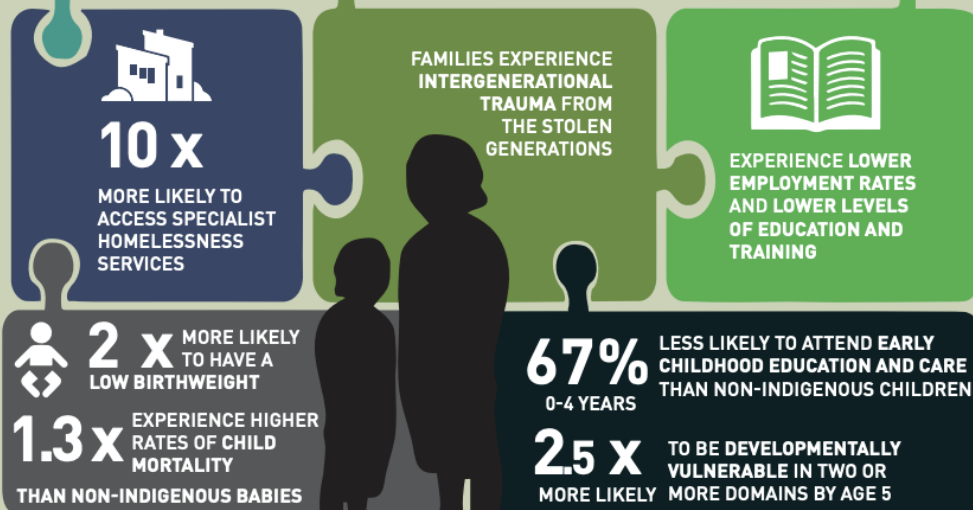
FAMILY MATTERS

Strong communities. Strong culture.
Stronger children.

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN



ABORIGINAL AND TORRES STRAIT ISLANDER FAMILIES



A CYCLE OF POVERTY

2022 **FAMILY MATTERS** **SNAPSHOT DATA**

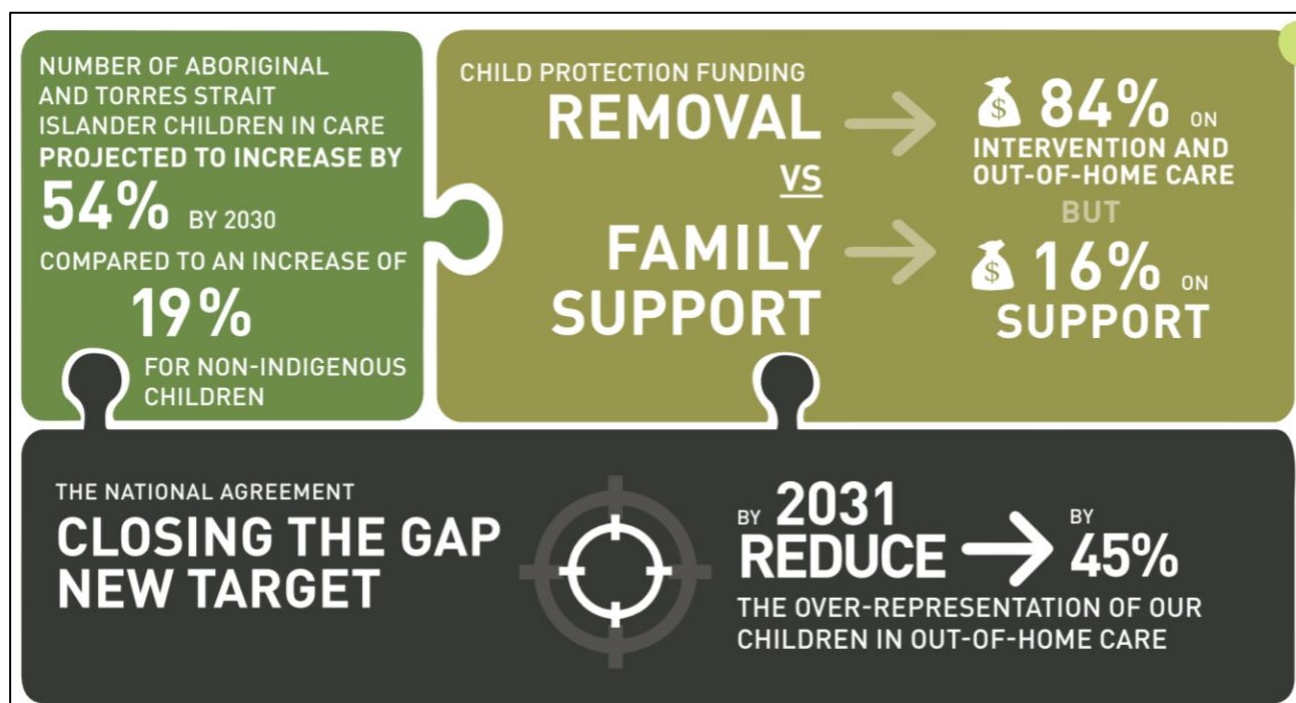
Source: Family Matters Report (2022): [Data Snapshot](#)

4.3.2. Ensuring children are placed in culturally appropriate care

- Nationally, 31.3% of children were placed with an Aboriginal or Torres Strait Islander relative or kin, which is a slight decrease from 32.2% reported in 2019-20. Across all jurisdictions, the proportions remain unacceptably low: ¹⁷⁰
 - Tasmania – 10.7%.
 - Northern Territory – 27.3%
 - Queensland – 21.7%
 - South Australia – 31.2%
 - New South Wales – 33.9%
 - Western Australia – 38.9%
 - Victoria – 39.6%
 - Australian Capital Territory – unavailable (reported 37.1% in 2019-20)
- From 2016-17 to 2020-21, the national proportion of children being placed with *any* Aboriginal and Torres Strait Islander carers (including those who are not family or kin) has decreased from 47.9% to 40.7%.¹⁷¹
- The data also shows a corresponding increase in the proportion of Aboriginal and Torres Strait Islander children placed with non-Indigenous relatives and kin – from 15.8% in 2016-17 to 21.7% in 2020-21.¹⁷²
- In most States and Territories, Aboriginal children were disproportionately placed in long-term care with non-Indigenous, non-relative/kin carers:¹⁷³
 - Australian Capital Territory – 66%
 - Community leaders in the ACT reported that many placements were being listed as kinship placements when children are placed with non-Aboriginal family members.¹⁷⁴
 - South Australia – 33%
 - Tasmania – 32%
 - Western Australia – 27%
 - Victoria – 19%
- Nationally, just 16.4% of Aboriginal or Torres Strait Islander children in OOHC were reunified in 2020-21.¹⁷⁵
- The overwhelming majority of Aboriginal and Torres Strait Islander children in OOHC are in long-term care arrangements, with reunification to their families not identified as a case plan goal.¹⁷⁶
- Nationally, there has been no significant change in the proportion of children placed in accordance with the ATSI CPP in the last five years – 63.3% of Aboriginal and Torres Strait Islander children were placed in accordance with the ATSI CPP in 2016-17, compared to 63.1% in 2021-22.¹⁷⁷

4.3.3. Ensuring children maintain connection with culture, community, Country and family

- At 30 June 2021, [17,300](#) Aboriginal and Torres Strait Islander children in OOHC were required to have a current, documented and approved cultural support plan – of these, [73.6%](#) had a plan in place.
- However, cultural support plans are often tokenistic and not fit for purpose.¹⁷⁸
- 79% of all Aboriginal and Torres Strait Islander children in OOHC or other supported care were on long-term or permanent care orders, leaving them at serious risk of being permanently disconnected from their families, communities and cultures.¹⁷⁹
- Aboriginal and Torres Strait Islander children are:¹⁸⁰
 - More likely to have a low birthweight than non-Indigenous babies
 - 35% less likely to attend early childhood education and care than non-indigenous children,
 - 2.5 times more likely to be developmentally vulnerable in two or more domains by the age of 5
 - 9.4 times more likely to access specialist homelessness services.
- Despite these facts, a significant proportion of government investment in child protection service is channelled into tertiary intervention and OOH (84%), compared to services that provide support to families to safely care for their children (16%).¹⁸¹



Source: [SNAICC](#) – National Voice for our Children, Annual Report 2021-2022 (p.21)

4.3.4. Enforcing appropriate duty of care standards

- Nearly 1500 reports of neglect and physical or sexual abuse of children in OOHC were substantiated in 2020-21. Perpetrators are most likely to be approved carers, people in the same home or community and agency staff.¹⁸²
- Teenage girls face increased risks of adverse sexual and reproductive health outcomes and all young people in OOHC are substantially more likely to have post-traumatic stress disorder.¹⁸³
- In Western Australia, [WA Today](#) reported (2022):¹⁸⁴
 - 7532 children and young people in OOHC or under the watch of the department, sometimes through an active investigation into their safety and wellbeing.
 - 1034 unallocated cases (636 or 61% being children currently in OOHC), meaning that the cases did not have a dedicated welfare officer.
 - 75 caseworkers across the state with responsibility for the welfare of more than 15 cases each. The average number of cases per worker was 9.06.

4.4. KEY CASES

4.4.1. Preventing unnecessary removals and enforcing appropriate duty of care standards

CEO of Child Protection v SJW & Ors [2016] WACC 8

- SJW's daughter was taken into the care of the Department for Child Protection and Family Support (CPFS) at birth and placed with non-Aboriginal foster carers in Perth.
- Within a year, SJW had made substantial efforts and progress in addressing concerns raised by CPFS about his lifestyle which contributed to his daughter being placed in care. This included SJW leaving his Country for six months to complete various programs in Perth.
- Upon returning home, SJW was not provided with support and assistance from CPFS as promised.
- Despite SJW making genuine attempts and considerable efforts to meet the onerous demands required of him, CPFS concluded that because the outcomes were not met within 12 months, his daughter would never be reunified with him and would remain in State care until the age of 18.
- In its judgment the Children's Court of WA:
 - Found that CPFS had utterly failed to observe the Aboriginal Child Placement Principle:
 - *"The Department did not locate, or even endeavour to locate, culturally appropriate carers after B's birth. Although there was mention made of referring the baby to the Aboriginal fostering agency in Perth, there was no*

*evidence that this occurred. This is inconsistent with the principles enunciated in Section 12(1)(a), (b) and (c) of the [Children and Community Services Act 2004 (WA) Act]".*¹⁸⁵

- *"The Department failed to consider the principle of self determination. The parents barely participated in B's care, or any decisions surrounding it. They had no choices or voices in the matter."*¹⁸⁶
- Found that the 'Permanency Planning' policy was interpreted by the CPFS as a way to override the obligation to ensure reunification with parents and the best interests of the child:
 - *"[The child's] best interests were surrendered to a policy."*¹⁸⁷
 - *"[The child] and her family became casualties to a policy which had the effect of subverting portions of the Act."*¹⁸⁸
- Described CPFS's efforts to identify family placement options for the child – and therefore ensure she could return to Country – as "pathetic":
 - "The Department failed to investigate Broome-based placement options for B in October 2014 notwithstanding that there were 'two or three' short-term placement options available."¹⁸⁹
 - Made a two-year time limited order with reunification of parent and child the primary objective.

