



FAMILY MATTERS

Strong communities. Strong culture.
Stronger children.

THE FAMILY MATTERS REPORT 2022

MEASURING TRENDS TO TURN THE TIDE
ON THE OVER-REPRESENTATION OF
ABORIGINAL AND TORRES STRAIT ISLANDER
CHILDREN IN OUT-OF-HOME CARE
IN AUSTRALIA



SNAICC
National Voice for our Children





ACKNOWLEDGEMENTS

The Family Matters Report is a collaborative effort of SNAICC – National Voice for our Children, the Family Matters Campaign, Monash University and the University of Technology Sydney.

AUTHORS

Family Matters: Catherine Liddle, Paul Gray (co-chairs)

SNAICC – National Voice for our Children: John Burton, Rashmi Kumar, Tamasin Tunny, Claire Prideaux, Emily Armstrong, Anna McCracken, Benjamin French, Indy Attenborough, Heidi Wolfe, Lily Harris, Dakota Lally.

Monash University (Health and Social Care Unit):
Tatiana Corrales, Jacynta Krakouer

University of Technology Sydney (Jumbunna Institute for Indigenous Education and Research):
Paul Gray, James Beaufiles, Larissa Behrendt.

Edited by: SNAICC – National Voice for our Children

We acknowledge the Family Matters Leadership Group, Jurisdictional Groups, and other Family Matters campaign partners (particularly the SAFeST Start Coalition) for their substantial contribution to this report. We acknowledge the children and young people who generously contributed their hopes for the future, contained throughout this report.

FINANCIAL CONTRIBUTORS

MacKillop Family Services; Life Without Barriers; Reconciliation Australia; Kirkland Lake Gold Australia Pty Ltd.

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DESIGN: Mazart Communications.

IMAGES: Jacinta O’Keefe Photography; Jesse Tyssen Film and Photography; Isobel Egan; Mandy Taylor.

PRINTER: Bytes n Colours, Canberra.

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Family Matters is led by SNAICC – National Voice for our Children and a group of eminent Aboriginal and Torres Strait Islander leaders from across the country. The campaign is supported by a Strategic Alliance of over 150 Aboriginal and Torres Strait Islander and non-Indigenous organisations.



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FOREWORD BY FAMILY MATTERS CO-CHAIRS

This report has always been a story about children. As you read it, we urge you to remember that every number you see is a child with a name and dreams for their future. These children are separated from their families in numbers that have not been in seen history. This simple fact presents a stark reminder that on the 25th Anniversary of the *Bringing Them Home* Report most of its recommendations remain unrealised, and with them, a promise of healing unfulfilled.

The National Inquiry laid bare the pain and suffering caused by government policies of forced child removals across generations. Today, child protection systems continue to inflict pain, severing families and re-opening deep wounds. Daily our communities experience the great sadness, anger and frustration that policy and practice cause. And every day our communities demand change, calling for accountability and healing, so that we can shape a new story, a different future for our children.

Since its inception, the Family Matters report has endeavoured to catalyse that change. This annual review highlights the impact of the ongoing dysfunction of the child protection system. It recognises and promotes the development and implementation of promising policies, programs and practice. Lastly, it offers clear solutions that seek to transform systems to better respond to the needs of our children.

Fundamental to its development is the irrefutable understanding that while policies and practices are shaped by governments, and not Aboriginal and Torres Strait Islander communities, they will continue to fail our children. Systems built on discrimination, dispossession and the destruction of Aboriginal and Torres Strait Islander families will never safeguard the rights and interests of our children. Our communities understand where the challenges lie and what is needed to address them.

Target 12 in the National Agreement on Closing the Gap aims to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031. It is deeply distressing that this target remains significantly off track. This policy failure undermines our children's wellbeing and life outcomes across all domains, including health, education, employment, contact with justice systems, and social and emotional wellbeing. Not only is the number of our children in out-of-home care continuing to rise, these children are less likely than ever to be placed with

Aboriginal and Torres Strait Islander family and carers. Far too few are restored to their families. The impacts of separation and removal cause great distress. We hear about this impact on our families and communities every day.

Central to the Family Matters campaign are our Building Blocks for change. We know that when our families enjoy equitable access to high quality, culturally safe supports, our children will thrive. We know that when our communities have control over decisions, our children will thrive. We also know that for this to happen it requires laws, policies and practices that are culturally safe and responsive to our needs, and governments and services that are accountable to our communities. We know that at the very heart of effective systems is our right to self-determination – the right of our communities to determine their own futures.

Our ways of caring for children through systems of care, support and reciprocity have raised our children safe and strong for thousands of generations. We know what our children need to feel loved and safe. We know what they need to belong. This is Grandmothers' Lore.

Our community-controlled organisations are doing the work to support our families, often despite having to navigate unhelpful government systems and unreliable, inadequate and poorly targeted funding streams. Aboriginal and Torres Strait Islander organisations that are able to exercise authority in child protection are achieving better results. This includes higher rates of keeping families safe and more of our children being reunified with their families. New community-controlled commissioning models are enabling our communities to direct funds to where we know they are most needed, delivering outcomes that align with our aspirations. We're also seeing new investments in community-controlled organisations to provide culturally safe and strong family services being prioritised under Closing the Gap. These successes demonstrate that if we have the courage to transform systems, we can tackle these

challenges and improve the lives of our children. But current investment in our approaches still represents a drop in the ocean.

There is progress being made on some of our key calls for change – genuinely empowering communities and establishing more robust processes for accountability. Governments in Victoria and Queensland are transferring authority to ACCOs to lead child protection decisions and practice about their children. Queensland has legislated requirements for active efforts to implement the Aboriginal and Torres Strait Islander Child Placement Principle’s five elements, and the Australian Capital Territory and South Australia are progressing legislative reviews to bring their legislation into line with the Principle. New South Wales has bowed to community advocacy and brought forward legislative change initially proposed for 2024, and has also increased investment in community controlled Aboriginal Child and Family Centres to provide integrated early childhood and family services. South Australia has progressed community-led design for a new children and families peak body and has established a fully legislated and empowered Aboriginal and Torres Strait Islander Children’s Commissioner, while the Australian Capital Territory is progressing establishment of its new Aboriginal and Torres Strait Islander Children’s Commissioner. The Northern Territory has funded new ACCO-run family support services and is preparing to launch a 10-year Generational Strategy to improve services for children and families. Finally, Western Australia has embarked on a process to design a 10-year roadmap to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in partnership with Aboriginal communities and organisations.

For the first time, at the national level, we have a framework for protecting children that was designed with us: *Safe and Supported*. The fact that Aboriginal and Torres Strait Islander people had a say in shaping this framework makes a huge difference to national policy. Through *Safe and Supported*, all governments have committed to further action to improve the lives of Aboriginal and Torres Strait Islander children and families, including the transfer of authority to our communities and organisations in child protection, full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts, and greater investment in our community-controlled service providers, proportionate to the needs of local communities.

In another first, this framework will include a stand-alone five-year national action plan for Aboriginal and Torres Strait Islander children, expected to be released in the coming weeks. If fully and faithfully implemented the action plan has the potential to kick-start the transformation of child protection systems, based on our right to self-determination. To achieve this, governments must invest heavily in the actions and follow through with their commitments. If they do this, our families and communities will see and experience the change that they have asked for and that is long overdue.

To help ensure this happens, this year the Report has focused on the clear steps that can be taken towards self-determination in child protection systems. Further, we have put a spotlight on the intersection of child protection and criminal justice. The collision of these systems drives the disproportionate removal of Aboriginal and Torres Strait Islander children from their families, the consequences of which are life-long. To address this, Aboriginal and Torres Strait Islander led approaches to supporting new and expectant parents in these settings are urgently needed, alongside greater transparency and accountability.

The transformation that is needed is not the sole responsibility of a single agency or government. We are calling on governments and agencies to push beyond their traditional siloes, to collaborate, and to expand their scope and their efforts. The issues driving removal of children cut right across the social and political determinants of health and wellbeing. They require focus and reform in housing, justice, disability and developmental delay, family services, education, child and maternal health and many other areas, and they require coordinated action. This action will only be successful if governments partner with Aboriginal and Torres Strait Islander communities and ensure we lead the way.

While this report shows some signs of real progress, the unmistakable fact remains that too many of our children suffer the consequences of failures of successive governments to address the ongoing harm caused by child protection systems. Our children and families can no longer be expected to pay the price for government inaction. Twenty-five years after Bringing Them Home there can be no more excuses.



A handwritten signature in black ink, appearing to read 'Catherine Liddle'.

Catherine Liddle
Family Matters Co-Chair

A handwritten signature in black ink, appearing to read 'P. Gray'.

Paul Gray
Family Matters Co-Chair





INTRODUCTION

GOAL OF THE REPORT

Family Matters – Strong communities. Strong culture. Stronger children. is Australia’s national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. Family Matters aims to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care within a generation, by 2040.

Family Matters reports focus on what governments are doing to turn the tide on over-representation and outcomes for our children. They also highlight Aboriginal and Torres Strait Islander led solutions and call on governments to support and invest in the strengths of Aboriginal and Torres Strait Islander peoples to lead on child wellbeing, development and safety responses for our children.

The reports contribute to efforts to change the story by explaining the extent of the challenges, reporting on progress towards implementing evidence-informed solutions, and profiling promising policy and practice initiatives.

2022 CONTEXT

This year’s Family Matters report is the third to be published following the development of the new *National Agreement on Closing the Gap* (the National Agreement), which was entered into in July 2020. Under the National Agreement, governments across the country committed to make decisions in genuine partnership with Aboriginal and Torres Strait Islander peoples and organisations; to invest in our community-controlled services; to transform government agencies and non Indigenous services into culturally safe organisations; and to develop data and monitor outcomes in partnership with Aboriginal and Torres Strait Islander peoples. The National Agreement also committed specifically to reducing Aboriginal and Torres Strait Islander children’s over-representation in out-of-home care by 45% by the year 2031, a target well aligned to the Family Matters campaign’s call to eliminate over-representation by 2040.

However, after more than two years of the National Agreement’s existence, it is clear that limited progress has been made to redress over-representation and the drivers of child protection intervention. Aboriginal and Torres Strait Islander children continue to be separated from their families, communities and cultures at devastatingly high rates. There were 22,243 Aboriginal and Torres Strait Islander children in out-of-home care: one in every 15.2 – at 30 June 2021, making our children 10.4 times more likely to be in out-of-home care than non Indigenous children (up from 10 times more likely in 2019-20). These numbers differ slightly from those in other government reports, because they include children on third-party parental responsibility orders who are otherwise excluded by states and territories from the definition of out-of-home care.

The Family Matters Roadmap (published separately on the Family Matters website) proposes four inter-related building blocks, underpinned by evidence, ethics, and human rights, detailing systemic changes needed to achieve this aim:



1. All families enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive



2. Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children



3. Law, policy and practice in child and family welfare are culturally safe and responsive



4. Governments and services are accountable to Aboriginal and Torres Strait Islander people

Given that these children are permanently removed from their parents, the Family Matters campaign believes that re-including them in out-of-home care statistics more accurately reflects the obligations of governments to uphold their rights and support their safety, wellbeing and ongoing connections to culture.

The impacts of colonisation, past and present discriminatory policies and practices, and persistent social inequity, coupled with under-investment in Aboriginal and Torres Strait Islander community-led and controlled solutions, have created a legacy of disproportionate child protection intervention in our communities across Australia. A genuine commitment to broad and holistic changes to systems and practice will therefore be needed to achieve the Closing the Gap out-of-home care target. *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* (Safe and Supported), launched in December 2021, aims to catalyse this fundamental shift in national policy related to child protection.

Developed through a co-design process with SNAICC and a national Aboriginal and Torres Strait Islander Leadership Group (and including extensive consultations with Aboriginal and Torres Strait Islander people and organisations across the country), *Safe and Supported* recognises our right to self-determination, aligns to the National Agreement's four Priority Reforms, and supports achievement of the Closing the Gap out-of-home care target. The four key focus areas of *Safe and Supported* also align well with the Family Matters building blocks – including a renewed focus on early intervention and targeted support for children and families experiencing vulnerability or disadvantage, improved information sharing and data analysis, and a commitment to strengthen the child and family sector workforce. Recognising that Aboriginal and Torres Strait Islander community-controlled services are better for our people, the National Framework explicitly commits to building the community-controlled sector.

Throughout 2022, SNAICC and the Aboriginal and Torres Strait Islander Leadership Group have been working with the State, Territory and Commonwealth Governments to co-design the first five-year Action Plans that will put *Safe and Supported's* commitments into practice. This work included the development of Outcomes Frameworks and Theories of Change to support monitoring and evaluation of the actions and to feed into continuous quality improvement. In recognition of the unique political status of Aboriginal and Torres Strait Islander peoples as the First Nations of Australia, there is a standalone Action Plan, Outcomes Framework and Theory of Change for Aboriginal and Torres Strait Islander children, young people and families.

As detailed in this report, if the implementation of the *Safe and Supported* commitments does not achieve its goals and the tide is not turned, we project the population of Aboriginal and Torres Strait Islander children living in out-of-home care will increase by 50% in the next 10 years, and the level of over-representation

will also increase (with our children likely to make up almost half of all children in out-of-home care). However, University of Melbourne researchers have shown that if early intervention and prevention efforts could reduce entry to out-of-home care for Aboriginal and Torres Strait Islander children by just 5% per year, the Closing the Gap target can be met. If efforts can also be applied to support increasing numbers of Aboriginal and Torres Strait Islander children in out-of-home care to reunify with their parents and family members, the target can be exceeded.

STRUCTURE OF THE REPORT

The report is structured in three parts, preceded by the Family Matters Report Card (a traffic light assessment of the progress of each state and territory to implement the four Family Matters building blocks).

Part 1: Current data for Aboriginal and Torres Strait Islander children and families. In order to understand the extent of the challenges and responses required, it is important to detail the current situation and trends in child protection intervention in the lives of Aboriginal and Torres Strait Islander families. This part describes data relating to children's interactions with child protection systems and provides a projection of how over-representation is likely to increase over the next 10 years if current conditions are maintained. Also included are descriptions of the types of child protection data that are publicly available; new data provided by state and territory governments; and key data gaps that need to be addressed to properly gauge progress. Finally, this part summarises data relating to the structural drivers that contribute to children and families encountering the child protection system (including trauma; systemic racism; socioeconomic disadvantage; access to safe and stable housing; family violence; and drug and alcohol issues) and analyses service engagement and availability barriers in the service sectors that have been identified as the highest priorities in responding to issues impacting on a child's development, wellbeing and safety.

Part 2: The year in review – Jurisdictional breakdown of efforts to address over-representation. This part sets out, for each jurisdiction:

- the perspectives of Aboriginal and Torres Strait Islander community and sector leaders from each state and territory, reflecting on the efforts of their respective governments to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. These perspectives are also reflected throughout the report.
- the perspectives of independent Commissioners for Aboriginal and Torres Strait Islander children and young people, if such a position exists in a jurisdiction.

- input provided by governments on their efforts to eliminate over-representation (legislation, policy and practice).
- a brief overview of each jurisdiction's most recent Aboriginal and Torres Strait Islander Child Placement Principle compliance review, as published annually by SNAICC – National Voice for Our Children. These reviews analyse government efforts across all five inter-related elements of the Child Placement Principle (prevention, partnership, participation, placement and connection), which is the primary principle in legislation and policy that safeguards children's cultural identity and connections, and seeks to ensure self-determination for Aboriginal and Torres Strait Islander peoples in child protection.