[Drake & Drake & Anor \[2014\] FCCA 2950](#)

- The maternal grandmother had made an application to the Federal Circuit Court of Australia (**FCCA**) seeking parental responsibility for her six Aboriginal grandchildren, who had been living with her since 2011.
- As the family law proceedings were pending, the New South Wales Department of Family and Community Services (**FACS**) removed the six children from her care without notice to her, her solicitor, the Independent Children's Lawyer or the FCCA.
- Notably, the six children were taken to four different placements, were placed a long way from their family and from their kinship group and were remote from country.
- It was conceded that their placements were a long way down the hierarchy in terms of placement options.¹⁹⁰ ATSI CPP was not followed.¹⁹¹
- Despite FACS forming the view that the grandmother did not have adequate parenting capacity, the FCCA held that the grandmother *did* have sufficient parenting capacity to care for her six grandchildren and made orders for all of the children to be returned to her and for her to have sole parental responsibility for the children.¹⁹²
- FACS's reasons for removing the children were due to concerns over the grandmother's "ability to act protectively generally towards the Children, including drugs, supervision, and identifying risks posed by other people coming into her life".¹⁹³
- However Judge Sexton found: "the Grandmother shows an understanding of her mistakes and insight into her failures as a parent...has been largely successful in

protecting the Children from the drug and alcohol issues of their Mother and Father. The Grandmother herself has turned her life around, having given up alcohol and drugs, accepted the support of the drug rehabilitation service ... and earned the respect of many in the community”.¹⁹⁴

- As such, Judge Sexton said that “the court’s primary focus should not be on the grandmother’s history of involvement with the Department in relation to her own children, but rather on the grandmother’s present capacity to care for her six grandchildren”.¹⁹⁵
- Notably, the family law solution in this case was to make orders for the grandmother to engage with appropriate support services in order to foster a safe environment for the children, whereas the solution sought by FACS was removal of the children.
- The removal proved to be discriminatory and unnecessary and proved traumatic:
 - “...two police officers and 3 other Departmental officers...knocked on the front door... [U] was crying and asking why they were being taken away...”¹⁹⁶
- Judge Sexton stated: “*the Grandmother offers cultural connection, meaningful relationships with the Mother and the Father and a home all together*”¹⁹⁷ and criticised FACS’ management of the case and the weaknesses of FACS’ proposal at the final hearing.¹⁹⁸
- Judge Sexton quoted various judgments that spoke about the importance of culture to Aboriginal identity:¹⁹⁹
 - The Full Court *In the Marriage of B and R* (1995) FLC 92 636 stated at 82 – 396:
 - “It is not just that Aboriginal children should be encouraged to learn about their culture, and to take pride in it ...What this issue directs our minds to is the particular problems and difficulties confronted throughout Australian history, and at the present time, by Aboriginal Australians in mainstream Australian society...”
- In *B & F* [1998] FamCA 239, Moore J considered the scope and meaning of the term ‘connection’. At 29-30 her Honour stated:
 - “...the requirement to maintain a connection to their lifestyle, culture and traditions involves an active view of the child’s need to participate in the lifestyle, culture and traditions of the community to which they belong...Through participation in the everyday lifestyle of family and community the child comes to know their place within the community, to know who they are and what their obligations are and by that means gain their identity and sense of belonging.”
- In *Donnell & Dovey* [2010] FamCAFC 15 the Full Court said:
 - “[W]e consider that an Australian court exercising family law jurisdiction in the twenty first century must take judicial notice of the fact that there are marked differences between indigenous and non-indigenous people relating to the concept of family. This is not to say that the practices and beliefs of indigenous people are uniform...However, it cannot ever be safely assumed that research findings based on studies of European/white Australian children apply with equal force to indigenous children...[at 321].”

- "... judicial officers dealing with cases involving an indigenous child should be expected to have a basic level of understanding of indigenous culture, at least to the extent that this can be found in what the Full Court in B and R (supra) called 'readily accessible public information' [at 322]."

South Australia v Lampard-Trevorrow Supreme Court of South Australia [2010] SASC 56

- The appeal by the State of South Australia concerned an award of damages by the trial judge in relation to the injuries suffered by the removal of an Aboriginal child, Bruce Trevorrow, from his natural parents into foster care, without their consent in 1957.
- Bruce Trevorrow claimed the removal from his natural family, and his placement with the Davies family, was unlawful. He claimed that the separation from his natural mother and family, and the manner in which he was reunited with his natural family, all contributed to a loss of cultural identity, depression, poor health, poor relationships and erratic employment history.
- Bruce Trevorrow died after the initial judgment was entered. His widow, Mrs Lampard-Trevorrow, as executrix of his estate, was the respondent.
- The appeal was rejected.
- One of the issues before the Supreme Court was whether, on the proper construction of s 10 of the *Aborigines Act 1934* (SA), the 'Aborigines Protection Board' (APB) had the right to foster an Aboriginal Child without the consent of the parents and, if that right existed, whether it was validly exercised.
- The Supreme Court determined that the APB was not authorised to place Bruce Trevorrow with Mrs Davies without the consent of his parents, as such an interpretation would have deprived all Aboriginal parents of the rights to the custody, control and upbringing of their children.
- At common law, parents have the right to exercise care and control over their children. Justice Gray noted that if this fundamental right is to be displaced the legislation must show that this is the Parliament's intention.²⁰⁰ [445]-[454].
- Crucially, no intention to grant powers of separation to the State of South Australia were evident. In fact, Justice Gray J found that acting as the guardian over children was only relevant for the protection of Indigenous children, not their removal.²⁰¹
- "The interpretation for which the State contends would have deprived all Aboriginal parents of a fundamental right – the right of parents to the custody, control and upbringing of their children, subject to intervention by the State when the parents are unwilling to exercise or are incapable of exercising those rights properly, and when the welfare of the child in question calls for that intervention. Legislation should not be construed as wholly abrogating these rights, unless there is a clear intention to do so."²⁰²
- The Supreme Court also said that this decision was in the public interest:
 - "Apart from that, in our opinion there is a definite public interest in persons like Bruce Trevorrow being able to have their claims decided by a court. The

widespread concern about the policies of the past, and about the manner in which they were administered, support the circumstances being exposed to public scrutiny, and the Court having the ability to consider what was done, whether it was done validly and properly, and with what consequences. That public interest, in this context, is an interest of justice.”²⁰³

- Bruce was [awarded A\\$525,000](#) the first such payout to a member of the Stolen Generations in Australian legal history.

REF and SJP v Chief Executive Officer, Territory Families [2019] NTSC 4

- An Aboriginal child, PG, with severe psychological, developmental and physical disabilities had lived with her non-Indigenous foster carers for the majority of her life before moving interstate with Territory Families’ support.
- The foster parents were not Indigenous but had professional experience working with Indigenous children and spoke the Pitjantjatjara language.
- Territory Families made the decision that the child should be returned to her maternal grandparents to ensure that the child was surrounded by Indigenous culture. However, there were some complexities surrounding the transition that led to the case arising.
- Barr J of the Supreme Court discussed the relationship between sections 10 and 12 of the *Care and Protection of Children Act 2007* (NT) (‘the Act’). In his discussion, Barr J stated that the language in the Act required that the best interest of the child be the absolute paramount concern for decisions involving children. As a result, Barr J found that the ATSI CPP is an ‘ancillary concern’.²⁰⁴

4.4.1. Ensuring children are placed in culturally appropriate care and maintain connections, and enforcing appropriate duty of care standards

Hackett (a pseudonym) v Secretary, Department of Communities and Justice [2020] NSWCA 83

- The New South Wales Court of Appeal was asked to decide whether a child was an ‘Aboriginal child’ for the purposes of adoption. This is a significant decision as it affirms a descent-based definition of an Aboriginal child in the New South Wales adoption and child protection systems.
- The Court of Appeal found a child of ‘Aboriginal descent’ is distinct from a child who ‘descended from an Aboriginal [person]’. This means the Department of Communities and Justice (**DCJ**) does not need to confirm a child’s relative meets all three requirements of the Aboriginal Land Rights Act, including identification and acceptance by the Aboriginal community, to determine that a child is an Aboriginal child. Evidence that a child has a relative who is Aboriginal is enough to establish Aboriginal descent.
- If a need for confirmation of Aboriginality is necessary, DCJ makes reasonable inquiries regarding a child’s Aboriginality as soon as possible, so decisions can be made in a timely manner having regard to a child’s Aboriginality. Reasonable inquiries may include:²⁰⁵

- Family group conferencing or family led decision making processes,
- Family finding casework, including discussions with a child's family/kin and community members,
- Reviewing current and archived records held by DCJ,
- Consultation with aboriginal community organisations, DCJ aboriginal panels and aboriginal operational and policy teams,
- Referrals to external services such as link up and the Crown Solicitor's Native Title Team,
- Requests to external agencies, via chapter 16A or subpoena, for birth records or aboriginal protection and welfare records,
- Searching free external databases such as the aboriginal and Torres Strait Islander biographical index and/or state and territory library catalogues.

In the Matter Of: B Appellant/Mother and R Respondent/Father and the Separate Representative Respondent [1995] FamCA 104

- The Family Court acknowledged the unique experiences of Aboriginal people, including the experience of forced removals of children and subsequent identity crises arising out of growing up in a foreign environment and being isolated from their Aboriginal identity.
- The Family Court held that these factors are relevant to a Court's consideration of an Aboriginal child's welfare and what is in that child's best interests. On the importance of retaining cultural connection, said:
 - "It is not just that aboriginal children should be encouraged to learn about their culture, and to take pride in it in the manner in which any other child might be so encouraged. What this issue directs our minds to is the particular problems and difficulties confronted throughout Australian history, and at the present time, by aboriginal Australians in mainstream Australian society. The history of aboriginal Australians is a unique one, as is their current position in Australian life. The struggles which they face in a predominantly white culture are, too, unique."²⁰⁶
- The Family Court accepted evidence that the effects on Aboriginal children of being raised in a Western environment where their Aboriginal identity was not reinforced could contribute to "*severe confusions of that identity and profound experiences of alienation*".²⁰⁷
- In particular, the Family Court made reference to Article 30 of the [CRC](#), which states:
 - "*In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.*"
- The Family Court also held that life as an Aboriginal person means confronting discrimination on a daily basis, that the removal of an Aboriginal child to a foreign environment is likely to have a devastating impact on that child, that Aboriginal identity

and self-esteem is more likely to be reinforced from within the child's Aboriginal community, and that children brought up in ignorance of their Aboriginality or in circumstances which belittle or deny their Aboriginality are likely to experience significant impacts on their self-esteem and self-identity into adult life.²⁰⁸

- Importantly, the Family Court held that these factors are unique to Aboriginal experiences and are relevant to determining the welfare and best interests of an Aboriginal child.²⁰⁹

[Nineth & Nineth \(No. 2\) \[2010\] FamCA 1144](#)

- The child had been living with his great-aunt. Whilst the great-aunt was an Aboriginal woman, she placed limited importance on her Aboriginality and placed more importance on her Christian faith.
 - *"The broad context of this parenting dispute, in which the aunt seeks orders that J continue to live with her, and the mother similarly, also includes, what might be called for convenience, a "cultural divide" between the aunt on the one hand, and the mother and grandmother on the other. Central to the aunt's life is her role in the Pentecostal faith. The intersection between those beliefs and the desire of the mother and the grandmother to immerse J in his aboriginal heritage and customs is an important element of this case."*²¹⁰
- It was held that, in respect of nurturing the child's Aboriginal identity, it would be in the best interests of the child to be placed with his grandmother, as she was an Aboriginal woman who placed great emphasis on her Aboriginality and had a deep belief in her culture and family.
- Justice Murphy held that it would be *"profoundly detrimental"* for the child to be deprived of being able to *"live his Aboriginality"*, and that the child *"deserves the opportunity to live his Aboriginality."*²¹¹

[Davis & Spring \[2007\] FamCA 1149](#)

- The child was living with her white father and paternal grandmother in La Trobe Valley, Victoria. The child's mother was a West Arrente woman who lived in Central Australia.
- Justice Young made orders for the child to relocate with her mother to Central Australia so that the child would be able to enjoy her right to her specific and unique Western Arrente culture.²¹²
 - *"Pursuant to the Act, and subject to her best interests I am required to provide to the child the opportunity to enjoy her aboriginal culture with other people who share that culture. She has a right to maintain a connection with that culture and to have the support of, opportunity and encouragement necessary to develop a positive appreciation and to fully explore her culture and tradition, on an age appropriate basis."*
- His Honour found that it would not be sufficient for the child to continue to live in La Trobe Valley with exposure to the Aboriginal Koori culture of that area. Justice Young held that for the child to maintain her cultural connections it was required for her to spend time with family members and her Indigenous community.

- *“The paternal grandmother acknowledged that she understood there was a vast difference between the culture, language and upbringing of the aboriginals of the LaTrobe Valley, and their Koori culture and those of the Western Arrernte people who occupy an area to the west of Alice Springs. There was however no proper explanation, other than she accepted legal advice, as to why this decision was made and implemented by her.*
- *It is common ground in this case that the mother objected and has always objected to the child being subjected to a culture and upbringing that was foreign to her aboriginal family and her ancestry. The mother’s position, as acknowledged by the paternal grandmother, was always that the child, on her maternal line is a child of the Western Arrernte people and should not have substituted therefore the Koori language and culture and the different traditions and beliefs of the aboriginal community of Gippsland.*
- *Always subject to the best interests of the child the stark reality in this case will be that if she is raised in Gippsland she will predominantly learn and speak English and perhaps to some extent the local Koori language, but have no exposure to the culture or family of her mother.”²¹³*

Legal Aid NSW Case Study demonstrating the importance of identifying appropriate placements at an early stage

- Daniel was a ten-year-old Aboriginal boy who had lived with his Aboriginal maternal grandmother during times when his mother was unable to care for him due to her substance use disorder and incarceration.
- When Daniel’s mother was released from custody, Daniel’s grandmother returned Daniel to her care. Shortly thereafter, Daniel’s mother overdosed and Daniel was removed from her care.
- FACS did not make contact with Daniel’s grandmother and Daniel was placed into OOHC. Daniel’s grandmother had another grandchild living with her on a permanent basis under an order made in Queensland. That child was a young teenager and there were no concerns about that child being in the care of the grandmother.
- FACS eventually assessed Daniel’s grandmother as unsuitable to care for Daniel. Daniel was moved to a second placement in OOHC. The grandmother successfully prosecuted a joinder application to become a party to the proceedings.
- She was represented in proceedings. Some months later, Daniel’s carers decided to move and Daniel again changed OOHC placements. By this stage Daniel’s behaviour had deteriorated. Daniel’s grandmother continued to argue for contact with Daniel during proceedings and funded her own transport from Queensland to see Daniel.
- Daniel’s lawyer obtained an expert report by a well-respected and experienced Aboriginal psychologist. The Aboriginal psychologist stated in his report that the assessment of the grandmother undertaken by FACS was not culturally sensitive or appropriate. He recommended that Daniel be placed with his grandmother and detailed a number of benefits to Daniel of living in his community. The psychologist assessed these benefits

as outweighing concerns held by FACS about the grandmother. That report recommended placement with Daniel's grandmother.

- FACS did not agree and the matter was set down for five days of final hearing, some thirteen months after Daniel's removal.
- By this time, Daniel was living in residential care with 24-hour supervision and with other young people with behavioural problems and he was not attending school. Daniel was sexually abused in that placement on more than one occasion.
- Following three days of a contested hearing and evidence about the sexual abuse, the Court, with some reservation due the evidence not being complete, made it clear that Daniel should be placed with his maternal grandmother on an interim basis. Following a further two days of the hearing, final orders were made placing Daniel in the parental responsibility of his maternal grandmother.
- The grandmother told Daniel's lawyer that Daniel was unrecognisable on his return to her care. FACS made it clear to the grandmother on the record that because they did not approve of the placement, she would not be paid a carers allowance.

4.5. KEY RESOURCES

4.5.1. Journal Articles

- [Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start \(SAFeST\): Urgent call to action to address crisis in infant removals](#) (2022)²¹⁴
 - Prior to colonisation, evidence suggests that Aboriginal and Torres Strait Islander children were likely to be physically, socially and emotionally healthier than European children in 1788 (Thomson, [1984](#)).²¹⁵ New parents were supported using principles of "Grandmothers' law" (Langton, [1997](#)²¹⁶; Ramsamy, [2014](#)).²¹⁷ The safety and well-being of Aboriginal and Torres Strait Islander children was fostered within systems of kinship and community care (McMahon, [2017](#)).²¹⁸
 - The World Health Organisation's framework (Marmot et al., [2012](#))²¹⁹ for understanding the causes of health inequities demonstrates how historical violence and family disruption lead to compounding cycles of intergenerational trauma (Chamberlain, Gee, et al., [2019](#))²²⁰ and childhood adversity, with major impacts on lifelong health (Anda et al., [2010](#))²²¹; Felitti et al., [1998](#);²²² Hughes et al., [2017](#)),²²³ well-being and prosperity.
 - In 2007, all Australian governments committed to Closing the Gap in life expectancy by improving health outcomes and equity for Aboriginal and Torres Strait Islander people with progress against key targets reported annually to Parliament.
 - In July 2020, a new National Agreement on Closing the Gap was signed and, for the first time, was formed as an agreement between governments and Aboriginal and Torres Strait Islander peak bodies. This agreement included 17 national socioeconomic targets across areas that have an impact on life outcomes for

Aboriginal and Torres Strait Islander peoples, including a target of reducing the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC) by 45 per cent by 2031 (SNAICC, [2020](#)). Redressing compounding cycles of intergenerational trauma, a legacy of colonisation, will be central to achieving this target.

- Urgent reforms are required to facilitate the effective and successful implementation of the *Aboriginal and Torres Strait Islander Child Placement Principle* ([SNAICC, 2019](#)), *Family Matters Report 2020* ([SNAICC, 2020](#)), and the *Family is Culture* report ([Davis, 2019](#)).
- We must maximise therapeutic outcomes and promote therapeutic, evidence-based, community-led, culturally responsive, trauma-integrated interventions and practices. This includes identifying feasible alternatives to removing babies from Aboriginal and Torres Strait Islander parents after birth and investment in immediate implementation and evaluation.
- Self-determination for Aboriginal and Torres Strait Islander communities needs to be actualised – to enable communities to reassert systems of kinship and community care that foster the safety and well-being of Aboriginal and Torres Strait Islander children.
- CPS need urgent reform – to enable Aboriginal and Torres Strait Islander communities to design and administer systems grounded in their values, perspectives and aspirations, and through them promote transparent, compassionate and healing-focused practice with families that is consistent with social justice and reduces the incidence of moral injury.
- [Aboriginal Cultural Safety: A Case Study of Collaborative Practice at the Intersection of Family Violence and Child Protection](#) (2022)²²⁴
 - Meaningful collaboration requires a conscious effort to really begin to shift away from previous ways of working that privilege western knowledge and practice. It requires constant reflection and the willingness to let go of that position of power that has privileged one way of knowing, being, and doing. It requires collaborative partnerships that are facilitated through culturally safe and responsive approaches.
 - The focus then shifts to decolonising social work practice and the role meaningful collaboration has within this. Culturally responsive collaboration gives Aboriginal people more power in decision making, recognises the value and strength of Aboriginal knowledge and practice, and makes a conscious effort to incorporate this throughout ways of working. This requires statutory child protection services to think about decolonisation and to reflect on their current ways of thinking and practice with a focus on the why and how they do things.
 - This requires not just adapting their practice with Aboriginal people, but learning from Aboriginal people, acknowledging the strengths in their knowledge and practice, and actually implementing this into service provision.

- For real change, there needs to be a deliberate effort to identify and find solutions to overcome the issues relating to power that often reinforce the absence of meaningful engagement with Aboriginal services and the implementation of Aboriginal knowledge and practice. Walking alongside Aboriginal services through collaborative practice that is relational; has mutual respect, equal representation, and trust; and sees value in the strengths of Aboriginal knowledge and practice is more likely to be sustainable.
- [“We don’t want you to come in and make a decision for us”: Traversing cultural authority and responsive regulation in Australian child protection systems](#) (2021)²²⁵
 - Utilising the Ngulluk Koolunga Ngulluk Coort (Our Children Our Heart) project conducted by Elder and community consultation to develop principles and practice recommendations for child protection governance (2021)
 - Offer a vessel for voice and self-determining the future of the Aboriginal community.
 - That using principles and responsive regulation of inclusion of Elder voices is critical in closing the gap between current practice and what is “best practice” for Aboriginal families and children, including through consultation processes to develop future cultural governance for child protection policy and practice, negating current issues of authority.
 - Increase the demand for recognition of the authority and knowledge of Elders and senior Aboriginal and Torres Strait Islander people and committing to their inclusion in decision-making roles at all stages of child protection processes, including engaging in careful consideration of past harm and trauma to prevent further harm.²²⁶
- [Extending out-of-home care in the state of Victoria, Australia: The policy context and outcomes](#) (2021)²²⁷
 - Home Stretch is a dedicated campaign led by Anglicare Victoria to persuade all State and Territory governments to extend OOHC provision to 21 years of age.
 - The campaign commenced in late 2015 and has used a range of advocacy strategies including public forums and launches, media interviews, surveys of public opinion, presentations to numerous conferences, meetings with state and Commonwealth politicians, and publications of research reports presenting a cost-benefit analysis (Mendes, 2018a; 2018b).
 - This article discusses the opposing views and relevance of achieving a benchmark of ongoing assistance for care leavers up to 21 years old within Australia, and their complex needs.
- [Aboriginal Family Planning Circle Evaluation: Empowering Aboriginal communities in evaluating and future-proofing Aboriginal-led community programmes](#) (2020)²²⁸
 - Aboriginal Family Planning Circle (AFPC) programme is an Aboriginal-led community programme which works with Aboriginal families in Western Sydney to address complex needs and reduce risk of having their children put into OOHC.

The AFPC evaluations demonstrate the value of Aboriginal-led early intervention programme models in addressing the complex needs of participating families and preventing Aboriginal over-representation in the child protection system.