It is crucial that governments implement the recommendations of this report in partnership with Aboriginal and Torres Strait Islander peoples to ensure that our children grow up safe and cared for in family, community and culture, and connected to their languages and Country.

Part 2 also discusses overarching national trends in the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

Part 3: Focus areas for Aboriginal and Torres Strait Islander-led transformation: To effectively respond to the needs of children and families and ensure that Aboriginal and Torres Strait Islander peoples' rights to participation and self-determination are fulfilled, Aboriginal and Torres Strait Islander community-controlled organisations must have adequate roles, resources and funding. Across the country, Aboriginal and Torres Strait Islander peoples and organisations are demonstrating excellence in supporting families and transforming the lives of our children for the better. Our communities have continued to grow, innovate and thrive despite the ongoing impacts of systemic racism – we know the solutions that work best to deliver strengths-based, community-driven initiatives, which empower localised processes and cultural understandings to support the holistic wellbeing of our children and families.

This section focuses on three policy areas that are of critical importance to the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people: self-determination in child protection; social and emotional wellbeing; and care for pregnant women, including those who are criminalised. Each focus area includes a case study that highlights leading practice by ACCOs and analyses how legislation and government policy across Australia can be transformed to scale up these innovations. Future Family Matters Reports will focus on a range of different policy areas over time.

The Family Matters Report 2022 is also an opportunity for us to exercise data sovereignty in the interpretation of data related to Aboriginal and Torres Strait Islander children and families. Government interpretations of data are often used in support of government policy agendas and servicing requirements. The report uses data to interpret current efforts to address the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care from our standpoint, and to demand government accountability.





KEY RECOMMENDATIONS

Refer to the conclusion of the report for further detail on these recommendations.

BUILDING BLOCK 1

All families enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive

1. Increase the availability of universal and targeted prevention and early intervention support by:
 - a. Increasing investment in prevention and early intervention support programs delivered by ACCOs.
 - b. Setting targets for the percentage of family support & intensive family support services funding directed to ACCOs in each jurisdiction and each region to be equivalent to the representation of Aboriginal and Torres Strait Islander children in child protection services.
2. Establish a dedicated funding model and program for Aboriginal and Torres Strait Islander community controlled integrated early years services, including new investment to expand their scope and coverage.
3. Develop and resource a joint state- and Commonwealth-funded national program for ACCO-led integrated family support services.

BUILDING BLOCK 2

Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children

4. Set targets for the proportion of funding for child protection and family support services directed towards ACCOs to be equivalent to the proportion of Aboriginal and Torres Strait Islander children involved in child protection systems in each jurisdiction and region.
5. Establish, resource and support independent Aboriginal and Torres Strait Islander family-led decision-making models in every state and territory, and across all regions, supported by legislation, for all families across all significant child protection decision-making points.
6. Expand and appropriately fund the transfer of authority to Aboriginal and Torres Strait Islander community controlled organisations for statutory child protection functions across Australia, ensuring that legislative mechanisms direct resources to ACCOs to perform this role.
7. Develop community-based, youth-led models for participation of children and young people in matters that affect them, as part of mechanisms for partnership and shared-decision making with Aboriginal and Torres Strait Islander communities.



BUILDING BLOCK 3

Law, policy and practice in child and family welfare are culturally safe and responsive

8. End adoption of Aboriginal and Torres Strait Islander children from out-of-home care.
9. Legislate requirements that ACCOs must approve permanent care orders for Aboriginal and Torres Strait Islander children and partner with ACCOs to create alternative, culturally safe approaches to promoting stability and permanency, including ensuring ACCOs have information and roles to support ongoing cultural connections for Aboriginal and Torres Strait Islander children on permanent orders.
10. Establish national standards to ensure family support and child protection legislation, policy and practices adhere to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.
11. Establish ongoing initiatives to improve practice, knowledge, responsiveness and accountability to Aboriginal and Torres Strait Islander people in government agencies, in accordance with Priority Reform 3 under Closing the Gap.

BUILDING BLOCK 4

Governments and services are accountable to Aboriginal and Torres Strait Islander people

12. Establish and resource peak bodies that support and enable equal participation of Aboriginal and Torres Strait Islander people in shared decision-making and partnership for policy and service design and in the oversight of systems impacting children, in accordance with Closing the Gap Priority Reform 1.
13. Establish Commissioners for Aboriginal and Torres Strait Islander children nationally and in every state and territory, in accordance with the UN Principles relating to the Status of National Institutions, empowered and resourced by legislation.
14. Establish partnerships between Aboriginal and Torres Strait Islander communities and governments to guide the design, collection, interpretation and use of data relevant to Aboriginal and Torres Strait Islander children. As a priority, we call on all jurisdictions to address data gaps identified throughout this report.
15. Change the definition and counting rules for out-of-home care to include children on permanent care orders.







KEY FINDINGS (EXECUTIVE SUMMARY)

Family Matters – Strong communities. Strong culture. Stronger children. is Australia’s national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. Family Matters aims to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care within a generation, by 2040.

Family Matters reports examine what governments are doing to turn the tide on over-representation and the outcomes for our children. They also highlight Aboriginal and Torres Strait Islander-led solutions and call on governments to support and invest in the strengths of Aboriginal and Torres Strait Islander peoples to lead on child wellbeing, development and safety responses for our children.

This report is structured in three parts, preceded by The Family Matters Report Card (a traffic light assessment of each state and territory’s progress in implementing the four Family Matters building blocks).

PART 1. CURRENT DATA FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND FAMILIES

Nationally, data and trends continue to demonstrate that current systems for child protection are not equipped to meet the commitment of Target 12 of the *National Agreement on Closing the Gap* to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031. Substantial transformation of child protection systems is required to turn the tide of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

Part 1 of the Family Matters Report describes data relating to children’s interactions with child protection systems and provides a projection of how over-representation is likely to increase over the next 10 years if current conditions are maintained. The report includes a description of the types of child protection data that are publicly available; new data provided by state and territory governments; and key data gaps that need to be addressed to properly gauge progress.

There were a staggering 22,297 Aboriginal and Torres Strait Islander children in out-of-home care at 30 June 2021. Aboriginal and Torres Strait Islander children were 10.4 times more likely than non-Indigenous children to be in out-of-home care, an over-representation that has increased consistently over the last 10 years. Target 12 of the National Agreement on Closing the Gap provides a high level of ambition to

The Family Matters Roadmap (published separately on the Family Matters website) proposes four inter-related building blocks, underpinned by evidence, ethics, and human rights, detailing systemic changes needed to achieve this aim:



1. All families enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive



2. Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children



3. Law, policy and practice in child and family welfare are culturally safe and responsive



4. Governments and services are accountable to Aboriginal and Torres Strait Islander people

It is crucial that governments implement the recommendations of this report in partnership with Aboriginal and Torres Strait Islander peoples to ensure that our children grow up safe and cared for in family, community and culture, and connected to their languages and Country.

reduce statutory intervention in the lives of Aboriginal and Torres Strait Islander families, that is closely aligned with the goal of the Family Matters campaign to end over-representation in out-of-home care by 2040.

1.1. CURRENT INDICATORS AND TRENDS IN CHILD PROTECTION FOR ABORIGINAL & TORRES STRAIT ISLANDER CHILDREN

Aboriginal and Torres Strait Islander children are over-represented at every point of child protection systems across Australia, inclusive of notifications, investigations and substantiations of child harm, removal into out-of-home care, permanent removal, and adoption. In the last 10 years, the over-representation of Aboriginal and Torres Strait Islander children in in out-of-home care has increased in every jurisdiction. This trend has continued from 2019-2020 to 2020-2021, with over-representation increasing in all states and territories apart from the Australian Capital Territory. Notably, the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care has continued to increase at a higher rate than the over-representation of Aboriginal and Torres Strait Islander children in cases of *substantiated* child neglect or abuse. In most jurisdictions, the rates of over-representation compound at successive steps in the child protection system.

Data suggest systemic problems with the implementation of the Placement element of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). The proportions of children placed with Aboriginal or Torres Strait Islander relatives or kin in each state and territory have remained unacceptably low in every jurisdiction. Further, there has been an increase in children being placed with non-Indigenous carers, with a consequent decrease in children being placed with Aboriginal or Torres Strait Islander carers. Nationally, there has been no significant change in the proportion of children placed in accordance with the ATSICPP 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 out-of-home care, 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 out-of-home care, and focus efforts on providing therapeutic, holistic and culturally safe supports to families to reduce any risks to child wellbeing.

Child protection systems seek to prioritise reunification where possible. However, concerningly low rates of reunification of Aboriginal and Torres Strait Islander children with their birth families were observed in all jurisdictions. Nationally, just 16.4% of Aboriginal

or Torres Strait Islander children in out-of-home care were reunified in 2020-2021. Data show that the overwhelming majority of Aboriginal and Torres Strait Islander children in out-of-home care are in long-term care arrangements, with reunification to their families not identified as a case plan goal. Promisingly, where reunification was possible the national average proportion of Aboriginal and Torres Strait Islander children who did not return to care within 12 months of reunification was 84.1% - identical to the rate for non-Indigenous children. Data show a systemic preference towards long term placement for Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander children continue to be severely over-represented in permanent care arrangements, including *long-term finalised guardianship and custody orders* (GCO) and *long-term third-party parental responsibility orders* (TPPRO). Nationally, at 30 June 2021 there were 17,638 Aboriginal and Torres Strait Islander children subject to a finalised TPPRO or GCO – a figure which represents 79.3% of Aboriginal and Torres Strait Islander children in out-of-home care.

Permanency planning needs to shift focus towards the provision of family support services aimed towards reunification, rather than permanent care orders. A lack of focus on approaches aimed at providing support to families is a critical barrier to achieving stability for Aboriginal and Torres Strait Islander children. During the 2020-21 financial year overall child protection spending increased across all jurisdictions, except for the Northern Territory. However, the proportion of expenditure allocated to family support services remains concerningly low. As a result, only 36,416 children nationwide accessed intensive family support services in 2020-21, despite 120,800 children being the subject of an investigation for abuse or neglect, and 49,000 children being subject to substantiations. Addressing this deficiency requires investing more to support families in the short- to medium-term, working towards overall savings on tertiary responses in the long-term.

These data demonstrate the failure of legislative and policy settings to resolve the injustices faced by Aboriginal and Torres Strait Islander children in child protection systems across all jurisdictions. To address the drivers of child protection intervention and achieve Target 12 of *Closing the Gap* requires transformative systemic change, grounded in the strengths of culture, and led by Aboriginal and Torres Strait Islander peoples. Governments must live up to their commitments in the National Framework for Protecting Australia's Children 2021–2031 and provide Aboriginal and Torres Strait Islander community-controlled organisations with the resources and decision-making power to provide family preservation and reunification, and other prevention and early intervention supports for our families.

1.2 CHILDREN IN OOHC BY 2031: AN ALARMING PROJECTION OF OVER-REPRESENTATION

In accordance with the *National Agreement on Closing the Gap* Priority Reform One (formal partnerships and shared decision-making) the second National Framework for Protecting Australia's Children ('Safe and Supported') was developed throughout 2021, in a co-design process with SNAICC and a national Leadership Group of Aboriginal and Torres Strait Islander experts. Safe and Supported is a transformative change in child protection policy, which acknowledges Aboriginal and Torres Strait Islander peoples' right to self-determination and supports Closing the Gap Target 12. For the first time, Aboriginal and Torres Strait Islander peoples will have our own specific Action Plan under Safe and Supported (to be released December 2022). Further policy commitments have been made across Australia, including the release by most jurisdictions of their second Closing the Gap Implementation Plans, and the establishment of the Early Childhood Care and Development Policy Partnership under Closing the Gap.

These refreshed policy frameworks will need to be implemented urgently and effectively to respond to what is a startling future projection for Aboriginal and Torres Strait Islander children in out of home care. The number of our children living in out of home care is projected to increase by 50% over the next decade – compared to an increase of just 13.5% for non-Indigenous children. Significant change is required across legislation, policy and practice to counter this concerning trajectory. There remains hope that with increased efforts to support families and the implementation of measures to address the drivers of child protection intervention, this trajectory can be altered. If the rate of entry of Aboriginal and Torres Strait Islander children into out of home care is reduced by merely 5% per year, Target 12 can be met. If this decrease can be supported by an increase in reunification rates, Target 12 may be exceeded. Family Matters calls upon governments to engage all available resources and efforts, in working alongside Aboriginal and Torres Strait Islander community-controlled organisations to ensure that this distressing increase in over-representation does not occur as currently projected.

1.3 STRUCTURAL FACTORS AND SERVICE GAPS THAT AFFECT CHILD AND FAMILY WELLBEING

For thousands of generations, Aboriginal and Torres Strait Islander families and communities have raised their children strong and safe in their culture. Ongoing inequities relating to the social determinants of health and enduring physical and mental harm are consequences of colonisation, intergenerational trauma,

and systemic racism. One of the most significant and traumatic areas of government intervention in the lives of Aboriginal and Torres Strait Islander people has been the widespread removal of children from their families known as the Stolen Generations. Stolen Generations descendants are significantly more likely to have experienced discrimination, violence, criminalisation, or poor health, and to have low levels of trust in the general community. Left unresolved, this has long lasting negative impacts on future generations. Further, systemic racism renders mainstream services ineffective and culturally unsafe for Aboriginal and Torres Strait Islander people, obstructs them from having decision-making power, and contributes to unjust outcomes.

This part of the report presents a summary of headline indicators in key policy areas to demonstrate structural factors that affect child and family wellbeing. These areas are socioeconomic disadvantage and poverty; poor access to safe and affordable housing; maternal and child health inequities; exposure to family violence; and substance misuse. To address these structural drivers of child and family wellbeing and safeguard the rights of Aboriginal and Torres Strait Islander people it is critical for governments to invest in holistic services that are accountable, high quality, culturally safe, and provided by Aboriginal and Torres Strait Islander Community-Controlled Organisations.

Early childhood education and care (ECEC) presents a key area of focus in policy reform. The early years are the most critical period in a child's development. Access to culturally responsive ECEC is crucial for strengthening Aboriginal and Torres Strait Islander children's skills, knowledge and identity, and giving them the best start to life. The Australian Early Development Census shows that the gap that exists across developmental domains between Aboriginal and Torres Strait Islander children and non-Indigenous children by the time they start school has widened from 2018 to 2021. Despite this backwards step in developmental assessment statistics, ACCO services are driving change through high-quality, culturally safe early years services.

Aboriginal and Torres Strait Islander children continue to be under-represented in ECEC services, such as long day care, family day care and out-of-school-hours care, at 67% of the rate of non-Indigenous children. There are interrelated individual, service, system and cultural factors that prevent Aboriginal and Torres Strait Islander families from accessing and participating in ECEC services. These factors include family stress and socio-economic challenges; preventable health conditions; complex enrolment documentation requirements; and lack of supports for families in enrolling children in ECEC. Further, system barriers such as the Child Care Package and accompanying Activity Test negatively impact Aboriginal and Torres Strait Islander children and families, often leaving them without adequate access to subsidised ECEC.



ACCO-led ECEC services are crucial for addressing the under-representation of Aboriginal and Torres Strait Islander children in ECEC. ACCOs have the unique ability to support children and families who have been marginalised by the continuing impacts of colonisation.

PART 2. THE YEAR IN REVIEW – JURISDICTIONAL BREAKDOWN OF EFFORTS TO ADDRESS OVER-REPRESENTATION

Each year, Family Matters requests the Australian, state and territory governments to provide information about their current strategies, actions and investments to reduce over-representation and to provide data in key gap areas relating to support and outcomes for Aboriginal and Torres Strait Islander children. This year, all governments provided input. These data are addressed throughout this report, with direct responses provided in Part 2.