- Culture as a reform principle – participation of Aboriginal voices in decision making, and respect for and protection of culture are imperative
- “Culturally responsive evaluations can provide an avenue for Aboriginal communities to advocate for the continued funding of their programmes...”
- [Aboriginal parents' experiences of having their children removed by statutory child protection services](#) (2020)²²⁹

Chapter 3.5 - Aboriginal Specific issues:

- When parents recommend several family members to care for their children, these requests were not followed up:
 - *[Our children] should have been placed together knowing our Aboriginal background culture. Every time we would nominate one of our family, it was they are not good enough, they are not suitable, but they have never been assessed (Karen)*
 - *Karen's children were sent to separate non-Aboriginal foster homes, as were Mel's children. Tanisha's son was also sent to a non-Aboriginal foster home. Jasmine's six children were living in separate non-Aboriginal foster homes, but when the case was transferred to an Aboriginal agency, all children were placed with the one Aboriginal foster carer.*
- None of the families in this case study had access to FACS Aboriginal caseworkers prior to or during their child's removal. Bree was provided with an Aboriginal caseworker after her children were removed, and court orders for long-term kinship care were finalized. She was feeling supported and hopeful to get her children back since having an Aboriginal case worker:
 - *Before they worked against me. They fought all the way in court and they got what they wanted, [my children removed] until they were 18 but now like they have given me an Aboriginal case worker and that's all I've wanted because I wanted them to understand the meaning of Stolen Generations. And I do not know it's like God works in a good way because I do got a good feeling I'm getting my kids back (Bree)*
- Institutional racism: Many Aboriginal children being removed in a particular part of town:
 - *The place where I was...there's a lot of Aboriginals and the majority of them have got their kids taken from down there it's like yeah they are picking on that certain little area and the certain culture (Bree)*
 - *Bree is referring to a particularly impoverished, public housing area where there is high prevalence of drug use, violence and crime and explained that when her child was removed, three other Aboriginal families had children removed in the same week.*

- Offers insight to how departmental decisions impact on families' wellbeing, capacity to have their children restored and the lack of control parents have in contributing to these decisions.
- Highlights how child protection systems can perpetuate family separation, through facilitating inappropriate contact and restoration arrangements for children in care and can impose requirements that are potentially detrimental to restoration.
- Recommends that to better support families whose children have been removed, practitioners need to empower parents by working together to make decisions that concern their children, case plan, and contact visits. This will ensure that case plans and service interventions are meaningful and meet the needs of families; in turn, they will be more likely to succeed.
- Recommends that more consideration also needs to be given to contact environments and arrangements so that contact visits feel safe, comfortable and enjoyable for families during the precious limited time they have together.
- [The role of decision making in the over-representation of Aboriginal and Torres Strait Islander children in the Australian child protection system](#) (2020)²³⁰
 - Indigenous children are over-represented in the Australian child protection system.
 - False positive errors in decision-making could contribute to over-representation.
 - Speculating on reasons for errors in decision-making has implications for practice.
 - Errors could be reduced through improved assessment of risk and needs of families.
 - Training in a culturally informed assessment framework is recommended.
 - While the ideal would be that Aboriginal and Torres Strait Islander community controlled services take the lead in all child protection matters involving Aboriginal and Torres Strait Islander families, in practice the majority of professionals involved in child protection decision making in Australia are non-Indigenous.²³¹ There is a clear need that this workforce has a high level of cultural capability to work effectively with Aboriginal and Torres Strait Islander families. Unfortunately, research has found non-Indigenous social workers feel ill-equipped and lack confidence in their ability to work with Aboriginal and Torres Strait Islander families.²³²
 - Non-Indigenous practitioners working in the child protection field require professional development opportunities to acquire cultural capability. A recent review of the literature on cultural competency training programs concluded that there was strong evidence programs could improve knowledge, attitudes, confidence and skills among health professionals, but there was little evidence available to determine whether these improvements translate into clinical practice.
 - Recommendations:
 - A bi-cultural approach for working with Aboriginal and Torres Strait Islander families

- A recent review of the OOHC system in New South Wales found that ‘intergenerational trauma’ was a key concept that permeated the report.²³³
- Manifestations of intergenerational trauma include issues such as mental health problems, domestic violence and substance misuse. A key recommendation of the report was that intergenerational trauma should not be interpreted as abuse or neglect to justify removal of children, but as something that should be addressed with appropriate therapeutic support.²³⁴
- In addition to acknowledging Aboriginal and Torres Strait Islander perspectives on SEWB, the impact of colonisation and cultural differences in child rearing, we suggest that it is important to examine how Aboriginal and Torres Strait Islander perspectives are different from, but overlap with the Western models of child development and family functioning taught as part of professional training.
- The resourcefulness that comes from strong connections to family, community, culture and country is unique to Aboriginal and Torres Strait Islander families.
- a culturally informed framework to guide assessments of families is one strategy that has the potential to decrease the over-representation of Aboriginal and Torres Strait Islander families in the child protection system in Australia.

4.5.2. Reports

National

- Productivity Commission: [Report on Government Services 2023](#) (2023)²³⁵
 - Part F, Section 16 reports on the performance of governments in providing child protection services across Australia.
- SNAICC: [The Family Matters Report](#) (2022)²³⁶
 - Reports annually and tracks how governments are responding to the overrepresentation of Aboriginal and Torres Islander children in OOHC. The report holds governments to account and is influential in making the case for change.
 - Related resources:
 - [Secretariat of National Aboriginal and Islander Child Care \(SNAICC\)](#): National non-governmental peak body for Aboriginal and Torres Strait Islander children. Their goal is to develop strong, healthy, self-determining Aboriginal and Torres Strait Islander children to be connected to family and culture.
 - [Family Matters Campaign](#): National campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for surrounded by their own family, community and culture.

- [National Agreement on Closing the Gap](#) (signed 27 July 2020): Agreement signed on 27 July 2020 between the [Coalition of Peaks](#), together with all Australian governments and the Australian Local Government Association. The Agreement includes four Priority Reforms to change the way governments work with Aboriginal and Torres Strait Islander people, new government accountability measures, and shared monitoring and implementation arrangements.²³⁷
- SNAICC: [SNAICC Annual Report 2021-22](#) (2022)
 - Provides insights into projects, services, resources, and support SNAICC offers through training, policy, partnerships, communications and finances, as well as the Family Matters and National Aboriginal and Torres Strait Islander Children's Day campaigns, and more.
- AIHW: [The Aboriginal and Torres Strait Islander Child Placement Principle Indicators](#) (2022)²³⁸
 - Reports annually on progress towards the implementation of ATSICPP.
 - This report presents data on the five indicators for which data are currently available:
 - These 5 indicators relate to the Placement and Connection elements of the ATSICPP.
 - Data is not available for the three remaining indicators as these are still under development.
 - The ATSICPP indicators were developed in partnership by cross-jurisdictional government and Aboriginal and Torres Strait Islander non-government organisations following the release of the [Fourth Action Plan of the National Framework for Protecting Australia's Children](#) (DSS 2018).²³⁹ Initial development work resulted in a set of draft indicators being produced in 2018.
- AIHW: [Child Protection Australia 2021-22](#) (2022)
 - Reports are released annually.
 - This report provides an overview of children in the child protection system in 2021–22, including children subject to notifications, investigations, and substantiations of maltreatment, and the ways children were supported.²⁴⁰
- Australian Government Department of Social Services: [Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031](#) (2021)
 - A National Framework that focuses on the best interests of the child.
 - Released by the Australian Government and developed in consultation with SNAICC, the National Aboriginal and Torres Strait Islander Leadership Group, and others.
 - Includes significant commitments, including implementation of all five elements of the ATSICPP, delegation of decision-making authority for Aboriginal and Torres

Strait Islander children to ACCOs, and mechanisms for shared decision-making with Aboriginal and Torres Strait Islander leaders for governance of the Framework.

- Identifies four key focus areas:
 1. A national approach to early intervention and targeted support for children and families experiencing vulnerability or disadvantage.
 2. Addressing the overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems.
 3. Improving information sharing, data development and analysis.
 4. Strengthening the child and family sector and workforce capability.
- Related documents:
 - [SNAICC National Framework for Protecting Australia's Children 2021-2031: Successor Plan Consultation Report](#) (2021)
 - [SNAICC: Turning the Tide: Designing a New Plan to Address the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-Of-Home Care Consultation Guide](#) (2021)
- Previous Framework:
 - [Protecting Children is Everyone's Business National Framework for Protecting Australia's Children 2009–2020](#)
- [National Aboriginal and Torres Strait Islander Early Childhood Strategy](#) (2021)²⁴¹
 - The Strategy provides a community-informed and evidence-based pathway to achieve the National Agreement on Closing the Gap targets and outcomes for early childhood, and to fulfil joint commitments to the Priority Reforms.
 - The Strategy is informed by an evidence-based framework and builds on existing whole-of government policy frameworks and strategies.
 - The Strategy has five goals:
 - **Goal 1** – Aboriginal and Torres Strait Islander children are born healthy and remain strong
 - **Goal 2** – Aboriginal and Torres Strait Islander children are supported to thrive in their early years
 - **Goal 3** – Aboriginal and Torres Strait Islander children are supported to establish and maintain strong connections to culture, Country and language
 - **Goal 4** – Aboriginal and Torres Strait Islander children grow up in safe nurturing homes, supported by strong families and communities
 - **Goal 5** – Aboriginal and Torres Strait Islander children, families and communities are active partners in building a better service system.²⁴²
- AHRC: [‘Wiyi Yani U Thangani’ Women’s Voices: Securing our Rights, Securing our Future Report](#) (2020)

- Sets out a range of pathways forward to reduce the high rates of Aboriginal and Torres Strait Islander children entering the child protection system and youth detention. These include investing in diversionary pathways away from the criminal justice system and child protection.²⁴³
- Recommends implementing mechanisms to keep women and children safe, and families together.²⁴⁴
- [Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability \(Disability Royal Commission\):](#)
 - [Public hearing 8:](#) The experiences of First Nations people with disability and their families in contact with child protection systems (2020)
 - Explored the experiences of First Nations people with disability and their families who have had contact with child protection systems, and the extent to which culturally appropriate and accessible supports are provided.
 - Purpose included gathering evidence about the experiences of First Nations parents with disability in contact with child protection systems, including to consider whether systemic failings identified may amount to systemic violence and/or neglect.
 - In particular, the scope of this hearing included an examination of the following issues:
 - whether First Nations parents with disability and their families are exposed to a higher likelihood of statutory intervention(s) by child protection systems because they are a First Nations person with disability
 - how child protection services interact with and respond to First Nations parents with disability in their practices and administrative decisions
 - whether First Nations parents with disability are exposed to a greater risk of violence, abuse, neglect or exploitation during, or as a result of, contact with child protection systems
 - what has or should be done to reduce the risk of First Nations parents with disability being subject to adverse outcomes, including all forms of abuse, and to promote better outcomes
 - the responses of state and territory governments to the implementation of recommendations on the above issues made by previous Royal Commissions and past inquiries.
 - [Public hearing 16:](#) First Nations children with disability in out-of-home care (2021)
 - Focused on the experiences of First Nations children with disability in OOHc.
 - The scope and the purpose of this hearing was to inquire into:

- experiences of violence, abuse, neglect and exploitation of First Nations children with disability in OOHC
 - policy and practices of child protection departments in identifying and diagnosing disability of First Nations children in OOHC, including health checks and disability assessments
 - access to supports and services by First Nations children with disability in OOHC, including the NDIS
 - access to supports and services by carers of First Nations children with disability in OOHC
 - policies and practices with respect to secure care environments and the potential for adverse outcomes for First Nations children with disability in these settings
 - patterns and trends in the representation and placement of First Nations children with disability in OOHC, including whether these children are more likely to be placed in particular OOHC settings
 - data on the representation and experiences of First Nations children with disability in OOHC
 - negative outcomes for First Nations children with disability in OOHC, including care-criminalisation
 - solutions to address systemic problems experienced by First Nations children with disability in OOHC.
- AIHW: [The Aboriginal and Torres Strait Islander Child Placement Principle Indicators 2018-19: measuring progress](#) (2020)
 - Developed in recognition of the devastating effects of forced separation of Indigenous children from families, culture, and communities. [It is a framework designed to promote policy and practice that will reduce the over-representation](#) of Aboriginal and Torres Strait Islander children in the child protection system.²⁴⁵
 - Australian Institute of Family Studies: [Child Protection and Aboriginal and Torres Strait Islander Children, Child Family Community Australia \(Resource Sheet, 2020\)](#)²⁴⁶
 - This resource sheet is designed to assist practitioners, policy makers and researchers with an understanding of the extent to which Aboriginal and Torres Strait Islander children are involved in the Australian child protection and OOHC systems.
 - The resource sheet is based on the AIHW Child protection Australia 2017–2018 data ([AIHW, 2019](#)).
 - SNAICC: [The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation](#) (2019)
 - The Guide aims to support holistic understanding, and the full and uniform implementation of the ATSICCP across the country. The Guide provides information on best practice and examples from across the country of promising

approaches to implementing each of the five elements of the ATSCIPP. The resource also has a section on identifying Aboriginal and/or Torres Strait Islander children, with timely identification a pre-requisite to applying the ATSCIPP.

- The Guide is designed to support practitioners and policy makers in the children and family sectors from all jurisdictions to develop strategies to improve their implementation of the ATSCIPP. Its content is strongly influenced by the expert knowledge and experience of Aboriginal and Torres Strait Islander agencies and leaders in the sector who provided their input to its drafting.
- Australian Institute of Family Studies – Child Family Community Australia [Developments to strengthen systems for child protection across Australia, Child Family Community Australia](#) (2017)
 - Charts reforms in Australia prior to 2017 – documented and compared in terms of child protection system principles, goals and components.
 - Draws on a survey completed by child protection departments across Australia on change and reform planned or underway since July 2010.²⁴⁷
- [National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023](#) (2017)
 - Culture and cultural identity is critical to social and emotional wellbeing. Practising culture can involve a living relationship with ancestors, the spiritual dimension of existence, and connection to country and language. Individual and community control over their physical environment, dignity and self-esteem, respect for Aboriginal and Torres Strait Islander peoples' rights and a perception of just and fair treatment is also important to social and emotional wellbeing. Culture is therefore critically important in the delivery of health services.²⁴⁸
- Australian Institute of Family Studies – Child Family Community Australia: [Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Policy and practice considerations Report](#) (2015)
 - Provides an in-depth discussion of ATSCIPP including its importance, the barriers to implementation and further action required.²⁴⁹

Australian Capital Territory

- [Keeping Children and Young People Safe: A shared community responsibility – A guide to reporting child abuse and neglect in the ACT](#) (2022)
 - The purpose of this guide is to explain how to provide information about concerns of child abuse or neglect that occur within a family to Child and Youth Protection Services (CYPS).
- [Next Steps for our Kids 2022-2030: ACT strategy for strengthening families and keeping children and young people safe](#) (2022)
 - Provides a brief update on the governments progress in implementing the 28 recommendations made in the [Our Booris, Our Way](#) (2019) review that the government [accepted](#).

- The ACT Government has committed a total of \$15.7 million from 2018–19 to 2023–24 to support implementation of the recommendations.
- While the ACT has several established and emerging ACCOs—including Winnunga Nimmityjah Aboriginal Health and Community Services and Gudan Gulwan Youth Aboriginal Corporation—the existing capacity in the community-controlled sector to expand child welfare services is limited.
- To make progress against this initiative, further work is underway to support established and emerging community-controlled organisations to take on an increasing role in the service system.²⁵⁰
- [Reviewing Implementation of the ATSICPP ACT 2020](#) (2021)
 - Aboriginal and Torres Strait Islander children comprised 29% of children in OOHC in 2018-19, despite making up about 3% of the child population in the ACT.²⁵¹
 - Just 6% of the government's expenditure on child protection was granted to one ACCO. There has been no improvement since the 2017-18 and 2016-17 reporting periods.²⁵²
 - The ACT's spending on family support and intensive family support services comprised only 12% of total funding spent on child protection in 2018-19, below the national average of 15.9 %.²⁵³
 - Funding spent on intensive family supports (8%) was double that spent on family support services (4%) in 2018-19.²⁵⁴
 - Just 42.2% of children were placed with Aboriginal and Torres Strait Islander carers – below the national average.²⁵⁵
- [Our Booris, Our Way](#) (2019)
 - Developed by the Our Booris, Our Way Steering Committee, formed in response to the high proportion of Aboriginal and Torres Strait Islander children in the ACT child protection system.
 - The five elements of the Review were community engagement, case file reviews, interviews, public submissions and data analysis.
 - Makes 28 recommendations for systemic change.²⁵⁶
- [Sharing Responsibility: A Framework for Service Collaboration for the Care, Protection and Wellbeing of Children and Young People in the ACT](#) (2005)
 - Outlines the responsibilities of the ACT Government and its approach to working together for the care and protection of children and young people in the Territory.

New South Wales

- AbSec and ALS (NSW/ACT): [Family is Culture Community Report Card 2023](#) (2023)²⁵⁷
 - Provides an independent, Aboriginal community perspective on the NSW Government's implementation of the [2019 Family Is Culture Review Report](#) recommendations. (See report summary below)

- Includes spotlight on shared decision-making, self-determination and partnership with Aboriginal communities.
- Previous Report Cards:
 - [Family Is Culture Community Report Card \(November 2022\)](#)
- NSW Ombudsman: [Aboriginal Outcomes Strategy focus area 2 \(out-of-home care\) – were the targets achieved? A special report under section 31 of the Ombudsman Act 1974](#) (2023)
 - The NSW Department of Communities and Justice’s Aboriginal Outcomes Strategy 2017 – 2021 (**AOS**) set an over-arching goal of reducing the over-representation of Aboriginal children in OOHC, together with four specific targets directed toward that goal.
 - In the absence of such reporting by the department itself, the New South Wales Ombudsman’s office set out to independently assess and report on what was done to implement the AOS, whether its goal of reducing Aboriginal over-representation in OOHC was achieved, and the extent to which its targets were met.
 - The Ombudsman – Paul Miller – said:

*“Our concern has been the failure of DCJ itself to report transparently on what it did to implement the strategy, and its failure to publicly report on the outcomes of the AOS, including whether and the extent to which the OOHC goal and its four associated targets were achieved [...] We found that much of what was planned did not occur. Executive monitoring and quarterly progress reports ceased in mid-2019, well before the end of the strategy.”*²⁵⁸
- Professor Megan Davis: [Family is Culture Review Report 2019: Independent Review of Aboriginal Children and Young People in OOHC](#) (2019)²⁵⁹
 - The report described a system lacking in accountability that maintains a resonance with historical practices of child removal used against Aboriginal communities, along with numerous other concerning trends.
 - The final report made 126 recommendations for structural change to the child protection system and over 3,000 recommendations about specific children and young people.
 - Provides a deep-dive into the circumstances of 1,153 Aboriginal children and young people entering OOHC from 1 July 2015 to 30 June 2016.
 - The findings released in 2019 identify a ‘system not only deep in chaos, but often [in breach of its own laws](#)’.
 - The report found that at times ‘children who did not appear to be at risk of harm were removed from their families’ by department caseworkers who ‘regularly’ provided ‘[false or misleading](#)’ evidence to the children’s court.
 - Recommendations – Government should introduce an ‘independent Child Protection Commission to oversee the child protection system, the adoption

of Aboriginal children in OOHC should be banned, and funding in the system should be [redirected to early intervention](#)'.

- Implementation of Report's recommendations has been unacceptably slow.
- Related NSW government reports:
 - [Family is Culture Response Progress Report](#) (August 2021)
 - [Family is Culture Progress Report](#) (May 2021)
 - [Family is Culture Progress Report](#) (November 2020)
 - [Special Report under section 139\(2\) of the Children's Guardian Act 2019: Family is Culture Review](#) (March 2022)
 - [Response to the Family is Culture independent review into Aboriginal out-of-home care in NSW](#) (July 2020)

Northern Territory

- [Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023](#) (2018)
 - Details the Northern Territory Government's plan to implement reforms to better support children, young people and families experiencing vulnerability and to deliver the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory.²⁶⁰

Queensland

- [Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037](#) (2022)²⁶¹
 - The Our Way Strategy is a 20-year approach to close the gap in life outcomes for Aboriginal and Torres Strait Islander children and families, and to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander children in OOHC within a generation.
- [Supporting Families Changing Futures 2019–2023](#) (2019)
 - The reform program was developed in response to recommendations of the [Queensland Child Protection Commission of Inquiry](#) (2013)
 - The strategy is centred around wellbeing outcomes — Safe, Secure and Stable; Healthy; Learning; Earning and Developing; and Participating, Belonging and Identity²⁶²
 - Including, continuing to address the over-representation of Aboriginal and Torres Strait Islander children and families experiencing vulnerability in the family support and child protection system.
 - [Evaluation reports](#):
 - Measuring what matters Evaluating outcomes achieved through the Queensland Child Protection Reform Environment (2014–2020) (2021)

- Queensland Child Protection Reform Program (2014-24) Implementation Evaluation Summary Report (2019)

South Australia

- [SA Roadmap for reforming the Child and Family Support System 2021-2023](#) (2023)²⁶³
 - The strategy recognises that child protection is a whole of government system, requiring collective responsibility for the safety and wellbeing of children and young people.
 - There are 3 key focus areas
 - **Supporting** families with multiple, complex needs by providing earlier, intensive, targeted support for families to reduce the incidents of child abuse and neglect and prevent children entering the child protection system in the first place.
 - **Protecting** children from harm, including when they come into care, and delivering trauma-responsive, development-focused services for children and young people in care that are designed to meet their individual needs, with an emphasis on family-based care, reunification and permanency.
 - **Investing** in children and young people in care, and their transition from care to help break intergenerational contact with the child protection system.
- [Safe and well: Supporting families, protecting children - 2022 Annual Report](#) (2022)²⁶⁴
 - This report is the third combined annual report on the actions being taken by the state government in response to two significant Royal Commissions:
 - Child Protection Systems Royal Commission (CPSRC)
 - Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA).
 - Annual reports on the progress in implementing the combined total of 516 recommendations across these Royal Commissions as well as progress on the across government child protection reform agenda, as set out in [Safe and well: Supporting families, protecting children](#) (2019).