Family Matters jurisdictional working groups and Aboriginal and Torres Strait Islander community-controlled peak bodies and organisations are invited to respond to the government input as well as provide their own commentary on progress to address over-representation. Commissioners (or similar) for Aboriginal and Torres Strait Islander children in New South Wales, Queensland, South Australia and Victoria were also approached for their input, and this was included in part 2.

Part 2 also discusses new overarching national policy frameworks in 2021, including *Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031*, the *National Aboriginal and Torres Strait Islander Early Childhood Strategy*, and the *Closing the Gap Early Childhood Care and Development Sector Strengthening Plan*, among others.

PART 3. FOCUS AREAS FOR ABORIGINAL AND TORRES STRAIT ISLANDER-LED TRANSFORMATION

The Family Matters report aims to shine a light on the transformative power of Aboriginal and Torres Strait Islander led decision-making and service delivery in child protection. Enabling Aboriginal and Torres Strait Islander self-determination in relation to policy design and commissioning frameworks is an essential element in achieving better outcomes. The expertise of Aboriginal and Torres Strait Islander Community-Controlled Organisations and people is paramount in designing and delivering the system-wide reform

needed to turn the tide of over-representation. This part of the report highlights Aboriginal and Torres Strait Islander Community-Controlled Organisations who excel in providing services that are culturally responsive and able to meet the needs of their communities.

3.1 REALISING ABORIGINAL AND TORRES STRAIT ISLANDER SELF-DETERMINATION IN CHILD PROTECTION

Self-determination is a collective right of Aboriginal and Torres Strait Islander peoples to determine and control their own destiny by exercising autonomy in their own affairs and maintaining distinct political, legal, economic, social and cultural institutions. This right has been recognised in the *National Agreement on Closing the Gap* and the new *National Framework for Protecting Australia's Children 2021–2031*. Through this right, Aboriginal and Torres Strait Islander communities are recognised as best placed to make informed decisions about the safety, wellbeing and protection needs of their children. This part of the report will explore what self-determination means to Aboriginal and Torres Strait Islander peoples and examine emerging approaches to self-determination in Australia.

To enable Aboriginal and Torres Strait Islander people to exercise the collective right to self-determination, governments should support upscaling the ACCO sector, including through increased funding, and support the transfer of control and power from government agencies and non-Indigenous organisations to Aboriginal and Torres Strait Islander peoples, communities and ACCOs. Aboriginal and Torres Strait Islander led commissioning processes are a critical element of this process. Governments should work with Aboriginal and Torres Strait Islander community-controlled entities to invest in local communities and enable local decision making, aligned to shared high level outcomes frameworks that reflect Aboriginal and Torres Strait Islander community priorities and approaches to individual and community wellbeing.

3.2 SOCIAL AND EMOTIONAL WELLBEING (INCL. FIRST NATIONS-LED SEWB OUTCOMES FRAMEWORKS)

The social and emotional wellbeing (SEWB) of Aboriginal and Torres Strait Islander children and families is a critical part of children growing up safe strong and connected to their culture and community. Supporting children and parents' SEWB as a social determinant of health wellbeing is an integral component of early support and prevention for families. The current burden of disease trends and service

access data are concerning and indicate that the service system is not meeting the needs of Aboriginal and Torres Strait Islander people. Not providing adequate support for families SEWB can lead to increased risk of interaction with child protection systems, which in turn exposes children and families to further risk of lower SEWB. Investing in ACCO-led SEWB programs and services is the best way forward for supporting and improving SEWB outcomes for Aboriginal and Torres Strait Islander children and families

Western-informed policies often ignore and fail to understand what changes need to happen to improve the overall wellbeing for Aboriginal and Torres Strait Islander people's health needs. Mental health services

must be delivered in ways that are consistent with Aboriginal and Torres Strait Islander understandings of SEWB so that they respond to all the domains that impact and support children and families. Given the cultural, spiritual, political, and social dimensions of SEWB, ACCOs and Aboriginal and Torres Strait Islander people are best placed to provide these services in culturally safe and responsive ways. This section of the report will highlight the Kimberley Empowerment, Healing & Leadership (KEHLP) program, delivered by the Kimberley Aboriginal Medical Service (KAMS). The KEHLP program is a powerful example of an ACCO-led initiative that is driving ongoing positive change for Aboriginal and Torres Strait Islander people in the Kimberley.



3.3 INFANT REMOVALS, CRIMINALISATION AND INCARCERATION [COMMISSIONED FROM JACYNTA KRAKOUER AND TATIANA CORRALES]

Over the past few years, the Family Matters campaign has drawn attention to the rising rates of pre-birth notifications and infant removals for Aboriginal and Torres Strait Islander babies (see previous Family Matters Reports). This trend has unfortunately continued, as in 2020-21, 21% of Aboriginal and Torres Strait Islander children removed into out-of-home care nationally were under the age of 1, and were removed at ten times the rate of non-Indigenous infants. This is a growing problem that impacts Aboriginal and Torres Strait Islander communities in profound ways, which will be explored in this section. Not only does it represent continuity with harmful past policies and approaches – especially the Stolen Generations – the ongoing removal of Aboriginal and Torres Strait Islander babies at, or shortly after, birth by child welfare is a site of pain and

distress, where the use of surveillance, control and coercive powers are particularly harrowing.

Family Matters calls for significant, immediate transformation to both child protection and criminal legal systems, transferring power and authority to Aboriginal and Torres Strait Islander peoples and communities and reorienting family surveillance and punitive approaches in favour of therapeutic, community-led approaches that centre individual and community wellbeing. This transformation will require greater investment in community-based, alternative and tailored models of support for Aboriginal and Torres Strait Islander parents and families during the perinatal period, instead of surveillance by child protection and criminal legal systems. This section of the report will profile the Legal Education and Advice in Prison (LEAP) for Women program, a unique specialist, unfunded legal program provided in partnership by Wirringa Baiya Aboriginal Legal Centre (WB), Women's Legal Service (WLS NSW) and Western Sydney Community Legal Centre (WSCLC). Established in 2009, the program was created in response to the high levels of unmet needs of women in prison, with a specific focus on Aboriginal women.





FAMILY MATTERS

Strong communities. Strong culture. Stronger children.

THE FAMILY MATTERS REPORT CARD 2022

COLOUR GUIDE

	Very poor
	Poor
	Promising/improving
	Stronger practice/outcomes

ABBREVIATIONS

OOHC: out-of-home care
 ACCO: Aboriginal and Torres Strait Islander community-controlled organisation
 ATSICPP: Aboriginal and Torres Strait Islander Child Placement Principle
 AEDC: Australian Early Development Census
 CTG: National Agreement on Closing the Gap
 TPPRO: third-party parental responsibility order

References to Aboriginal people refer to Aboriginal and Torres Strait Islander people.



Headline indicator Over-representation in OOHC + TPPRO (rate)		BUILDING BLOCK 1 Universal and targeted services	BUILDING BLOCK 2 Participation, control and self-determination	BUILDING BLOCK 3 Culturally safe and responsive systems	BUILDING BLOCK 4 Accountability
ACT	13	<ul style="list-style-type: none"> Second lowest rate of Aboriginal children on track in all 5 AEDC domains (27.3%) Third highest proportion of investment in ACCOs for family support and intensive family support (12%) Third lowest proportion of expenditure on family support and intensive family support (10.7%) Over-representation in OOHC above national average 	<ul style="list-style-type: none"> Overall proportion of child protection and family services funding to ACCOs remains very low (1.3%) NEXT STEPS STRATEGY released – commitment to build ACCOs and transfer case management to ACCOs Promising impact of family group conferencing to prevent removals, but community identifies need for independent Aboriginal Family-led Decision Making 	<ul style="list-style-type: none"> Highest proportion of Aboriginal children reunified ACCO and community led review of legislation to align with the 5 elements of the ATSICPP completed Lowest placement of children on permanent care orders with Aboriginal carers (11%) Community Voices alarmed by lack of cultural safety in the system and family experiences of racism 	<ul style="list-style-type: none"> Establishment of a legislated, independent Aboriginal and Torres Strait Islander Children's Commissioner is in progress Independent Aboriginal-led oversight body monitors implementation of <i>Our Booris, Our Way</i> review, but progress is slow Aboriginal elected body plays an important role in policy design and oversight more broadly
NSW	10.5	<ul style="list-style-type: none"> New \$98.7 million investment to continue and expand to 15 Aboriginal Child and Family Centres Highest rate of Aboriginal children on track in all 5 AEDC domains (38.8%) Investment in ACCO family support and intensive family support services (5.4%) is well below Aboriginal representation in child protection system 	<ul style="list-style-type: none"> Lack of partnership with Aboriginal community to progress Family is Culture recommendations New investment over 4-years: \$3.9 million for Aboriginal-led commissioning; \$8.6 million for community determined consultation mechanisms Highest proportion of expenditure to ACCOs for care services (7.5%) 	<ul style="list-style-type: none"> Lowest proportion of Aboriginal children reunified Second highest placement with kin or Aboriginal carers (70.5%) Highest use of permanent care orders (long-term TPPRO) for Aboriginal children (18.6 per 1000) and low placement with Aboriginal carers (21.5%) Aboriginal case management policy being implemented, but progress to embed is limited 	<ul style="list-style-type: none"> Deputy Aboriginal Children's Guardian appointed, but lacks children's commissioner powers and role (role review in progress could address this) Community Voices describe "misrepresentation and dilution" of recommendations from Family is Culture review, and continued government-led reform Lack of dedicated plan to address over-representation led by Aboriginal people
NT	13.8	<ul style="list-style-type: none"> Third highest over-representation in OOHC Second lowest Aboriginal entry to OOHC Second highest proportion of expenditure on family support and intensive family support (26.5%) Lowest rate of Aboriginal children on track in all 5 AEDC domains (16.4%) and lowest access to child care 	<ul style="list-style-type: none"> Lowest use of long-term child protection orders for Aboriginal children No Aboriginal Family-Led Decision Making model implemented despite commitment made 4 years ago Expansion of ACCO family support service delivery (10 ACCOs funded across the NT) No ACCO funding data provided for this report 	<ul style="list-style-type: none"> Lowest placement with kin or Aboriginal carers (31.8%) No dedicated peak body for Aboriginal children to lead culturally safe and responsive systems, despite community calls for peak body funding Aboriginal kinship care service delivered by 6 ACCOs, but services identify lack of authority for decisions 	<ul style="list-style-type: none"> NT Children's Commissioner identifies "lack of accountability, transparency and independent scrutiny" of the Department Aboriginal person is Acting Children's Commissioner, but no dedicated Aboriginal Children's Commissioner role 10-year Generational Strategy for children and families in development with Aboriginal peaks' input
QLD	8.8	<ul style="list-style-type: none"> Second lowest, stable over-representation in OOHC Equal highest proportion of investment in ACCOs for family support and intensive family support (21.1%), but stagnation of funding and need for new targets High proportion of family support (32%) and intensive family support (67%) for Aboriginal and Torres Strait Islander children provided by ACCOs 	<ul style="list-style-type: none"> New commitment to transfer services to ACCOs, but needs comprehensive strategy / change plan Delegated authority established for 2 ACCOs and equal funding to DCYJMA and QATSICPP teams to develop and progress blueprint for expansion Strengthened role of peak body in strategy, policy co-design and sector development 	<ul style="list-style-type: none"> Second lowest placement with Aboriginal kin (21.7%) and high residential care (0.7%) – strategic reform and Family Caring for Family Program underway Legislation passed in May 2022 to require active efforts to implement the 5 elements of the ATSICPP Decommissioning of inappropriate Structured Decision Making, but replacement must address bias 	<ul style="list-style-type: none"> Queensland First Children and Families Board oversees Our Way Strategy, but evaluation shows low community awareness of Strategy Data improvements needed to support evidence-based decision-making and monitor system drivers Reform plan required to align reform milestones and timeframes with Closing the Gap targets
SA	11.1	<ul style="list-style-type: none"> Second highest Aboriginal entry to OOHC Second lowest proportion of expenditure on family support and intensive family support (9.8%) Community voices highlight lack of effort to address structural issues driving child removals Third lowest access to child care for Aboriginal children compared to non-Indigenous children 	<ul style="list-style-type: none"> Highest use of long-term guardianship and third party orders for Aboriginal children (80.1 per 1000) Commissioner identifies failure to engage Aboriginal community in policy and service design, and to implement mechanisms for self-determination Significant one-year increase in funding to ACCOs for child and family services (\$19 million to \$28 million) 	<ul style="list-style-type: none"> Third lowest proportion of Aboriginal children reunified (9.9%) Highest cultural support plan completion rate (96.5%) but Commissioner cites failures to support cultural identity and need for practice audit Opportunity for critical changes through CACYP ATSICPP inquiry; and current legislative review 	<ul style="list-style-type: none"> Resourced and completed community-led model design for an Aboriginal children and families peak, but outcome and next steps not released/confirmed Only jurisdiction with a fully legislated independent Commissioner for Aboriginal Children and Young People Lack of a dedicated plan to address over-representation overseen by Aboriginal people
TAS	4.9	<ul style="list-style-type: none"> Lowest over-representation in OOHC, but community concern about identification practice Lowest Aboriginal entry to OOHC Third highest proportion of expenditure on family support and intensive family support (25.2%), but low investment in ACCOs (0.8%) Second highest rate of Aboriginal children on track in all 5 AEDC domains (38.3%) 	<ul style="list-style-type: none"> Second lowest use of long-term child protection orders for Aboriginal children No Aboriginal facilitators for family group conferences despite prior commitments No policy or program for ACCO involvement in child protection decisions, or Aboriginal Family-led Decision Making 	<ul style="list-style-type: none"> Second lowest proportion of Aboriginal children reunified (9%) By far lowest placement with Aboriginal kin (10.7%) TAC notes funding directed to support its role, but lack of change to legislation, policies and programs Lowest proportion of investment by far in ACCOs for family support and care services 	<ul style="list-style-type: none"> Community voices question the accuracy and transparency of child protection data and identification of Aboriginal children No dedicated commissioner for Aboriginal children or formal system leadership roles for independent Aboriginal representatives No dedicated strategy to address Aboriginal over-representation
VIC	17.3	<ul style="list-style-type: none"> Second highest over-representation in OOHC Highest Aboriginal entry to OOHC Highest proportion of expenditure on family support and intensive family support (27.4%) but ACCO funding for early intervention is limited (11.6%) Commissioner identifies lack of coordinated investment to support Aboriginal families earlier 	<ul style="list-style-type: none"> ACCOs authorised to take full statutory responsibility for 206 Aboriginal children at December 2021 Decrease from 50% to 47% of Aboriginal children in OOHC case managed by an ACCO from June to December 2021 reflects stalled progress on targets Highest proportion of investment in ACCO services ACCOs resourced for policy and leadership roles 	<ul style="list-style-type: none"> Highest placement with kin or Aboriginal carers (80.2%) Second highest proportion of Aboriginal children reunified Second highest use of permanent care orders (long-term TPPRO) for Aboriginal children (16.5 per 1000) Low proportion of children with a cultural support plan (63%) 	<ul style="list-style-type: none"> Strong partnership with ACCOs through the Aboriginal Children's Forum and the <i>Wungurilwil Gaggapduir Agreement</i>, but limited accountability for failure to meet targets Commissioner for Aboriginal children and young people leads independent systemic oversight, but the role is note enshrined in legislation Action needed to address high entry to care rates
WA	18.2	<ul style="list-style-type: none"> Highest over-representation in OOHC Significant 1-year drop in OOHC admission rate Lowest proportion of expenditure on family support and intensive family support (5.6%), with high proportion of that expenditure to ACCOs (21.1%) Lowest expenditure on intensive family support per child in the population 	<ul style="list-style-type: none"> Aboriginal Family-led Decision Making pilot continues in 2 locations, but is not legislated and there is no clear commitment to broader roll-out Consultation with Aboriginal Representative Organisations legislated in 2021, but is only resourced in 2 pilot regions No Aboriginal peak body resourced for state-wide leadership 	<ul style="list-style-type: none"> Second highest placement with Aboriginal kin (38.9%) Only one ACCO in WA is providing OOHC services, supporting 123 Aboriginal children in Perth Promise of new ACCO OOHC services through current recommissioning process targeting ACCOs Highest over-representation of Aboriginal children on long-term guardianship and third-party orders 	<ul style="list-style-type: none"> Work commenced to develop 10-year Roadmap to address over-representation after significant delays, with promise for shared decision-making and Aboriginal oversight Aboriginal person appointed as Commissioner for Children and Young People, but no dedicated Commissioner role for Aboriginal children and no state-wide Aboriginal peak

Note on data: The reference date and source for data is often excluded in this abbreviated table, but is available in the relevant sections of the report. The headline indicator is based on children in 'out-of-home care' and on third-party parental responsibility orders.



PART 1

CURRENT DATA FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND FAMILIES

OVERVIEW

Data and trends nationally continue to demonstrate that current systems for child protection are not equipped to turn the tide on the rising rate of Aboriginal and Torres Strait Islander children in out-of-home care. *The National Agreement on Closing the Gap's Target 12* (to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031) will not be met without a substantial transformation of these systems.

Each year the Family Matters report has consistently identified that turning the trajectory around will require a comprehensive approach to address the drivers of child protection intervention and create a new system of child protection and service supports that are grounded in the strengths of culture and led by Aboriginal and Torres Strait Islander peoples.

It is important to note early in this report that the numbers presented regarding children in out of home care will appear different to figures reported by other sources, because the Family Matters campaign includes children on long-term third-party parental responsibility orders (TPPROs) in the out-of-home care count. In contrast, the official definition of out of home care used by government agencies in Australia excludes children on TPPROs. However, given that these children have been removed from their families by child protection authorities, SNAICC and the Family Matters Leadership Group disagree with this decision. More detail on this issue is provided in the following pages.

From a systems perspective, the number of children in out-of-home care at any point in time is a function of four interrelated processes:

1. Children already in out-of-home care

This is a count of all children who are recorded as living away from their parents in out-of-home care on a given day. Some children will have been in out-of-home care for one day, and others for up to 17 years. This gives a **point-in-time** count of the **prevalence** of children in care, care and is reported nationally as at 30 June in *Child Protection Australia* (published by the Australian Institute of Health and Welfare (AIHW) and the *Report on*

Government Services (RoGS, published by the Steering Committee for the Review of Government Service Provision).

2. Children entering out-of-home care

This is a count of all distinct entries into out-of-home care in a given period of time (usually over one year). Some children may have been in out-of-home care in an earlier year and others have had no prior entries, but all commenced a placement in a given year. This is known as the incidence of children in care (that is, new cases) or an **entry cohort**.

3. Children exiting out-of-home care

This is a count of all children exiting out-of-home care in a given period (usually a year). This is known as an **exit cohort**. Many children exit care because they reach 18 years of age (that is, age out of care); others return to the care of their parents or other family members, and some exit to other jurisdictional permanent care arrangements. However, the Family Matters campaign does not consider exit to permanent care to be a genuine exit from the system because governments are still responsible for those children having removed them from the care of their parents. As such, this report re-includes data on children in permanent care wherever possible.

4. The time children spend in out-of-home care

When a child enters care, they may stay for a very short to a very long period of time (as noted in point 1 above) depending on whether (and when) they are returned to the care of their parents, they reach the age of 18, or they exit the system for another reason. This is commonly referred to as **length of stay** or

duration in care, and is a main driver of prevalence, or the total number of children living in out-of-home care.

Over-representation and under-representation could occur in any or all of these processes. Focusing only on those children currently in out-of-home care, or those exiting out-of-home care, leads to poor policy decisions. Reducing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care 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. Prevention and early intervention to strengthen families and communities will provide the best possible opportunity for children to be safe and thrive in connection with their cultures.

However, 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 to inform the development of *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031* ('Safe and Supported'), 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.

There is an urgent need for change to the current legislative and policy settings that are failing to reduce the inequities children experience across all decision-making points of Australia's child protection systems. The Family Matters campaign has long advocated for the development of a national, comprehensive strategy to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. While an ambitious target has now been adopted through the National Agreement, it will be critical for all jurisdictions to invest in significant reforms, designed and led by Aboriginal and Torres Strait Islander people and organisations, under the First Aboriginal and Torres Strait Islander Action Plan for Safe and Supported.

1.1 CURRENT INDICATORS AND TRENDS IN CHILD PROTECTION FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

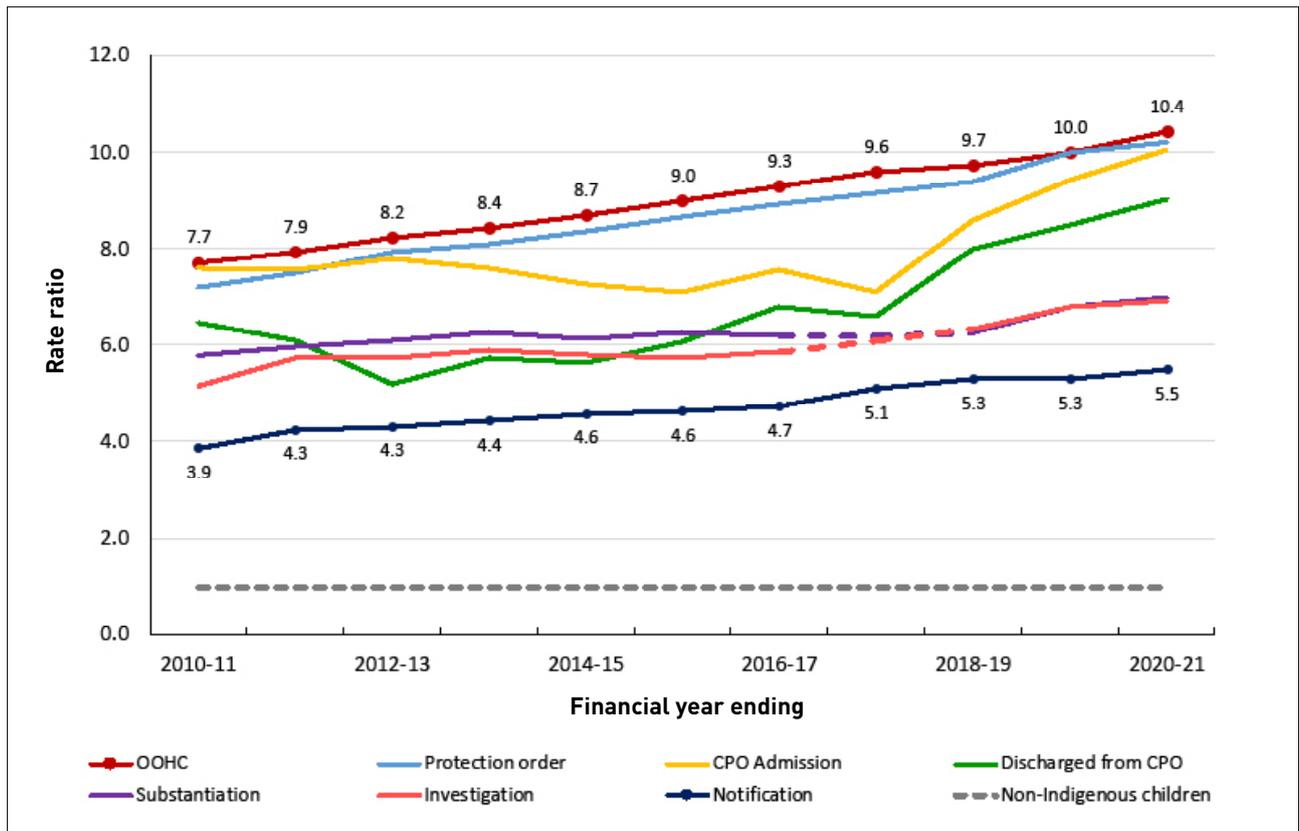
A. Over-representation of Aboriginal and Torres Strait Islander children in child protection systems

In 2020-21, Aboriginal and Torres Strait Islander children nationwide were 5.5 times more likely than non-Indigenous children to be reported to child protection authorities, 10.2 times more likely to be subject to a child protection order, and 10.4 times more likely to be in out-of-home care (including on permanent care orders) (see **Figure 1**). Time series of these rate ratios (using the non-Indigenous rate as the baseline to show how many times greater the Aboriginal and Torres Strait Islander rate is) indicate that the over-representation of Aboriginal and Torres Strait Islander children across key decision making points within child protection systems continues to increase over time. The number of Aboriginal and Torres Strait Islander children in out-of-home care also continues to increase, reaching 22,243 at June 2021 (AIHW 2022b).

Notably, while the over-representation of Aboriginal and Torres Strait Islander children in cases of *substantiated* child neglect or abuse has not increased significantly in recent years, the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care has continued to climb. This is the result of several variables (some discussed in part 1.1 above) including higher rates of removal of Aboriginal and Torres Strait Islander children following substantiation of child abuse or neglect, the lower rates at which they are reunified with parents and family members, and the longer periods they spend in care.

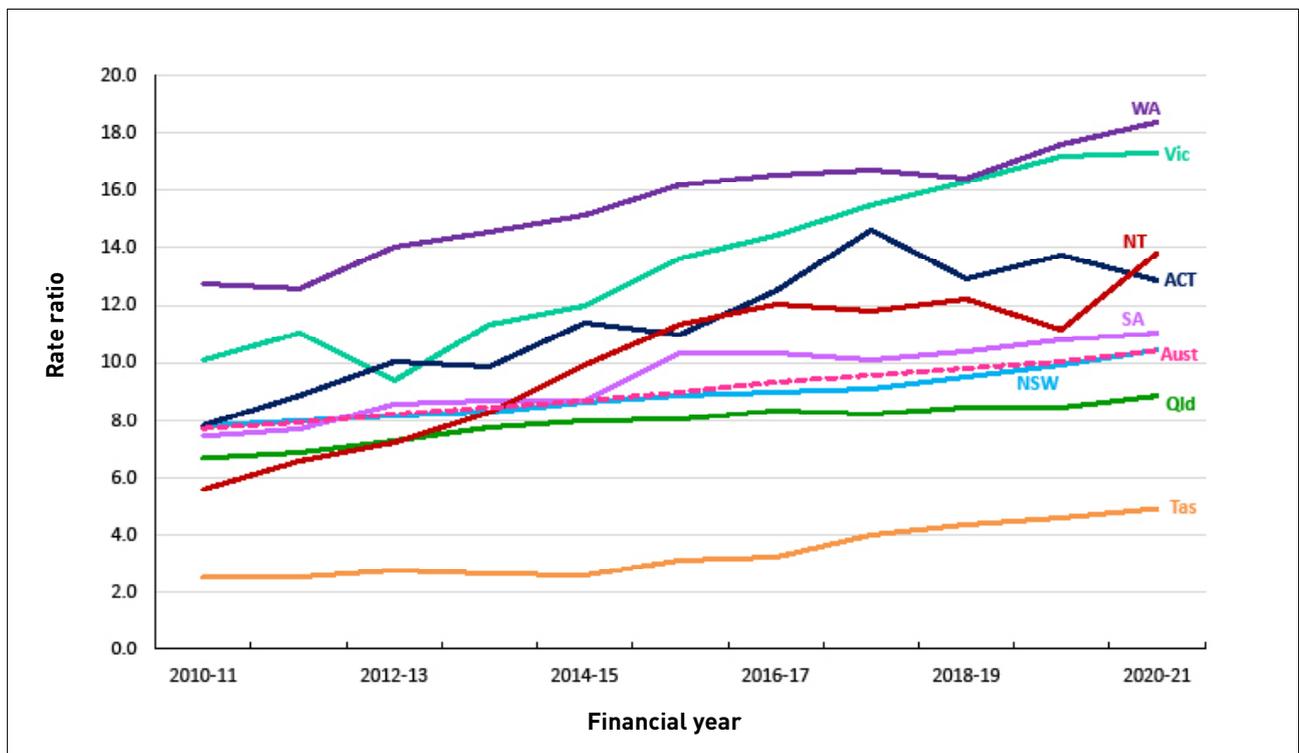


FIGURE 1 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children involved with child protection systems in Australia, 2010-11 to 2020-21



Note: Data for investigation and substantiation in NSW are not available for the 2017-18 financial year. These trend lines are broken accordingly.
Data sources: SCRGSP (2022b); AIHW (2022b)

FIGURE 2 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care by state and territory, 2010-11 to 2020-21



Note: Children on finalised third-party parental orders added to NSW data (2014-15 to 2018-19) and Victorian data (2017-18 to 2018-19). Differences between RoGS and AIHW published data tables mean that individual state changes between 2018-19 and 2019-20 rate ratios should not be relied upon.
Data sources: SCRGSP (2022b); AIHW (2022b)

DATA GAP

EXCLUSION OF CHILDREN ON PERMANENT CARE ORDERS

National out-of-home care counting rules changed for all states and territories from 2018–19 and now exclude children on third-party parental responsibility orders (TPPROs) from the count of children in out-of-home care. The Family Matters campaign believes that this change seriously undermines transparency and accountability, effectively rendering these children invisible in the system. Our governments must remain accountable for protecting the rights of *all* children removed from parental care. Closing the Gap Target 12, which aims to reduce statutory intervention in Aboriginal and Torres Strait Islander family life, will be frustrated if governments seek to achieve it by permanently removing children from their families and excluding them from the count of children in out-of-home care. Consequently, the data presented in Figures 1, 2 and 3 re-include children on third party parental responsibility orders in the count.

When over representation trends for Aboriginal and Torres Strait Islander children in out of home care are viewed at the state and territory level (**Figure 2**), it becomes apparent that over representation is a significant issue right across the country, increasing in every state and territory over the last 10 years. The highest rate of over-representation in 2020-21 was observed in Western Australia (18.4), followed closely by Victoria (17.3). Tasmania displayed the lowest rate of over-representation (4.9), followed by Queensland (8.9). Over-representation increased in every jurisdiction between 2019-20 and 2020-21, bar the Australian Capital Territory (which saw its rate ratio decrease from 13.7 to 12.9). The sharpest increase over the past reporting year was observed in the Northern Territory, where the rate ratio increased from 11.2 to 13.8.

Over representation is also present in every jurisdiction for other child protection processes, as shown by **Figure 3**, which compares rate ratios of Aboriginal and Torres Strait Islander children and non Indigenous children subject to child protection notifications, investigations, substantiations, protection orders, and out of home care placement. Aboriginal and Torres Strait Islander children are almost five times more likely than non Indigenous children to be involved in *any* stage of the child protection system, in any jurisdiction.