Tasmania

- [Strong Families Safe Kids: Next Steps Action Plan 2021-2023 \(Strong Families Safe Kids: Next Steps\)](#) (2021)
 - Aims to deliver 34 actions under five key priority areas of the reform agenda:
 - Child safety and wellbeing is everyone's business
 - Building a common understanding of safety and wellbeing
 - Managing the front door
 - Providing better support for children and their families, and
 - Redesigning the Child Safety Service.

- Previous evaluations that informed the Next Steps phase:
 - [Strong Families Safe Kids Progress Report 2016-2020](#) and the [Advice and Referral 12 Month Summary Report](#) outlines key achievements delivered under Strong Families Safe Kids and
 - [Strong Families Safe Kids Summary Evaluation Report](#) (University of Tasmania, 2020)
- [It takes a Tasmanian village: Child and Youth Wellbeing Strategy](#) (2021)
 - Focus Area: Ensure the cultural needs of clients are respected and valued within Government Services:
 - Aboriginal Family Group Conference Facilitators: Department of Communities Tasmania to work with ACCOs to identify and build capacity for Aboriginal Family Group Conference Facilitators to oversee those conferences that relate to Aboriginal children and young people.
 - Aboriginal led Case Management Model for OOHC: Department of Communities Tasmania to work with ACCOs to develop an Aboriginal-led case management service model for Aboriginal children in OOHC and further embed the Aboriginal Child Placement Principle.²⁶⁵

Victoria

- Yoorrook Justice Commission: [Yoorrook for Justice Report](#) (2023)
 - Made 46 recommendations for reform across the five key categories:²⁶⁶
 - Transformative change through the Treaty process
 - Urgent reforms: accountability, cultural competence and compliance with human and cultural rights
 - Urgent reforms: child protection system
 - Urgent reforms: criminal justice system
 - Law reform to enable truth telling
 - Reported that:
 - Legal requirements under the [Children, Youth and Families Act 2005 \(Vic\)](#) are not consistently met.²⁶⁷
 - Systemic racism and discriminatory attitudes of child protection, health and other service staff is leading to disproportionate and high rates of removals.²⁶⁸
 - Aboriginal and Torres Strait Islander children's health and disability needs are not being adequately assessed or met.²⁶⁹
 - Lack of accurate and timely identification of Aboriginality, including misidentification and deidentification of children.²⁷⁰

- Aboriginal and Torres Strait Islander children are being criminalised in residential care and the framework developed to address this is not being implemented.²⁷¹
- Aboriginal and Torres Strait Islander people continue to disproportionately face barriers to becoming carers and carers are not receiving adequate information and supports.²⁷²
- ACCOs are not being adequately funded and resourced.²⁷³
- Related resources:
 - [Yoorrook Justice Commission](#): The Yoorrook Justice Commission (**Yoorrook**) is the first formal truth-telling process into historical and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in Victoria. Yoorrook investigates past and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in Victoria since colonisation.
- [Our Youth, Our Way](#) (2021)²⁷⁴
 - Koori Youth Justice Taskforce and the Commission for Children and Young People (CCYP) inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system and child protection systems.
 - The CCYP made 75 recommendations including around connection to family, community and culture (Recommendations 22-33) and the child protection system (Recommendations 37-42).
- [Victorian Government Aboriginal Affairs Report 2021](#) (2021)
 - This report looks at how they've tracked against their commitments to improving outcomes for Aboriginal Victorians, measured against the [Victorian Aboriginal Affairs Framework \(2018-2023\)](#) (VAAF).
 - The purpose of the Victorian Government Aboriginal Affairs Report is to outline progress towards achieving the vision of the VAAF: That all Aboriginal Victorian people, families and communities are safe, resilient, thriving and living culturally rich lives.
 - The report sets out how government is working with community to realise the VAAF's 20 goals across 6 domains:
 - Children, family and home
 - Learning and skills
 - Opportunity and prosperity
 - Health and wellbeing
 - Justice and safety
 - Culture and Country
- [Wungurilwil Gapgapduir: Aboriginal Children and Families Agreement](#) (2018)²⁷⁵

- A partnership between the Victorian Government, Victorian Aboriginal Communities and the child and family services sector.
- The strategic action plan provides the mechanism for achieving measurable progress towards the agreement's five objectives:
 1. Ensure all Aboriginal children and families are strong in culture and proud of their unique identity.
 2. Resource and support Aboriginal organisations to care for their children, families and communities.
 3. Commit to culturally competent and culturally safe services for staff, children and families.
 4. Capture, build and share Aboriginal knowledge, learning and evidence to drive children and family services' investment and to inform practice.
 5. Prioritise Aboriginal workforce capability.
- CCYP: [‘Always was, always will be Koori children’: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria](#) (2016)
 - This report outlines the findings of the CCYP's systemic inquiry into services provided to Aboriginal children and young people in OOHC:

“Of grave concern to the Commission is the fact that evidence-based solutions have long been apparent to successive governments but have not been implemented. Previous landmark inquiries have demonstrated the harm that past government policies caused Aboriginal people. Despite this, action has been slow, resulting in the continued harm to our current generation of Aboriginal children.”

 - DET and DHHS have failed to comply with existing protocols and agreements to safeguard the cultural rights of Aboriginal children in OOHC.
 - Accountability and performance measures are not robust and that the service systems lack transparency and adequate oversight.
- [Roadmap for Reform: Strong Families, Safe Children](#) (2016)²⁷⁶
 - Strategy to transform the child and family system.
 - It focuses on earlier intervention and prevention to reduce vulnerability and equip children and young people to reach their full potential.
 - Previous reports:
 - [Roadmap for Reform children and families 2018](#)
 - [Roadmap for Reform: strong families, safe children 2016](#)

Western Australia

- [Aboriginal Community Controlled Organisation \(ACCO\) Strategy 2022-2032](#) (2022)
 - Stated aims: The ACCO Strategy responds to the need to improve the way that Communities commissions and delivers services to Aboriginal children, families

and communities, while supporting the development of ACCOs to increase their capacity to deliver more culturally appropriate services across WA.

- The ACCO Strategy is an enactment of the National Agreement on Closing the Gap, in particular Priority Reform Area Two, Building the Community Controlled Sector.
- The ACCO Strategy is built around three core pillars:
 - **Cultural Safety and Governance:** That all services for Aboriginal children, families and communities are grounded in Aboriginal knowledge and culture.
 - **Partnerships:** Building genuine partnerships and engagement with ACCOs to deliver strong accountability and culturally responsive ways of working.
 - **Economic Opportunities:** ACCOs are given economic and socio-economic opportunities to deliver services to their community.
- Related documents:
 - [Aboriginal Community Controlled Organisation Strategy 2022 to 2032](#) (2022)
 - [Aboriginal Community Controlled Organisation Strategy - Implementation Plan One](#) (2022)
- [Building Safe and Strong Families: Earlier Intervention and Family Support Strategy 2016](#) (2016)²⁷⁷
 - The Strategy provides a framework for the alignment of the service system to meet the current needs of families most vulnerable to their children entering OOHC.
 - [The Strategy focuses on four key areas:](#)
 - 1) **A culturally competent service system** – A system that is safe and responsive to the needs of Aboriginal families.
 - 2) **Diverting families from the child protection system** – A system that identifies families that are vulnerable to involvement with the statutory child protection system and provides early and intensive support.
 - 3) **Preventing children entering OOHC** – A system that prioritises and aligns the Department's workforce and resources to prevent the most vulnerable children from entering OOHC.
 - 4) **Delivering shared outcomes through collective effort** – A system that is aligned and accountable to achieving shared outcomes for vulnerable families, with a focus on Aboriginal children and families
 - An [audit report](#) of its implementation is expected to be tabled in the fourth quarter of 2023.

4.5.3. Inquests & Coroner's Reports

- [Inquest into the death of into the death of Zhane Andrew Keith Chilcott](#) (SA, 2023)
 - Inquest into the death of a 13-year-old Aboriginal boy, Zhane Chilcott who died by suicide in July 2016 while under the care of the Department for Child Protection (at the Morphett Vale Community Unit, a residential care facility run by the Dept).
 - At the time of his death, Zhane had been subject to a long-term Care and Protection Order under the *Children's Protection Act 1993* (SA).
 - See below for details: Media Reports on the Issue - Ethan Rix, Coronial inquest reveals 'catastrophic' breakdown in teen's state care before suicide ([ABC News, 2023](#)).
- [Inquest into the deaths of thirteen children and young persons in the Kimberley region, Western Australia](#) (WA, 2017)
 - Inquest into the death of thirteen Aboriginal children and young persons in the Kimberley Region of Western Australia who died by suicide.
 - All 13 deaths were investigated at the one Inquest because there were similar circumstances, life events, developmental experiences and behaviours that appear to have contributed to making them vulnerable to suicide.
 - The State Coroner made 42 recommendations across a range of areas including:
 - Fetal alcohol spectrum disorder (FASD)
 - Alcohol restrictions
 - Housing
 - Mental health support
 - Employment
 - Cultural healing
 - Education
- [Inquest into the death of Madeline Jocelyn Rose Downman \[2016\] NTLC 007](#)²⁷⁸
 - Inquest into the death of a 17-year-old Aboriginal girl, Madeline Jocelyn Rose Downman (Maddy) who died by suicide in June 2014 while under the care of the Department of Children and Families (**DCF**) (at Harney House, a residential care facility run by DCF).
 - At the time of her death, Maddy was subject to a long-term Parental Responsibility Order under the *Care and Protection of Children Act 2007* (NT).
 - [Summary of Recommendations](#):²⁷⁹
 - The Coroner reviewed and referred to DCF's own review and its failings in the following key areas:
 - protection investigation
 - delivery of OOHC services

- assessment and management of high-risk behaviour
- collaboration with other agencies.
- The Coroner made a number of findings regarding DCF's significant failings which negatively affected the care that should have been provided to Maddy, but ultimately found that these failings and errors did not necessarily cause or contribute to her death.

4.5.4. Media Reports

- **Ethan Rix, Coronial inquest reveals 'catastrophic' breakdown in teen's state care before suicide** ([ABC News, 2023](#))
 - Zhane Andrew Keith Chilcott, 13-year-old Aboriginal boy died by suicide while he was living in a residential care unit at Morphett Vale (Adelaide, SA).
 - Zhane lived in about 18 different placements including foster care, emergency commercial care and residential care.
 - Coroner David Whittle found that "the cumulative effect" of the department's failings increased "his risk of suicide".
 - Whittle found that the department's failure to keep Zhane connected with his biological family and culture was a "breach" of their obligations:
 - "The department failed by ... neglecting to facilitate regular and meaningful contact between Zhane and his biological family, and failing to keep Zhane connected to his family, community, and culture," he said.
 - Recommendations:
 - Children have contact with their biological family "in a meaningful way" at least once every 12 months.
 - All Aboriginal children under state care should be connected with a case worker or family member from the same Aboriginal or Torres Strait Islander community as the children.
 - A review into the payments made to family-based foster carers with a view to "increasing the availability of family-based placements for children".
 - A review into the Complex Care Review Committee's policies and training.
 - Establish appropriate information sharing arrangements between agencies.
- **Adeshola Ore, 'Calls to increase allowances for Indigenous carers to keep children connected with culture'** ([The Guardian, 2023](#))
 - Increasing allowances for kinship and foster carers of children in OOHC. Specifically empowering First nations people to participate and enable greater retention of Indigenous children within their own culture and community.
 - Child protection is a key policy for government to legislate and enforce as too many First Nations children are being taken away from their families by the state.