For most jurisdictions, the level of Aboriginal and Torres Strait Islander over representation *compounds* throughout successive steps in the child protection system – meaning that Aboriginal and Torres Strait Islander families are increasingly more likely to be investigated after a child protection notification, to have

substantiations recorded against them, and to have their children placed on care and protection orders (including removal from the family household to out of home care). The reasons underpinning this compounding over representation are unclear and likely complex; while a higher likelihood of substantiation following investigations could reflect that there are more serious family safety concerns (resulting from systemic failures by governments to address the structural drivers of child protection involvement) driving initial notifications about Aboriginal and Torres Strait Islander families, it is also likely that discriminatory judgements are being made about individual families at some points in the system.

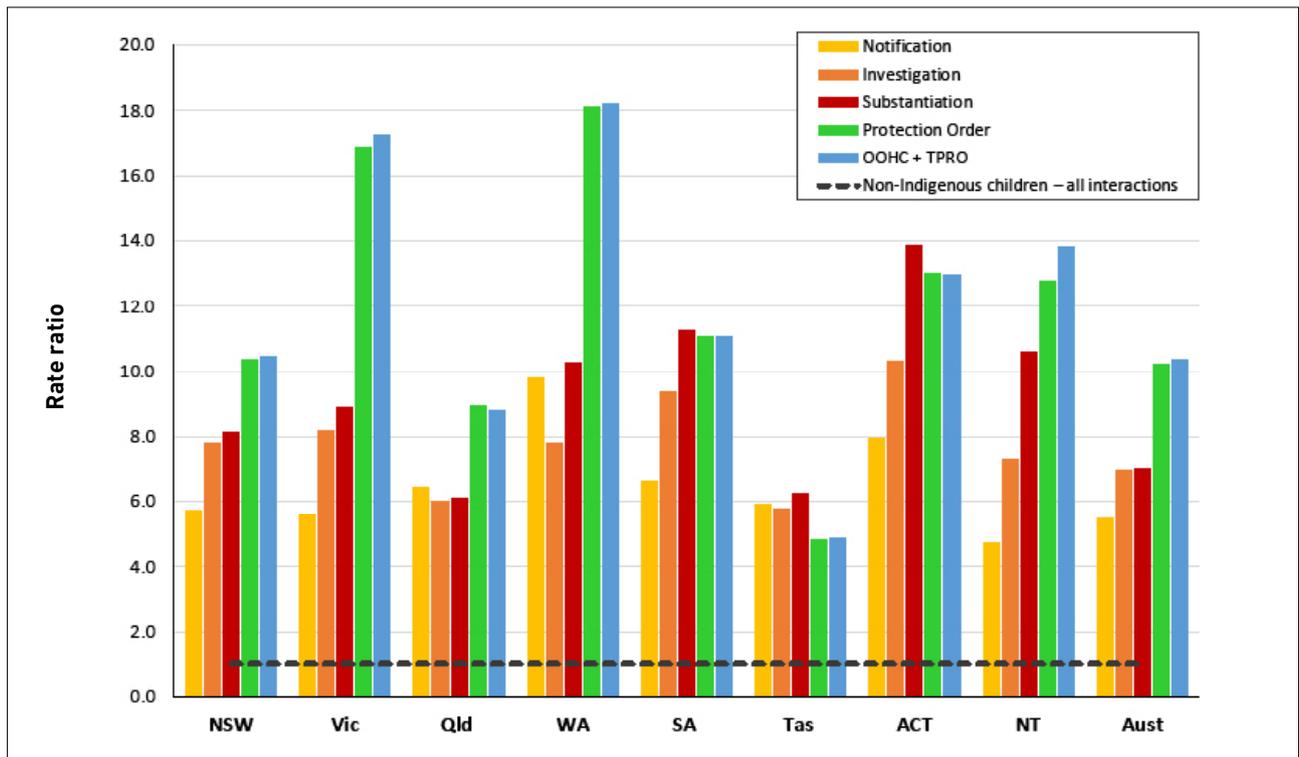
B. Entry to and exit from out-of-home care

Achieving Target 12 of the *National Agreement on Closing the Gap* (the National Agreement) – to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% within a decade – will require a focus on enabling children to stay safely at home with their families, connected to their cultures and communities. The provision of prevention and early intervention supports to families, and broader efforts to address the underlying issues that drive removal of Aboriginal and Torres Strait Islander children, are required to reduce the rate at which Aboriginal and Torres Strait Islander children are entering out of home care. Data on admission to out-of-home care can provide a proxy indication of whether these efforts are succeeding. However, these data must be contextualised by considering the extent to which safety and wellbeing concerns are being addressed through enabling Aboriginal and Torres Strait Islander families to access quality support services.

Nationally, 4,477 Aboriginal and Torres Strait Islander children were admitted to out-of-home care in 2020-21, at a rate of 13.3 admissions per 1,000 children. This is 10.1 times the rate of entry for non Indigenous children (1.3 admissions/1000). In 2020-21, there were 4,138 Aboriginal and Torres Strait Islander children who exited care, at a rate of 12.3 exits per 1,000 children, which was 8.8 times the rate of exit for non Indigenous children (1.4/1000 children) (AIHW 2022). Exits from out-of-home care may occur because children reach the age of 18 or are reunified with their parent/s. However, due to changes to the out of home care definition discussed above, exits may also be to third-party parental responsibility orders for children who remain separated from their families.

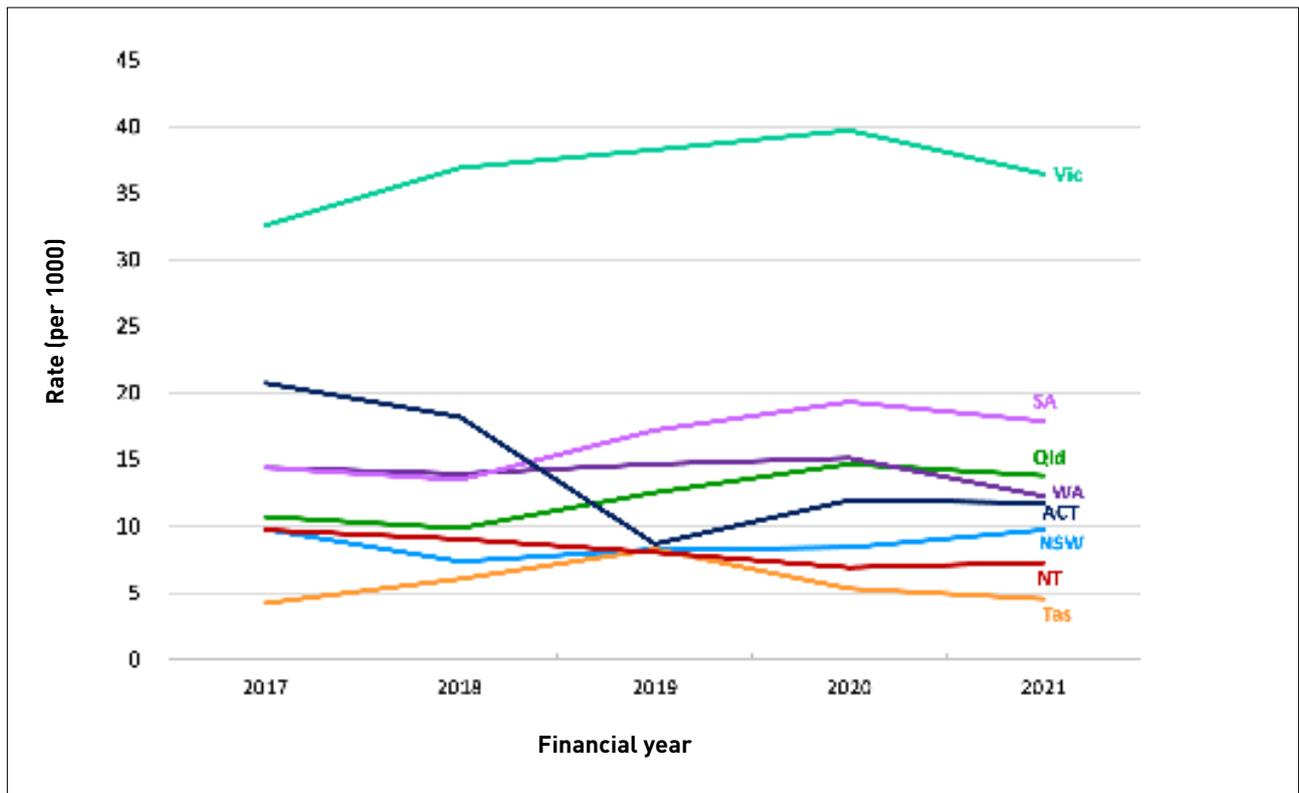
Figure 4 shows that while rates of admission have remained consistently high, there has been relatively low variation in admission rates across a number of jurisdictions in recent years, such as Western Australia, New South Wales and the Northern Territory. Victoria stands out as having by far the highest rate of entry for Aboriginal and Torres Strait Islander children to out-of-home care (36.5 entries per 1,000 children), though

FIGURE 3 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children involvement with child protection systems, by state and territory, 2020-21



Notes: (a) Substantiation data for the ACT and the NT need to be interpreted with caution as there has been an unexplained but significant increase in the rate of Aboriginal and Torres Strait Islander children subject to a substantiation from previous years.
 b) Rates for OOHC include children and young people in OOHC or on third-party parental responsibility orders. Not comparable to data used in Family Matters reports prior to 2021.
 Data sources: SCRGSP (2022b); AIHW (2022b).

FIGURE 4 Rate of admission to out-of-home care for Aboriginal and Torres Strait Islander children, by state and territory, 2016-17 to 2020-21



Notes: Includes all children admitted to OOHC for the first time, as well as those children returning to care who had exited care >60 days previously. Children admitted to OOHC more than once during this reporting year were counted only at the first admission.
 Data source: AIHW (2022b).

this decreased significantly from 39.8 entries per 1,000 children in 2019-20). Most other jurisdictions also showed a slight decrease in rates of admission over the last reporting period, with the exception of New South Wales (rising from 8.4 entries per 1000 children in 2019-20 to 9.7 entries per 1000 children in 2020-21) and the Northern Territory (from 6.9 entries per 1000 children in 2019-20 to 7.3 entries per 1000 children in 2020-21). The other significant decrease in admission rates was observed in Western Australia (from 15.1 entries per 1000 children in 2019-20 to 12.3 entries per 1000 children in 2020-21).

As a consequence of these decreases in most jurisdictions' admission rates, the *national* rate of Aboriginal and Torres Strait Islander children being admitted to out-of-home care also decreased slightly, from 13.8 admissions per 1000 children in 2019-20 to 13.3 admissions per 1000 children in 2020-21 (a 3.3% decrease).

Despite the decreasing or relatively static admission trends depicted in Figure 4, the over-representation of Aboriginal and Torres Strait Islander children living in out-of-home care continued to increase over the last reporting period (as shown in Figure 2 above). In part, this reflects a *greater* reduction in entry rates for non Indigenous children over the same period – from 1.45 admissions per 1000 children in 2019-20 to 1.31 admissions per 1000 children in 2020-21 (roughly a 9.3% decrease) (AIHW 2022b). However, as noted above, there are many other factors that contribute to the total national rate of over-representation, including the longer periods that Aboriginal and Torres Strait Islander children stay in care and the lower rates at which they are reunified to the care of their parents and family members.



DATA GAP

IDENTIFICATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

Without correct early identification of Aboriginal and Torres Strait Islander children at all stages of child protection involvement, children risk being deprived of culturally safe support, case planning and placement, and data will not accurately describe their interactions with the service system.

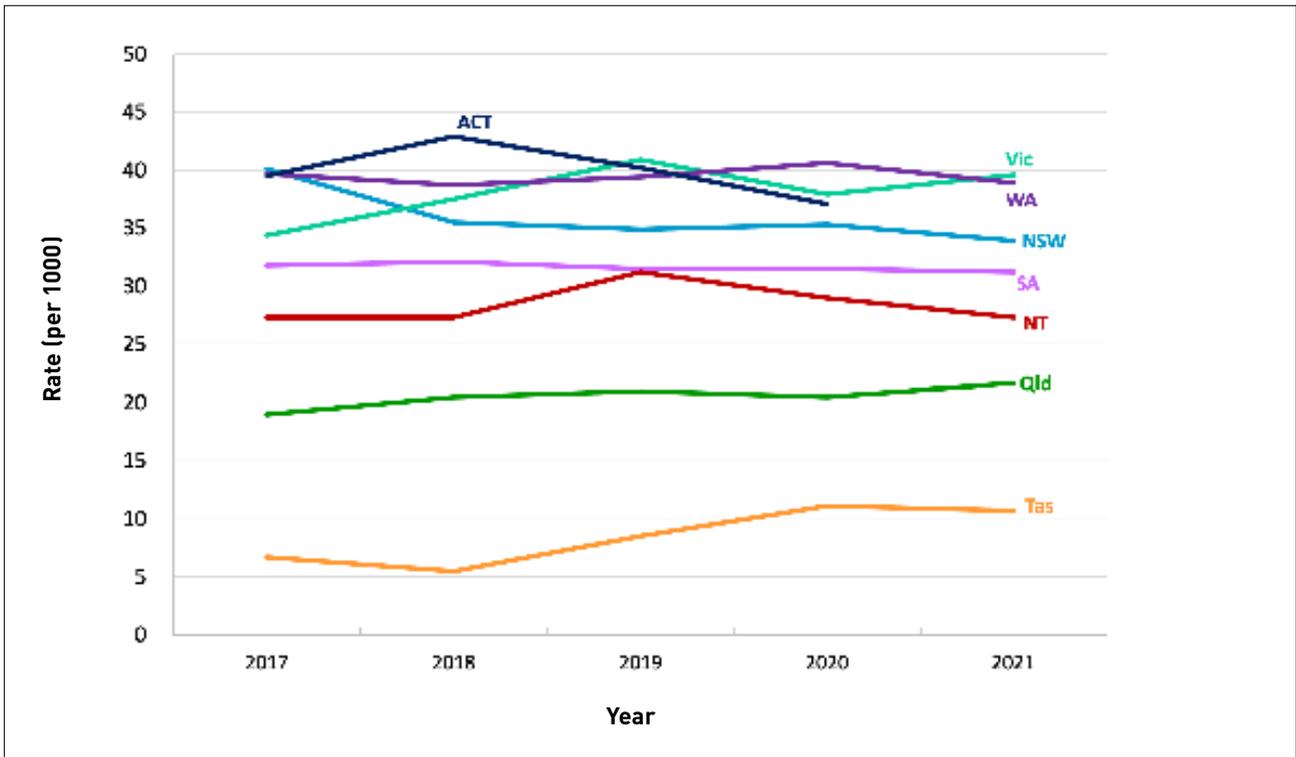
Family Matters campaign members continue to report poor and inconsistent practice in identifying Aboriginal and Torres Strait Islander children. Policy and legislation in each state and territory must require children and families to be asked at their earliest engagement with child protection systems about their Aboriginal and Torres Strait Islander identity, and for this status to be recorded as early as possible. Implementation measures must include training to practitioners on culturally safe ways to discuss and explore cultural identity with children and families. There must also be protections against the de-identification of children without consultation with Aboriginal and Torres Strait Islander communities.