- The State Parliament is expected in the coming weeks to pass a nation-first legislation that will require judges and child protection workers to consider the past mistreatment of Aboriginal families and the impact of trauma from colonisation when dealing with cases involving Indigenous children.
- The proposed law is intended to reduce the number of Indigenous children entering the OOHC system by empowering Aboriginal-controlled organisations to connect families with support before a court order is made.
- **Adeshola Ore, ‘Systemic racism persists in Victorian child protection system, Yoorrook Justice Commission hears’ ([The Guardian, 2023](#))**
 - Victoria’s department of families has conceded systemic racism persists in the child protection system.
 - Yoorrook Justice Commission has begun hearing testimony from government witnesses, and has heard no single department is responsible for reducing the number of Indigenous children in the OOHC system.
 - Alisandratos said child protection workers acknowledged that there was bias and racism across the department’s workforce.
 - Commissioner Kevin Bell said “shamefully high rates” of Indigenous children being removed from their families in Victoria suggested that a “pressing problem of racism” persisted in the sector.
 - In February, the government introduced legislation that will [empower Aboriginal-controlled organisations](#) to investigate child protection cases and connect families with support before a court order is made.
 - Yoorrook is Australia’s first Indigenous truth-telling body and has the same powers as a royal commission. Its mandate is to investigate historical and current systemic injustices against First Nations people and it will produce a final report with its findings by mid-2025. The due date for the final report was pushed back a year [after the state government failed to produce key documents on time](#).
- **Alicia Bridges, ‘Life Without Barriers will transfer responsibility of fostered Aboriginal children to Indigenous-led services’ ([ABC News, 2023](#))**
 - A major Australian community service organisation has announced it will transfer its responsibility for the foster care services of hundreds of Aboriginal children to Indigenous-led services, hoping to ensure decision-making about foster care for Aboriginal children is more often made by Indigenous people.
 - Life Without Barriers, which has more than 1,000 Aboriginal children in its care around Australia, says it will start phasing out all foster care services for Aboriginal and Torres Strait Islander children.
 - "A strong cultural identity is central to wellbeing and that can only occur to its fullest extent within an Aboriginal family unit," Mr Dent said.
 - “We see strong cultural identity as being necessary for all areas of a child’s wellbeing – physical health, mental health, emotional health and spiritual health”.

- "It's great to see Indigenous-led organisations get the funding for reunification, but the actual problem lies with a lack of focus on preventing the removal to begin with"
- "All of our evidence shows child removals are heavily racially biased and solutions, therefore, need to be on addressing systemic drivers, such as child protection cultural competencies... cultural differences are consistently being confused for child maltreatment risk due to culturally biased assessments"
- Last year, the WA Department of Communities launched the Aboriginal Community Controlled Organisation (ACCO) Strategy to improve cultural safety across its services.
- Mr Dent welcomes the shift toward more Indigenous decision-making but says service providers and the government need to be prepared to overcome the challenges that come with sharing power.
- **Tamsin Rose, 'NSW 'effectively abandoned' strategy to have fewer Indigenous children in care, Ombudsman finds' ([The Guardian, 2023](#))**
 - The New South Wales Government is being condemned for abandoning its own strategy to reduce the representation of Aboriginal children in OOHC and failing its own targets.
 - The New South Wales Ombudsman found that by 2022 Aboriginal children were 11 times more likely than non-Indigenous children to be in OOHC – up from 9.3 in 2017 – and the DCJ had not met any of its four 'Aboriginal Outcomes' targets.
 - When the Aboriginal Outcomes Strategy was first announced in 2017, there were 6,839 Aboriginal children in OOHC. They accounted for 38.4% of all children in the system. Over the five years the strategy was supposed to run, the proportion of Aboriginal children grew to become 43.8% of all kids in OOHC.
 - One target set by the department was for 1,500 Aboriginal children to be restored to their families over five years. The Ombudsman found just 999 were returned – representing 67% of the goal.
- **Giovanni Torre, 'Indigenous children 10.4 times more likely to be in out-of-home care, more likely to be abused in out-of-home care – new report reveals' ([National Indigenous Times, 2022](#))**
 - The Family Matters Report reveals a child protection system in crisis.
 - Aboriginal and Torres Strait Islander children are 10.4 times more likely to be in OOHC than non-Indigenous children and are more likely to suffer abuse while in OOHC.
 - The Report found that while Aboriginal and Torres Strait Islander children were just as likely – 84.1% – to not return to care within 12 months of family reunification, the "overwhelming majority" of Indigenous children in care are in long-term arrangements, with reunification with their families not identified as a case plan goal.

- **Michael McGowan, “People think it’s all in the past”: push to reform system taking Aboriginal kids from families’** ([The Guardian, 2022](#))
 - [Children and Young Persons \(Care and Protection\) Amendment \(Family is Culture Review\) Bill 2022](#) to be introduced in the lower house of the NSW Parliament next week seeking to reform the child protection system:
 - Require magistrates to “presume” an inherent harm in removing a child from their family, including a “serious harm arising from disrupting the child or young person’s connection to his or her culture”.
 - Force a reallocation of funding towards prevention by “mandating the provision of support services to prevent entries into care”, and allow courts to dismiss applications for care orders in circumstances where the department cannot show it had considered “alternatives”.
 - ‘Until now, the government has said it would delay considering any recommendations requiring legislative change until a review in 2023, something Professor Davis calls “incredibly distressing.”
 - Related: [Family Is Culture Bill has passed, but AbSec and ALS are calling for more](#) (ALS and AbSec Joint Media Release, 10 November 2022)
- **Paul Gray, ‘A Generation after Brining Them Home, child protection systems are failing Aboriginal families’** ([SBS Opinion, 2022](#))
 - “A quarter of a century after the landmark Bringing Them Home report [1997] child protection systems continue to disproportionately remove Aboriginal children from their families”.
 - “The 2019 Family Is Culture (FIC) review report provided a clear roadmap with 126 recommendations... The NSW Government’s response since 2019 has been disappointing, but also revealing, with the FIC recommendations largely reframed and absorbed into the pre-existing government-led reform agenda, deflecting the FIC Review’s broader proposal for structural and legislative reform”.
- **Adeshola Ore, ‘Permanent care orders and ‘racist’ carers cut some Aboriginal children’s cultural links, inquiry told’** ([The Guardian, 2022](#))
 - One of Australia’s leading Indigenous child welfare advocates has told a Victorian truth-telling inquiry that permanent care orders and “racist” carers are severing links between some First Nations children and their culture.
 - Prof Muriel Bamblett, the chief executive of the Victorian Aboriginal Child Care Agency, told the state’s Yoorrook Justice Commission that permanent care orders were “not worth the paper they’re written on” due to little oversight of cultural plans.
 - She said connection to culture, including links with their Aboriginal family and exposure to Indigenous languages, was vital for children’s wellbeing. “We want to create children who are proud to be Aboriginal,” she said.
- **BJ Newton, ‘Reunifying First Nations families: The only way to reduce the over-representation of children in out-of-home care’** ([The Conversation, 2022](#))

- At the time of Kevin Rudd's 2008 National Apology, there were 9,070 Aboriginal and Torres Strait Islander children in OOHC in Australia – increased to more than the 18,900 today with approximately more than 40% being First Nations children.
- Family Matters Report estimates that by 2030, the number of First Nations children in OOHC will more than double again without “profound and wholesale change to legislation, policy and practice”.
- All states and territories in Australia are also focusing on “permanency” outcomes to reduce the number of children living in OOHC.
- Permanency policies appear to be motivated by the best interests of children, but moving Aboriginal children to permanent care orders has a range of benefits for the state. Not only does it appear progress is being made towards reducing overrepresentation in OOHC, it also absolves child protection departments of any further financial, practical or moral responsibility to these children or their families.
- Of significant concern is these permanency policies do not necessarily mean these children will return to their families. Rather, it means many will move out of the care system through guardianship or adoption.
- Current approaches to child reunification come from a perspective where parents are blamed for the problems leading to a child's removal and preventing their return home. Their perceived failings are considered instead of the external factors that prevent children from returning to their families (and indeed contributed to their removal in the first place).
- **Giovanni Torre, 'Child J' death inquest sparks call for Indigenous child removal overhaul** ([NIT, 2022](#))
 - Child J, was taken into the care of the WA Department of Communities as a toddler and placed into foster care.
 - The inquest found it was suspected from an early age he suffered from foetal alcohol spectrum disorder and early trauma issues, was referred to paediatric and mental health services many times in 2013 and that same year was diagnosed with clinical depression at 12 years of age. He ultimately [died by suicide] in 2017.
 - “[J's] trauma was medicalised and there was a lack cultural framework - inconsistent with the Mental Health Act,” Dr Hannah McGlade said.
 - "His mother was a victim of family domestic violence, and we know there has been a significant lack of support at the community level for women and also in terms of changing attitudes that sustain violence to women and children”.
 - “Aboriginal people have been asking for community based holistic and culturally informed trauma approached for more than two decades and this has never properly happened.”
 - In 2019, research by Western Australian Aboriginal foster care agency Yorganop found more than 55 per cent of WA children in care were Aboriginal.
 - Mr Mace said the State Government had made a record investment in earlier intervention and family support services focused on keeping children safely at

home with their parents, and last year began a [pilot of a program](#) empowering Aboriginal families to have greater say in child protection matters involving their children.

- **Adeshola Ore and Cait Kelly, ‘Victoria’s child protection system is creating ‘new stolen generation’, Aboriginal leader says’** ([The Guardian, 2022](#))
 - In June 2022, the state auditor general’s report found Victoria’s Department of Families, Fairness and Housing was putting Aboriginal children into homes that were not culturally appropriate, with 56% placed with a non-Aboriginal and Torres Strait Islander Carer.
 - Over 50 per cent are separated from their siblings and 56 per cent have no cultural support plan. This can lead to children experiencing a lack of connection with their culture and family.
 - Aboriginal leaders say Victoria’s “culturally unsafe” child protection system is creating “a new stolen generation.”
- **Michael Evans, ‘Left hungry and too cold to go to school: Urgent review of children in care’** ([The Sydney Morning Herald, 2022](#))
 - A Children’s Court magistrate has detailed the “unconscionable” treatment, “appalling neglect” and “failure” in care by providers for children in OOHC, including Lifestyle Solutions and the NSW DCJ.
 - Brothers Finn and Lincoln Hughes (not their real names) complained to their school principal of hunger pains and to their lawyer about not having enough food and about how they were too cold to go to school because they did not have a winter uniform.
 - The not-for-profit Lifestyle Solutions sought payment from the department of \$18,096 per week to look after Finn and Lincoln, or \$1200 per day for 90 days, before then subcontracting some care of the children to another provider, Connecting Families.
 - In July, a department caseworker dubbed Ms P expressed concerns about what had happened since Lifestyle Solutions had taken over the case management of Finn and Lincoln.
 - “Ms P’s affidavit outlined an appalling neglect of Finn and Lincoln’s needs whilst under the case management of Lifestyle Solutions and the failure of Lifestyle Solutions to provide for the boys’ short-term and long-term needs”, the magistrate’s judgment read.
- **Wendy John, ‘How the care system fails our most vulnerable kids’,** ([Medical Republic Blog Post, 2022](#))
 - Details short comings of care provider compliance with administrative protocols which are aimed at ensuring the care and treatment children in OOHC get with respect to health check-ups and medical examinations.
 - The specific unique needs of children in OOHC are often the result of abuse and trauma that require each child and young person in OOHC to have an

individualised health plan. However, Dr. McDowell – Head of Research at Create Foundation – says that under the National Standards for OOHC, requiring a medical plan was never fully implemented.