DATA GAP

REPEAT ENGAGEMENT WITH CHILDREN PROTECTION SERVICES BY INDIGENOUS STATUS

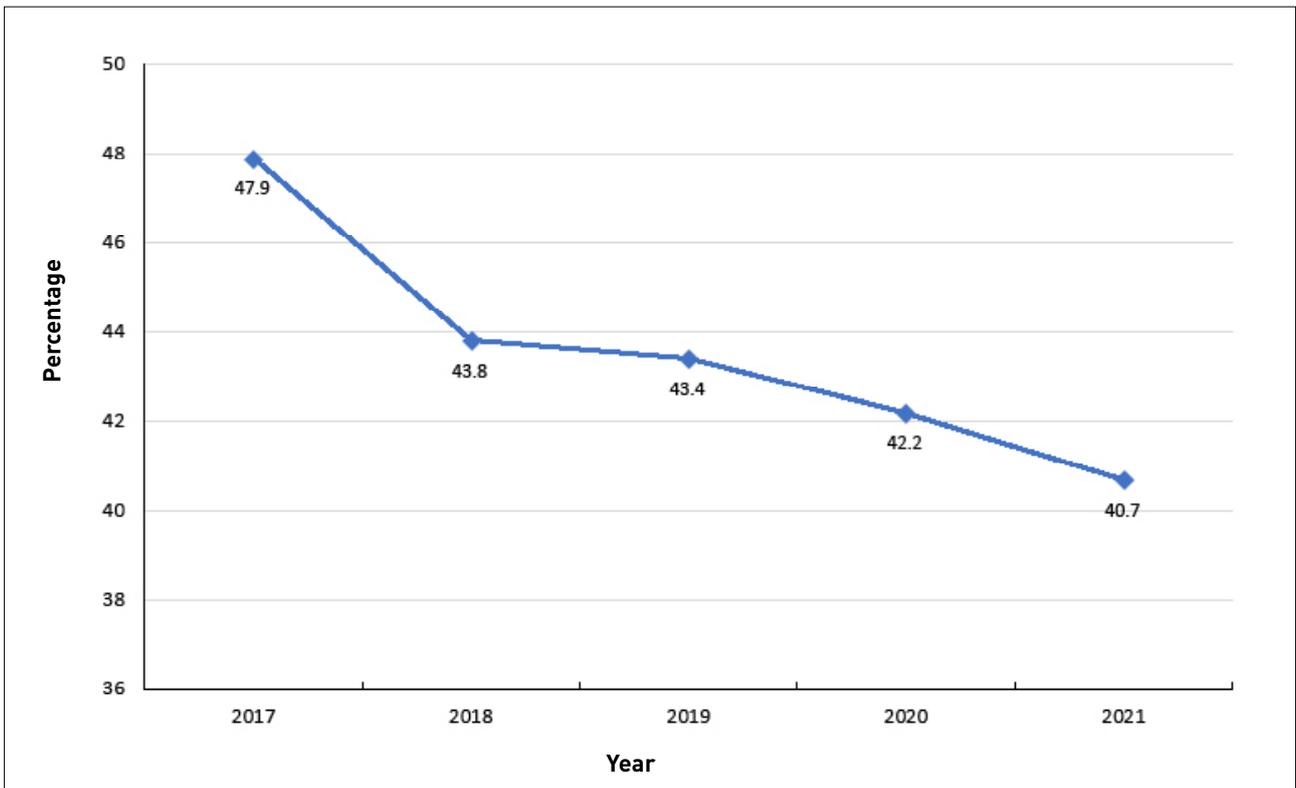
Child protection involvement is not just more likely for Aboriginal and Torres Strait Islander families but is also more likely to be repeated. Research has found that Aboriginal and Torres Strait Islander children are over-represented in recurrence at multiple stages of intervention (Jenkins *et al.* 2018). To better understand the full impact of over-representation, it is important to measure not just how many children have contact with child protection systems at each stage of contact (notification, investigation, substantiation, entry to child protection orders, entry to/exit from out of home care, reunification, entry to permanent care), but how often they experience this. National data on children who are repeat clients of child protection systems are not currently reported by Indigenous status.

FIGURE 5 Proportion of children placed with Aboriginal and Torres Strait Islander relatives or kin, by state and territory, 30 June 2017 to 30 June 2021



Notes: (a) In Victoria, caregiver type was unknown for 17% of children at 30 June 2017 and 13% of children at 30 June 2018. Therefore, actual proportions for Victoria may be higher than reported. (b) In Tasmania, the high number of carers whose Indigenous status is unknown may affect the identification of children living with Aboriginal and Torres Strait Islander caregivers. (c) For the Australian Capital Territory, suppression has been used to prevent possible re-identification of individuals due to small numbers. Note historical numbers have not been suppressed due to prior publication.
Data source: AIHW (2022b).

FIGURE 6 Proportion of children placed with Aboriginal and Torres Strait Islander carers nationally, 2016-17 to 2020-21



Data source: AIHW (2022b), Table S1.1.

C. Placement in out-of-home care

Figure 5 shows the proportions of children placed with Aboriginal or Torres Strait Islander relatives or kin in each state and territory. These proportions have remained unacceptably low in every jurisdiction, with the highest rate reported in Victoria (39.6%), followed by Western Australia (38.9%) and New South Wales (33.9%). Lower rates were reported in South Australia (31.2%), Queensland (21.7%) and the Northern Territory (27.3%). The rate remains critically low in Tasmania at 10.7%. Data for 2021 was unavailable for the ACT, which reported 37.1% in 2019-20.

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. Concerningly, only Victoria and Queensland reported an increase from 2019-20 in the *number* of children placed with an Aboriginal or Torres Strait Islander relative or kin (AIHW 2022b). These low rates and lack of improvement represent a severe risk to the ability for Aboriginal and Torres Strait Islander children in out of home care to maintain connection with their culture and community.

Another concerning trend is an increase in children being placed with non-Indigenous carers (and corresponding decrease in children being placed with Aboriginal or Torres Strait Islander carers). **Figure 6** shows the proportion of Aboriginal and Torres Strait Islander children placed with *any* Aboriginal and Torres Strait Islander carers (including those who are not family or kin) from 2016-17 to 2020-21. During that time, the national proportion has decreased from 47.9% to 40.7%. (There has been 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.)

These data suggest systemic problems with the implementation of the Placement element of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). The 'hierarchy' set out in the Placement element requires a child to be placed with Aboriginal or Torres Strait Islander relatives or kin; non-Indigenous relatives or kin; or non-related Aboriginal or Torres Strait Islander caregivers (SNAICC 2017). Nationally, there has been no significant change in the proportion of children placed in accordance with the ATSICPP in the last five years – 63.3% of Aboriginal and Torres Strait Islander children were placed in accordance with the ATSICPP in 2016-17, compared to 63.1% in 2021-22. More detail is provided for each jurisdiction in part 2.2 of this report, with all states and territories' data being deeply concerning. Severing an Aboriginal or Torres Strait Islander child's connection with their culture, family and community is destructive to their sense of identity and has long-term detrimental impacts on their overall wellbeing (SNAICC 2016).

D. Harm experienced in out-of-home care

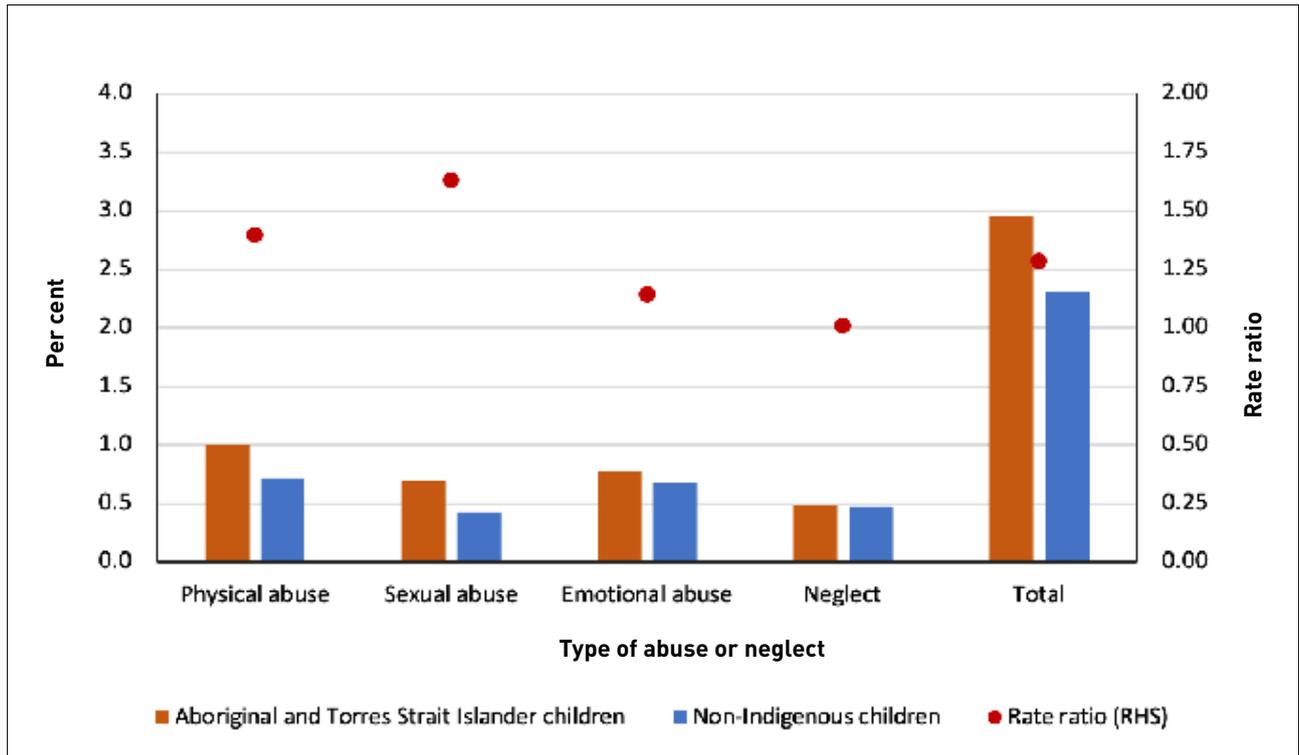
Because the removal of a child to out-of-home care is premised upon protecting the child from the abuse or neglect that has been substantiated to have occurred (and is very often a highly traumatic process for children and their families), government agencies have a profound responsibility to ensure that children are safe at all times in out-of-home care. However, this does not always occur: several hundred children each year experience further (compounding) trauma when they suffer abuse or neglect in care. In 2021, the AIHW commenced publication of a new data product – *Safety of children in care* – which presents data on substantiations of abuse or neglect against children living in out-of-home care. Abuse or neglect in care includes instances where the person held responsible is:

- a) the approved carer
- b) another person living in the household or care facility, including other children
- c) an employee of the responsible care service/agency or government department
- d) a person not living in the household, where a person in (a) or (c) failed to protect the child, or the action or inaction of a person in (a) or (c) contributed to the abuse (AIHW 2021).

Figure 7 shows the proportion of Aboriginal and Torres Strait Islander children and non-Indigenous children who were the subjects of a substantiation of abuse or neglect in care, disaggregated by the primary type of abuse or neglect, in 2020-21 (the only year for which data are available so far). Disaggregation by Indigenous status is currently only available on the national level, though we note that other data tables in this product are disaggregated by state or territory, age group, and sex.

Just under 3% of Aboriginal and Torres Strait Islander children in care – around 1 in every 33 children – were subject to a substantiation of abuse or neglect during 2020-21, compared to 2.3% of non-Indigenous children in care. Aboriginal and Torres Strait Islander children were more likely than non-Indigenous children to suffer all types of abuse (physical, sexual or emotional) in care, but equally likely to experience neglect. Physical abuse was the most common type for both groups of children, but Aboriginal and Torres Strait Islander children were notably 1.63 times more likely than non-Indigenous children to suffer from sexual abuse in care. These figures highlight a clear and urgent need for child protection systems to reduce the rates at which children are removed into out-of-home care – treating it as a *genuine* last resort – and to pivot towards helping families to reduce any risks to child wellbeing through the provision of therapeutic, holistic and culturally safe supports.

FIGURE 7 Proportion of Aboriginal and Torres Strait Islander children and non-Indigenous children subject to a substantiation of abuse or neglect in care, nationally, 2020-21



Notes: These data include cases where a substantiation of abuse or neglect in care was recorded between 1 July 2020 and 30 June 2021. This may include historical cases where the abuse occurred before 1 July 2020, as well as where children exited care before the date of the substantiation.
Data source: AIHW (2021d), Table 3.

FIGURE 8 Proportion of Aboriginal and Torres Strait Islander children and non-Indigenous children who were reunified with family from out-of-home care, by state and territory, 2020-21



Data source: AIHW (2022b), Table 2.3a.

E. Reunification and the impacts of permanency planning

Child protection intervention and removal to out-of-home care can have highly detrimental impacts on the stability of a child's relationships, culture and identity. To best support child safety and wellbeing, efforts must focus on achieving and promoting stability for children who come into contact with child protection services. For an Aboriginal and/or Torres Strait Islander child, those efforts must recognise that a child's stability is inherently grounded in the permanence of their identity in connection with family, community, culture, and Country (SNAICC 2016). This understanding is often incompatible with permanent care orders imposed through state and territory legal systems, which tend to prioritise physical and legal stability over relational permanence and connection to Country (SNAICC 2016), despite evidence that stability for children encompasses a broader scope of positive, caring and stable relationships *alongside* physical and legal permanency (Tilbury and Osmond 2006).

State and territory child protection systems have taken a focus in recent years on the introduction of legislation, policy and practices that prioritise stability for children through what is commonly referred to as *permanency planning*. Family reunification is recognised as the best-practice permanency planning outcome for children who enter out-of-home care, and in all jurisdictions ongoing child protection case management seeks to prioritise reunification where possible (AIHW 2022b). However, when reunification is deemed to be inappropriate, permanent care orders or adoption will be pursued. The effect of these orders is permanent separation of a child from their family until adulthood.

Consequently, for Aboriginal or Torres Strait Islander people, the implementation of permanency planning measures is met with apprehension – particularly because the introduction of maximum timeframes to pursue reunification (before the focus turns to permanent legal orders) carries the risk of permanently severing a child's connection to family, community and culture. Aboriginal and Torres Strait Islander people have consistently identified that a systems focus on permanent care and adoption reinforces a “downstream model” of tertiary responses, without a concurrent focus to heal the damage to families and communities resulting from colonisation and discriminatory government policies and practices (Turnbull-Roberts, Salter and Newton 2021). For example, the *Family is Culture Review Report* concluded that rigid time frames (in New South Wales) are problematic because “there are lengthy waiting lists for the services that are generally linked to restoration goals and restoration work is often limited to uncoordinated and cold referrals” (Davis 2019, p. 364).

Aboriginal and Torres Strait Islander people also commonly question permanency decisions that are based on a narrow construct of attachment theory –

one that pursues a singular attachment for a child to their carer and does not recognise the importance of kinship relationships and cultural identity development (SNAICC 2016). Relatedly, a particularly detrimental feature of permanent care orders (in many jurisdictions) is that there is no legal mechanism to ensure ongoing connection to family, community and culture (AbSec 2018). Even in jurisdictions where safeguards to ensure cultural connection – such as cultural support plans – are required, minimal compliance with these directives often means that a child's cultural rights are inadequately protected (CCYP (Vic) 2017).

The significant impacts of permanency planning are evidenced in the data, which show that the vast majority of Aboriginal and Torres Strait Islander children in out-of-home care are in long-term care arrangements, with reunification to their families not identified as a case plan goal. For Aboriginal and Torres Strait Islander people, this presents deeply distressing parallels to the Stolen Generations.

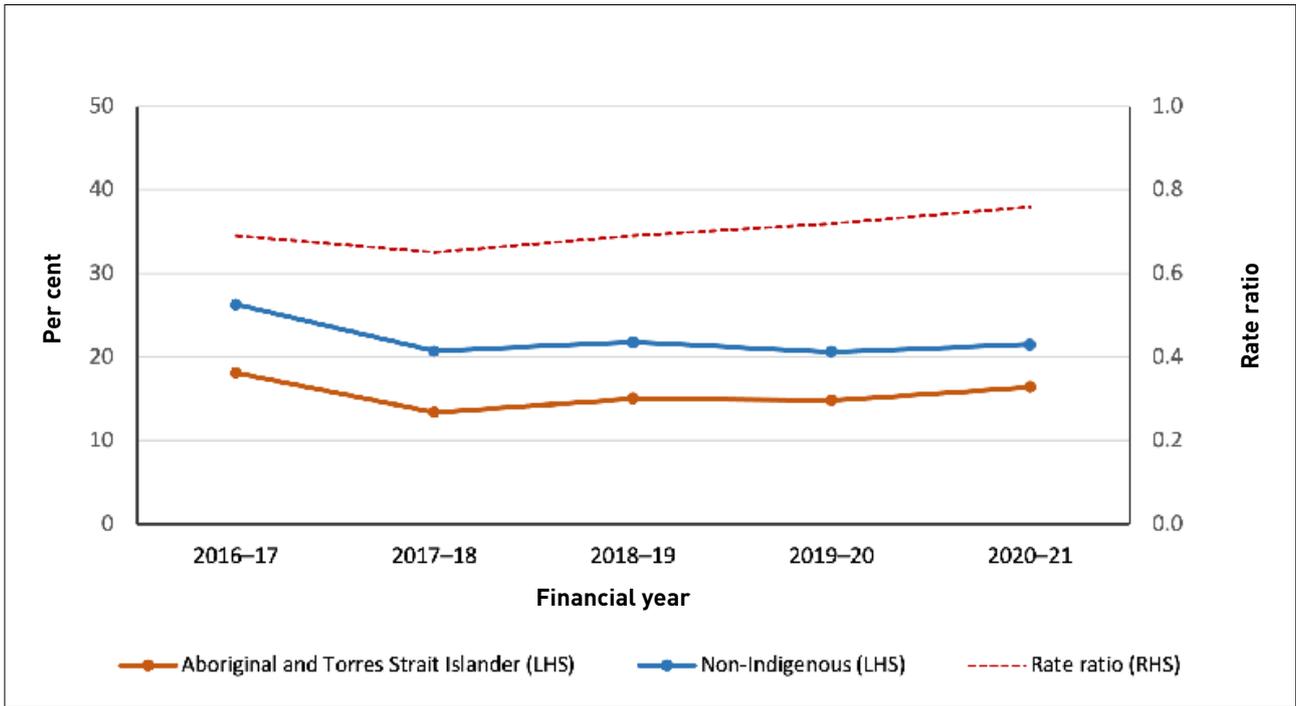
REUNIFICATION TRENDS

Note: *Reunification is typically defined as children being reunified with their parents, although differing definitions also include other family members or guardians, particularly if the child was living with these adults prior to entry into care (AIHW 2022b). When calculating proportions of children reunified from out-of-home care, the AIHW does not include children on long-term guardianship, custody or third-party parental responsibility orders in the denominator, because these children are not considered to be candidates for reunification in any jurisdiction (reflecting policymakers' desire for permanent outcomes). The proportions of children in out of home care reported in this discussion are therefore calculated from a significantly different base to other parts of the Family Matters report; as described above, the high prevalence of permanent care orders means that up to 80% of Aboriginal and Torres Strait Islander children in out of home care in 2020-21 were not considered as having a possibility of reunification with their families.*

Nationally, 1,682 Aboriginal and Torres Strait Islander children were reunified with their families from out-of-home care in 2020-21. This represented 16.4% of Aboriginal and Torres Strait Islander children in care and was an increase in both number and proportion from 2019-20 (when 1,567 children, or 14.8%, were reunified). **Figure 8** shows the proportions of Aboriginal and Torres Strait Islander and non Indigenous children who were reunified in each state and territory for 2020-21.

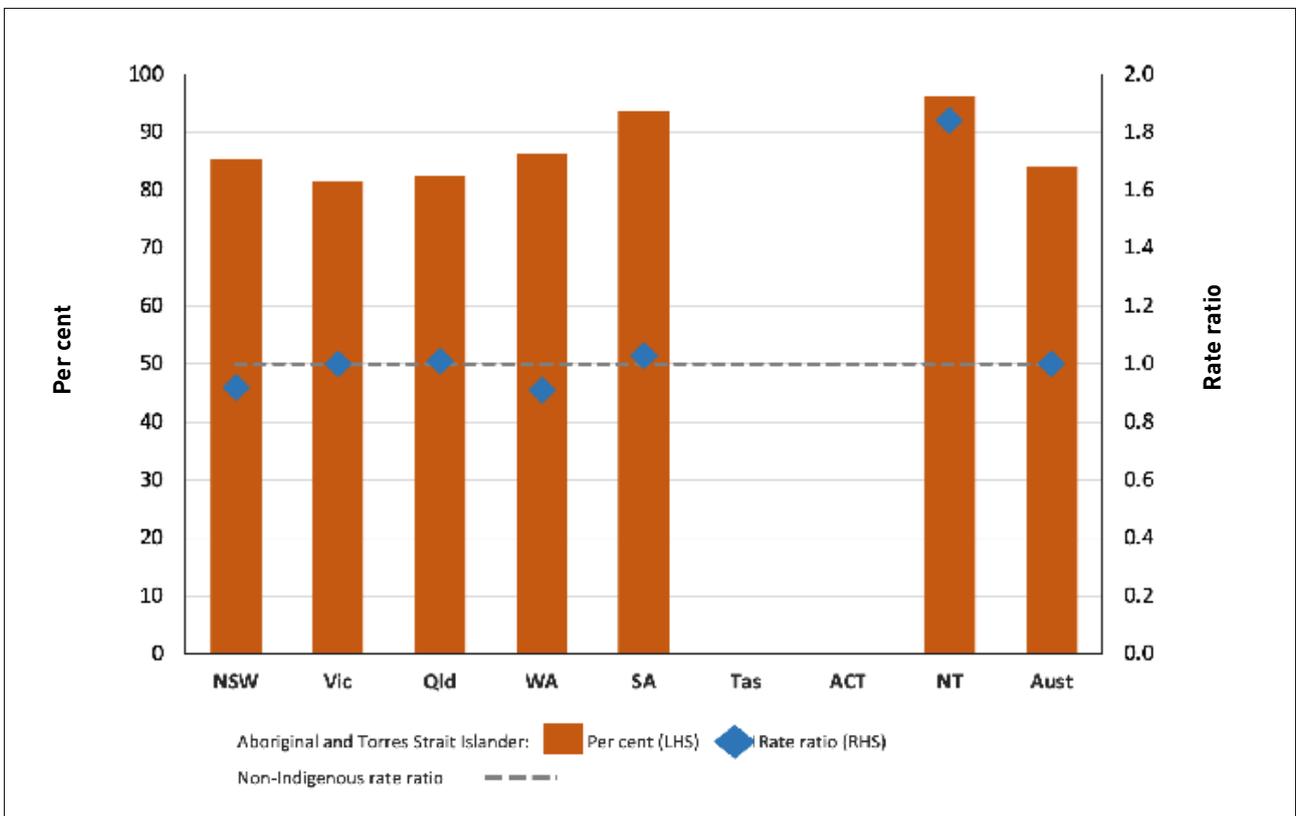
The highest rates of reunification for Aboriginal or Torres Strait Islander children were reported in the ACT (33.3%) and Victoria (32.0%). Reunification rates were significantly lower in Western Australia (17.0%) and Queensland (12.7%), and critically low in South Australia (9.9%), Tasmania (9.0%) and New South Wales (8.3%) (AIHW 2022). All states and territories, except the

FIGURE 9 Reunifications of Aboriginal and Torres Strait Islander children compared to non-Indigenous children – national proportions and rate ratio, 2016-17 to 2020-21



Data source: AIHW (2022b), Table 2.3a.

FIGURE 10 Aboriginal and Torres Strait Islander children who were reunified in 2019-20 and did not return to out-of-home care within 12 months, percentage and rate ratio compared to non-Indigenous children, by state and territory



Notes: Tasmania does not publish data on children returning to care after reunification, due to concerns over the possible identification of children from small numbers. This indicator was also suppressed for the Australian Capital Territory in 2019-20 in order to prevent the identification of individuals.

Data source: AIHW (2022b), Table 2.3a.

Australian Capital Territory and the Northern Territory, reunified a higher percentage of non Indigenous children compared to Aboriginal and Torres Strait Islander children in 2020-21. For example, 17.0% of Aboriginal and Torres Strait Islander children were reunified from out-of-home care in Western Australia, compared to 24.8% of non Indigenous children; and in South Australia, 9.9% of Aboriginal and Torres Strait Islander children were reunified, compared to 13.3% for non-Indigenous children. After Western Australia, the difference was most pronounced in Tasmania, which reunified 9.0% of Aboriginal and Torres Strait Islander children compared to 15.0% of non Indigenous children.

One potentially promising trend is that the national rate ratio for reunifications of Aboriginal and Torres Strait Islander children (compared to non-Indigenous children) has gradually been increasing since 2016-17 (see **Figure 9**). However, the proportions of children reunified each year have fluctuated significantly over this time period, so it is not yet possible to ascertain a clear positive or negative trend in either indicator, which is crucial – it would not be encouraging, for example, if an increase in the rate ratio was merely the consequence of a decrease in reunifications of non-Indigenous children.

RETURN TO OUT-OF-HOME CARE AFTER REUNIFICATION

Children who are reunified with their families from out-of-home care do, at times, return to care, though this is not the case for most children. **Figure 10** depicts the proportion of Aboriginal and Torres Strait Islander children who were reunified with their families in 2019-20 and did *not* return to out of home care within 12 months of reunification (that is, up to 30 June 2021), as well as the rate ratio comparing Aboriginal and Torres Strait Islander children to non Indigenous children, on a state by state basis. Promisingly, the national average proportion of Aboriginal and Torres Strait Islander children who did not return to care within 12 months of reunification was identical to that for non-Indigenous children – 84.1% – and was an improvement on the national proportion for Aboriginal and Torres Strait Islander children in the previous reporting period (80.8%). For individual states and territories, the lowest proportions were seen in Victoria (81.6%) and Queensland (82.4%), with the highest proportions occurring in the Northern Territory (96.3%) and South Australia (93.6%).

The only jurisdictions in which a lower proportion of Aboriginal and Torres Strait Islander children were reunified in 2019-20 but returned to care within 12 months, compared to non-Indigenous children, were New South Wales (rate ratio of 0.92) and Western Australia (0.91). The Northern Territory showed an extremely high rate ratio of 1.84, which was sadly due to almost half of the non-Indigenous children who were reunified during 2019-20 returning to out-of-home care during 2020-21 (AIHW 2022).

AREAS FOR DATA AND RESEARCH DEVELOPMENT IN REUNIFICATION

It is important to note that the Indigenous status of the families with whom Aboriginal and Torres Strait Islander children were reunified was not reported by any jurisdiction. Further, the AIHW notes that a lack of national consensus on the definition of reunification negatively impacts the comparability of these data (AIHW 2022b). To support policy and practice aimed at maintaining Aboriginal and Torres Strait Islander children's connection to culture, data development should address these concerns.

Research into the factors that support reunification will also be important. Previous research has found that reunification is most likely to be achieved within the six months immediately following a child's initial entry into out of home care, and that the likelihood of reunification occurring after one year in care decreases rapidly (Delfabbro, Barber and Cooper 2003; Barber, Delfabbro and Gilbertson 2004; Farmer et al. 2009; Fernandez and Lee 2011, Fernandez and Lee 2013). Other research has highlighted a range of challenges to family reunification more broadly, finding that structural barriers such as poverty and homelessness impede the likelihood of reunification occurring within a short time frame (Delfabbro et al. 2015; Fernandez et al. 2019) – given that Aboriginal and Torres Strait Islander families experience both poverty and homelessness at higher rates compared to non-Indigenous families (part 1.3), this area should be explored further for policy implications.

Going forward, the impact of COVID-19 on reunification practices in 2020 and 2021 is likely to become another key variable in research concerning reunification, since public health restrictions in some jurisdictions have severely limited contact between Aboriginal and Torres Strait Islander children, their families, and caseworkers (SNAICC 2020).

LONG-TERM GUARDIANSHIP, CUSTODY AND THIRD-PARTY PARENTAL RESPONSIBILITY ORDERS

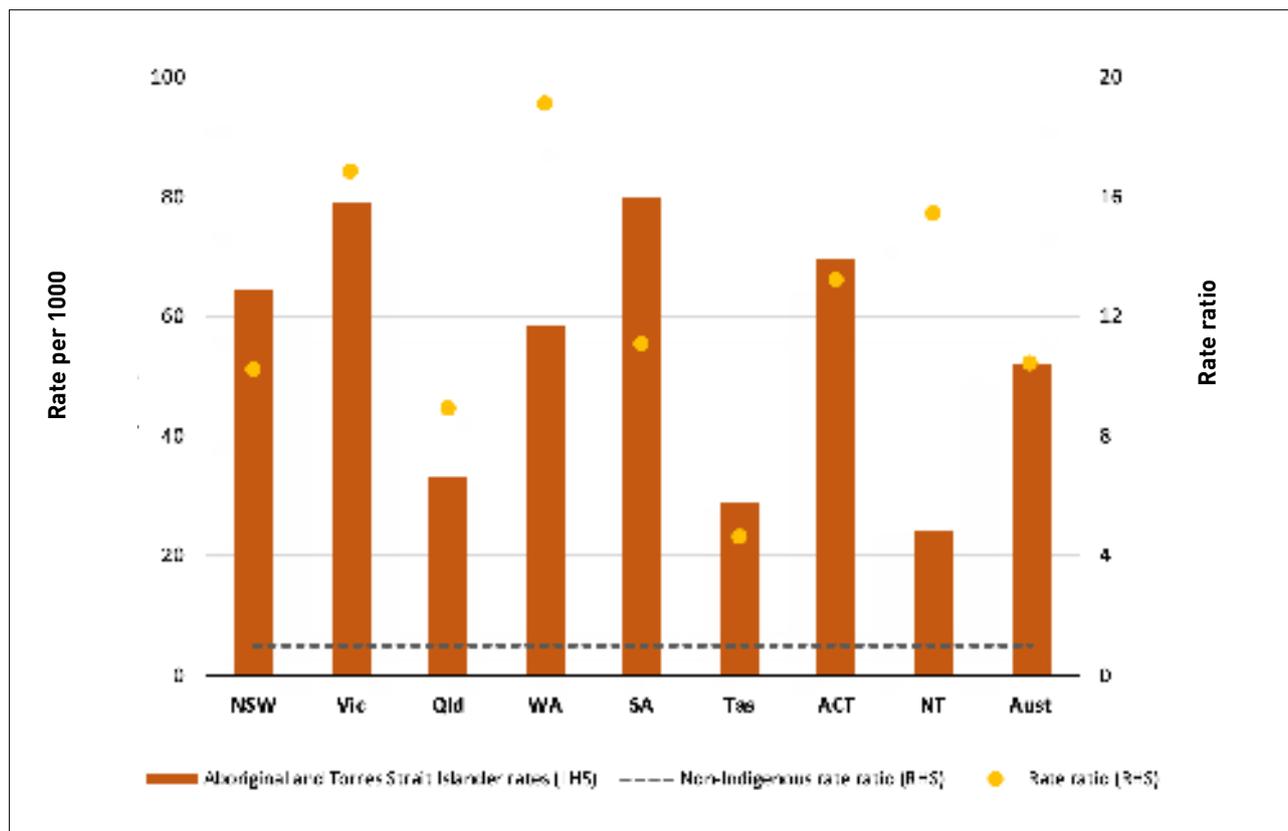
Linked to these low reunification rates, Aboriginal and Torres Strait Islander children continue to be severely over-represented in permanent care arrangements, including *long-term finalised guardianship and custody orders* (which permanently transfer guardianship of children to the state until age 18) and *long-term third-party parental responsibility orders* (which permanently transfer guardianship of children to a nominated person, ordinarily a kinship or foster carer, until age 18).