- Dr. McDowell says this component of on-boarding kids into OOHC is overlooked and this is problematic for child welfare in OOHC.
- The National Clinical Assessment Framework sets the bar appropriately high – within 30 days of a new care placement, each child should have an initial health assessment by a GP. But there are low numbers of kids seeing GPs or recommended services as part of the children's care plan.
- "Children placed with a family member in kinship care are even more unlikely to meet guidelines. Many kinship carers are grandparents. Dr. McLean – a paediatrician – says they may have reduced mobility, be on a pension or have low digital literacy. This makes it more difficult to navigate health appointments, government departments and out-of-pocket costs."
- Poor health outcomes for children in OOHC is often blamed on the horrific experiences which instigated their placement in care. However, research abundantly confirms that institutionalisation itself further contributes to increased risks for adverse outcomes. Numerous studies confirm the compounding trauma of OOHC placement, the adverse effects of institutionalisation and the poor level of health care accessed.
- Improved healthcare is a key tool to breaking the disadvantage (specifically, health-related) of OOHC.
- **Jewel Topsfield, 'Children removed from families face longer wait before court hearings' ([The Age, 2021](#))**
 - Placing vulnerable would be at risk due to proposed reform of the Children, Youth and Families Amendment Bill.
 - "This bill will extend the period of time that children are forcibly removed from their families without robust oversight from the courts ... the government has shown they can listen to experts, and they must listen to Aboriginal organisations who have serious concerns about aspects of this bill."
- **Jano Gibson, Coroner says Aboriginal girl, 9, who took her life in foster care was 'not sufficiently supported' by Territory Families ([ABC News, 2021](#))**
 - Coroner Elisabeth Armitage said Sammy had endured "significant hurdles and trauma", including removal from her parents at the age of 10 months.
 - "That a child of nine years of age had the knowledge and aptitude to understand death and the wherewithal to kill herself is confronting," Ms Armitage said in her findings.
 - "That there were apparently no indicators that she was thinking of death and wishing to end her life is troubling."
 - Armitage found that the Department had failed to follow through on proposed treatment for Sammy's trauma nor had it assessed her for Foetal Alcohol

Spectrum Disorder (FASD), despite her higher risk of suicide as a child in OOHHC with attention deficit hyperactivity disorder (ADHD).

- "Sammy was in the high-risk cohort," Ms Armitage said.
- "She was not sufficiently supported."
- Armitage was critical of Territory Families for failing to have Sammy placed in kinship care after being removed from her biological parents, despite repeated requests over several years from her mother and other family members.
 - Under the *Care and Protection of Children Act*, Aboriginal children in care are supposed to be placed with a member of the child's family, an Aboriginal person in the child's community, or another Aboriginal person.
 - "That section [of the Act] was largely ignored and not followed," Armitage said.
- **Jacyntha Krakouer et al., 'First Nations children are still being removed at disproportionate rates. Cultural assumptions about parenting needs to change' ([The Conversation, 2021](#))**
 - Child protection systems continue to operate on assumptions about race and class that increase inequalities and injustices against First Nations families.
 - Understandings of neglect and emotional abuse are subject to interpretation by child protection practitioners. These interpretations can be based on societal and cultural values often incompatible with collective child rearing, and do not account for the impacts of material poverty when raising children.
- **Sharynne Hamilton et al., 'Thirteen years after "Sorry", too many Aboriginal and Torres Strait Islander children are still being removed from their homes' ([The Conversation, 2021](#))**
 - To find new ways to confront this problem and promote community-identified solutions, the Ngulluk Koolunga Ngulluk Koort (Our Children, Our Heart) project conducted consultations with over 100 Elders and senior Aboriginal community members in [Perth](#).
 - The Elders and community members repeatedly expressed concerns they were not being consulted or included in decisions being made about child protection interventions.
- **Lorena Allam, "'Alarming rate": removal of Australia's Indigenous children escalating, report warns' ([The Guardian, 2020](#))**
 - \$2bn is spent on child protection and OOHHC, but only \$150m is spent on early intervention.
 - Review of the NSW system found "widespread noncompliance" with law and policy. The Family is Culture review found that 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.

- Family Matters recommends an end to “the policy and practice” of adopting Aboriginal and Torres Strait Islander children from OOHC, the establishment of national standards for family support and child protection legislation, policy and practices, and for every state and territory to appoint a commissioner for Aboriginal and Torres Strait Islander children.
- **Keira Jenkins, ‘Family Matters: Indigenous kids still over-represented in out of home care’** ([SBS NITV, 2020](#))
 - Indigenous communities outline the real issues surrounding the rising numbers of First Nation’s children in OOHC.
 - The underlying issues for coming into care are around transgenerational trauma, around poverty, family violence, drug and alcohol issues, mental health.
 - Then where the investments are happening, they're not happening where they should be. More money is actually going into child protection, so removal of children rather than looking at how do we preserve families, how do we reunite families.
 - Out of 19 adoptions of Indigenous children in 2018-19, 95 per cent were to non-Indigenous carers. All of those adoptions occurred in NSW and Victoria.
 - This 'alarming trend' results due to having a child permanently going into care, and particularly in NSW and Victoria, they are then considered off the books for the government.
 - Government doesn't count them, because the definition for OOHC doesn't count permanent care and once a child is permanently placed, the government loses responsibility.
 - There is a call for investing in Aboriginal and Torres Strait Islander organisations.
 - "We need to invest in family support, we need to get to our families before the system does”.
 - "We know best and we know we do. We need to make sure that legislation and policies, that we're part of that decision making, that we're not left just to be told what to do”.
 - The report also calls for a commissioner for Aboriginal and Torres Strait Islander children to be appointed nationally and in every state and territory.
- **Christine Craik and Linda Ford, ‘Aboriginal children need loving, safe and culturally appropriate homes’** ([ABC News, 2018](#))
 - Aboriginal children should placed with Aboriginal families. This is the central idea of the Aboriginal and Torres Strait Islander Child Placement Principle in all states and territories. Having learnt from history and the significance of cultural identity for healthy development, the principle states that children who are removed from their families must be housed with Indigenous family members or Indigenous foster carers.

- In reality, the proportion of children placed according to the principle decreased from 74 per cent in 2007-08 to 67.6 per cent in 2016-17.
- The argument is often made that there are not enough Aboriginal families to foster or adopt, but there are many Aboriginal families that could foster and adopt, however are unable to due to the barriers and lack of support provided. This needs to be acknowledged so that the systems change in order to increase Aboriginal fostering and adoption capacity.
- The reality is that the bureaucratic process to foster or adopt is based on what is comfortable for white, middle-class families, and this can create huge barriers for members of the Aboriginal community. It is also full of systemic bias.
- Another example of a systemic barrier in this process is that of requiring a police check, without a thorough understanding of the contributing factors to any positive screens in Aboriginal families.
- **Lucy McNally, 'NSW child protection system failing; funding for intervention 'inadequate': report', ([ABC News, 2017](#))**
 - Details funding short comings of New South Wales child protection system even after the New South Wales Government announced reforms to resolve key issues in the sector.
 - The report found only 30% of children deemed at risk of significant harm are receiving face-to-face visits from caseworkers.
 - Also noted how children who cannot be placed with a foster carer are placed in unsafe residential homes run by non-government organisations. A Four Corners report in 2016 revealed how a 12-year-old girl was placed in a home with an older boy who was facing sexual assault charges.
- **Melissa Davey, 'Aboriginal children in care 'isolated from family and culture', says Victoria report' ([The Guardian, 2016](#))**
 - The report, titled 'Always Was, Always Will Be, Koori Children', reveals failures across systems to care for Aboriginal children.
 - Almost 20% of children in OOHC are Aboriginal, despite Aboriginal people representing less than 1% of the Victorian population. Many of these children were placed away from communities in non-Aboriginal households, Jackomos wrote in his executive summary to the report.
 - Of the 980 Aboriginal children investigated, 42% were placed away from their extended family and 86% were case managed by a non-Aboriginal agency.
 - The report makes 79 recommendations including a greater effort to place Aboriginal children with Aboriginal carers or connect them to their history and culture.

ENDNOTES

- 1 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)
- 2 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, supp no 49, UN Doc A/RES/61/295 (13 September 2007).
- 3 *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
- 4 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, adopted by GA Res 2200A (XXI) (entered into force 23 March 1976); *Optional Protocol to the International Covenant on Civil and Political Rights*, Adopted and proclaimed by GA Res 2200A (XXI) (entered into force 23 March 1976); *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, Adopted and proclaimed by GA RES 44/128 on 15 December 1989.
- 5 *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 4 January 1969, General Assembly resolution 2106 (XX) of 21 December 1965 (entry into force 4 January 1969)
- 6 *Convention on the Rights of Persons with Disabilities*, opened for signature 12 December 2006, A/RES/61/106 (entered into force 3 May 2008).
- 7 Australian Institute of Family Studies (2022), Australian Child Protection Legislation: Resource Sheet, Australian Government < [Australian child protection legislation | Australian Institute of Family Studies \(aifs.gov.au\)](https://aifs.gov.au/child-protection-legislation)>.
- 8 Adam Tomison (2001), A history of child protection: Back to the future?, Australian Institute of Family Studies, Family Matters No. 60 Spring/Summer, p. 49 <[Article - Publications - Australian Institute of Family Studies \(AIFS\)](#)>.
- 9 Adam Tomison (2001), A history of child protection: Back to the future?, Australian Institute of Family Studies, Family Matters No. 60 Spring/Summer, p. 50 <[Article - Publications - Australian Institute of Family Studies \(AIFS\)](#)>.
- 10 National Museum Australia, Aborigines Protection Act (Web Page) < [Aborigines Protection Act | National Museum of Australia \(nma.gov.au\)](https://nma.gov.au/aborigines-protection-act)>.
- 11 Australian Human Rights Commission, *Bringing them home 8. History - New South Wales and the Australian Capital Territory* (Report, 2010, p.80).
- 12 Sir Ronald Wilson and Mick Dodson et al., (Human Rights and Equal Opportunity Commission) (1997), Chapter 21: Child Welfare Care and Protection, *Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (Australia), <<https://humanrights.gov.au/our-work/bringing-them-home-chapter-21>>.
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