Across Australia at 30 June 2020, there were 17,638 Aboriginal and Torres Strait Islander children on finalised long-term third-party parental responsibility (TPPRO) or finalised long-term guardianship/ custody (GCO) orders, making up 79.3% of all Aboriginal and Torres Strait Islander children in out-of-home care (AIHW 2022). As a proportion of the total 44,337 children



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FIGURE 11 Rates and rate ratios of Aboriginal and Torres Strait Islander children and non-Indigenous children on long-term finalised guardianship or custody orders and long-term third-party parental responsibility orders, by state and territory, at 30 June 2021



Data source: AIHW (2022b), Table S4.10.

nationwide on finalised long-term TPPROs or GCOs, 39.8% were Aboriginal or Torres Strait Islander children. Nationally, Aboriginal or Torres Strait Islander children are 10.4 times more likely to be subject to a finalised long-term TPPRO or FGCO, at a rate of 52.1 for every 1000 children. **Figure 11** shows the rates of children on finalised long-term TPPROs and GCOs in each jurisdiction for 2020-21.

The highest rate was reported in South Australia, where 80.1 of every 1000 Aboriginal or Torres Strait Islander children were on a GCO or TPPRO. Victoria also reported a high rate of 79.1 for every 1000 Aboriginal or Torres Strait Islander children. In the ACT and NSW, the rates were 69.4/1000 and 64.3/1000 respectively. In Western Australia, 58.5 of every 1000 Aboriginal or Torres Strait Islander children were on such an order, and in Queensland the rate was 33.1/1000. The rates were lower in Tasmania (28.8/1000) and the Northern Territory (24/1000), yet still more than twice the national average for non-Indigenous children of 10.4 per 1000.

These data show a systemic preference towards long term placement for Aboriginal and Torres Strait Islander children. Comparatively low rates of short-term GCOs and TPPROs were reported across all jurisdictions. For example, 41.1 for every 1000 Aboriginal or Torres

Strait Islander children are on long-term GCOs. This is in stark contrast to a national average rate of 8.2 per 1000 Aboriginal or Torres Strait Islander children on a short term GCO.

Finalised long-term TPPROs are particularly significant when considering the implications of permanent care for Aboriginal and Torres Strait Islander children, because they reflect the circumstances where states and territories have transferred parental responsibility for a child to a kinship or foster carer and no longer count the child as being within the definition of out-of-home care. Arguably, children are most at risk of losing family and cultural connections on these orders as governments no longer take any responsibility for ensuring the maintenance of those connections and the protection of children's cultural rights.

The rate of placement for children on permanent care orders with Aboriginal and Torres Strait Islander carers was requested directly from all states and territories for the purpose of this report. **Table 1** presents the numbers reported by the jurisdictions that responded to this question. (Data are not shown for the Northern Territory because no permanent care orders were issued there in 2020-21).

TABLE 1 Proportion of Aboriginal and Torres Strait Islander on long-term finalised TPPROs placed according to the ATSICPP, by state and territory, at 30 June 2021

	Aboriginal and Torres Strait Islander relative/kin	Non-Indigenous relative/kin	Other Aboriginal and Torres Strait Islander carer	Non-Indigenous, non-relative/kin carer	Residential care
NSW	21%	16%	0.5%	0.1%	0%
Vic	52%	15%	3%	19%	0%
Qld	52%	38%	3%	7%	0.3%
SA	33%	33%	0%	33%	0%
NT	na	na	na	na	na
Tas	18%	50%	0%	32%	0%
ACT	11%	23%	0%	66%	0%
WA	25%	7%	41%	27%	0%

Notes: (a) In NSW, there were also 1352 children (63%) in unknown placement types. (b) In Victoria, there were also 47 children (12%) in unspecified placements. (c) The Northern Territory does not issue TPPROs.
Data source: Data supplied by governments for the Family Matters Report.

RESHAPING PERMANENCY PLANNING TO SUPPORT THE WELLBEING OF OUR CHILDREN

As noted above, maximum timeframes are imposed on permanency planning and reunification efforts in a purported effort to achieve greater stability for the child (AIHW 2022b). This focus on efficiency is evidenced by data, which shows that across Australia, 76.2% of children in out of home care achieved a permanency outcome – including reunification, long-term third-party parental responsibility orders, adoptions, and long-term guardianship/custody orders – within two years of entering care; furthermore, 52.6% of permanency outcomes were determined within 12 months (AIHW 2022b).

At present, it is difficult to observe quantitative longitudinal impacts for children under permanent care orders, and therefore to understand whether these orders are successful in meeting their objectives of long-term improvements in stability. There is also a lack of data as to the perspectives of children and young people. This presents an urgent need to monitor the wellbeing of children who are on long-term orders and seek the views of young people who have direct lived experience of the system.

The Family Matters campaign calls for permanency planning to focus on the timeliness of the provision of family support services (particularly intensive services), aimed towards reunification, rather than permanent care orders. To support the best interests and ongoing wellbeing of Aboriginal and Torres Strait Islander children, it is critical to preserve their identity and sense of culture through stable relationships with their extended family and kin networks, which are grounded in connection to Country (SNAICC 2016). This type of stability cannot be achieved through permanent child placement orders, which should only be used as an absolute last resort in extreme cases.

The permanent placement of Aboriginal and Torres Strait Islander children should only be implemented with the approval of an ACCO and in accordance with the ATSICPP, in order to ensure that a child's connections to their community and culture are paramount in any decisions made about their ongoing care and protection. Unfortunately, there has consistently been a lack of involvement of Aboriginal and Torres Strait Islander organisations in decision-making process relating to the welfare of our children. As a result, non-Indigenous worldviews have dominated decision-making about Aboriginal and Torres Strait Islander children, causing systemic failures in protecting them from harm.



AN ALARMING TREND TOWARDS INCREASED ADOPTION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

The Family Matters campaign has consistently identified that adoption from out-of-home care is not an appropriate option for Aboriginal and Torres Strait Islander children. Aligned to the discussion above, adoption represents the extreme end of the risk associated with severing a child's family connections in the context of child protection systems that are largely not providing culturally appropriate and safe child protection services led by Aboriginal and Torres Strait Islander people. The concept of adoption raises strong parallels with the experiences of the Stolen Generations and the resulting intergenerational trauma experienced by Aboriginal and Torres Strait Islander people. As explained by Turnbull-Roberts et al. (2021):

“Kinship processes play a foundational role in Aboriginal child development, and adoption represents a moment of rupture in these processes, particularly because adoption has not been part of Aboriginal customary culture”

The Family Matters Report 2021 highlighted an alarming spike in adoption numbers for Aboriginal and Torres Strait Islander children in recent years. In 2019–20 there were 12 adoptions of Aboriginal and Torres Strait Islander children, on par with the number of adoptions in 2018–19. In 2020–21 there were five (5) adoptions of Aboriginal and Torres Strait Islander children, with one adoption by Aboriginal and/or Torres Strait Islander parents and the other 4 children adopted by non-Indigenous parents. This was the lowest number of adoptions since 2016–17. This may have been affected by the disruption caused by the early stages of the COVID-19 pandemic, which occurred during the data reporting period.

National adoption data is not broken down by state and territory. States and territories were invited to provide adoption data to inform the Family Matters report. New South Wales, Queensland and Victoria each reported 1 adoption of an Aboriginal and/or Torres Strait Islander child in 2020–21. Zero adoptions were reported in South Australia, Northern Territory, Australian Capital Territory and Tasmania. Western Australia reported that adoption numbers were small, and reporting these would risk identifying individual children.

There has been a growing trend over the past 10 years towards adoption of Aboriginal and Torres Strait Islander children by non-Indigenous parents. Between 2001–02 and 2020–21 104 Aboriginal and Torres Strait Islander children were adopted from out-of-home care, with 69, or 66.3%, of these children adopted by non-Indigenous parents (AIHW 2021, p. 33). Between 2016–17 and 2020–21 34 Aboriginal and Torres Strait Islander children were adopted by non-Indigenous parents. It remains to be seen whether the lower number of adoptions in 2020–21 will emerge as a longer-term trend.

F. Inadequate investment in, and access to, family support services

Culturally appropriate, strengths-based family support services are vital for preventing children from coming into contact with child protection systems (Liddle et al. 2021). A lack of focus on measures designed to strengthen and support families is a major barrier to achieving stability for Aboriginal and Torres Strait Islander children. Bolstering efforts designed to prevent the removal of children from their families and support reunifications is critical for the achievement of Target 12 of Closing the Gap and the goals of *Safe and Supported*.

Quantitative analysis of family support service systems should consider both the numbers of Aboriginal and Torres Strait Islander children and families accessing services and governments' levels of investment. While quality data are not available to depict access rates for all family support services, data are published about access to intensive family support services (IFSS). These models provide time-limited, typically in-home, intensive casework supports aimed at addressing the complex needs of families experiencing vulnerabilities. IFSS delivered by Aboriginal and Torres Strait Islander community-controlled organisations have been found to bridge barriers to service access by providing culturally strong casework supports and assisting families to access and navigate the broader service system (SNAICC 2015).

Accordingly, **Figure 12** shows the frequency at which Aboriginal and Torres Strait Islander and non-Indigenous children commenced IFSS in 2020–21, alongside each state and territory government's average per child expenditure on IFSS. It can be seen that, nationally, Aboriginal and Torres Strait Islander children were 8.69 times more likely to commence an IFSS than non-Indigenous children, noting that data were unavailable for Tasmania. This represents an increase from 2019–20 (when Aboriginal and Torres Strait Islander children were 7.94 times more likely to commence a service) and continues a longer-term trend of growth in this rate ratio. Jurisdictional rate ratios of Aboriginal and Torres Strait Islander children commencing IFSS in 2020–21, compared to non-Indigenous children, ranged from 6.64 in Victoria to 24.5 in the Australian Capital Territory.

Figure 12's illustration of each state and territory's expenditure on intensive family support services per child in the population provides a proxy indicator of the level of investment relative to children's needs; however, it is not a very precise measure of the adequacy of spending because circumstances and support needs for children and families varies across jurisdictions.

For example, in Western Australia, while access for Aboriginal and Torres Strait Islander families to intensive family support appears high when compared to non-Indigenous children, the government invests far less per child (\$26.14) in these services than any other state or territory, which is likely to have significant impacts on service availability and quality. By contrast, Victoria and Queensland invest in intensive family support at the highest rates per child in the population (\$136.01 and \$106.24 respectively) of the states and territories with available data.

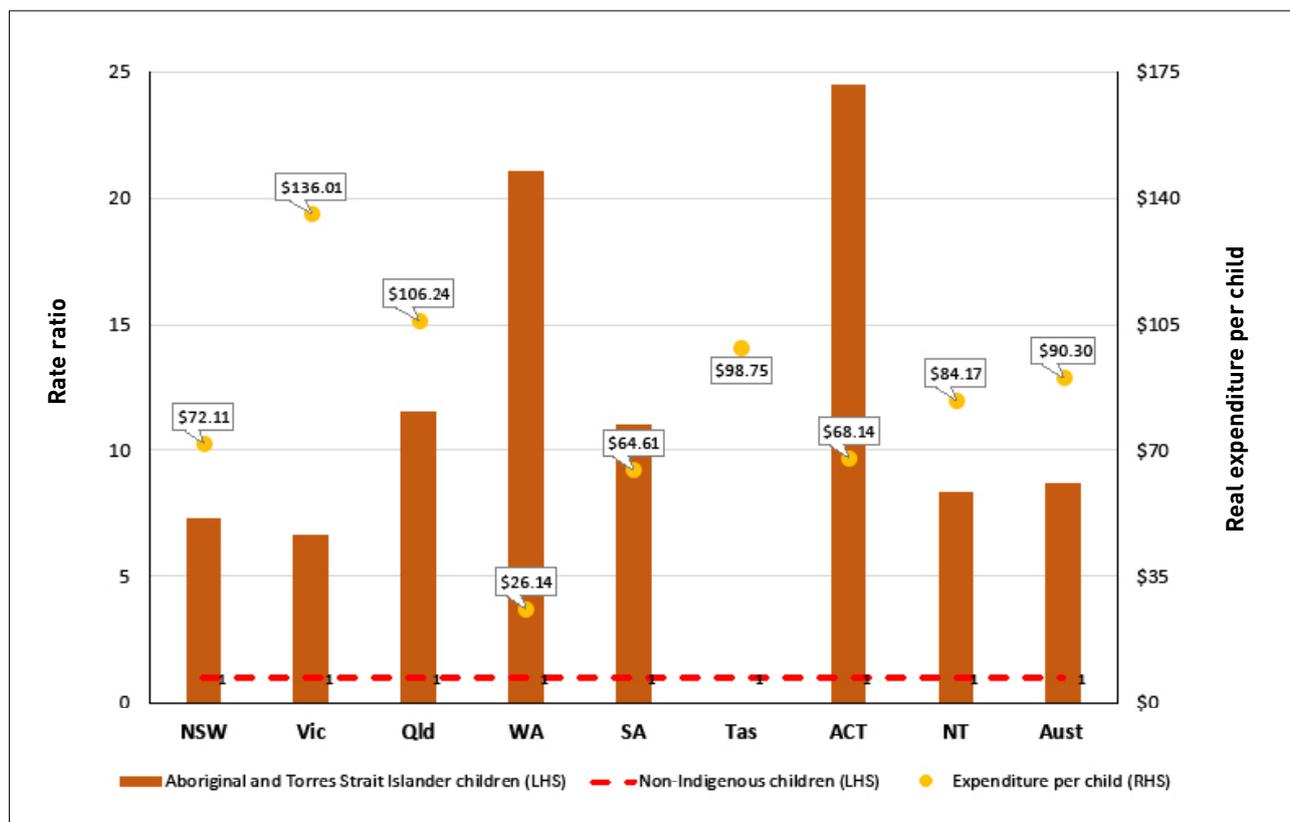
Although access to these support services is encouraging (that is, Aboriginal and Torres Strait Islander children are more likely than their non-Indigenous counterparts to receive needed services), the data should be approached with caution. Broadly speaking, the referral pathways for intensive family support services prioritise families who have been screened in for investigation of a *risk-of-harm* report; there is, therefore, some conjecture about the extent to which these services can act as an extension of investigative child protection functions driving child removal rather than supporting families to stay safely

together, particularly when they are not delivered by ACCOs (SNAICC 2015, SNAICC 2021). Furthermore, the over-representation of Aboriginal and Torres Strait Islander children across every stage of the child protection system necessitates higher rates of service access, therefore the high reported rates of access should not necessarily be looked upon with a view that the service system is somehow *more accessible* for Aboriginal and Torres Strait Islander children and families.

BROADER FAMILY SUPPORT SERVICES

As noted above, data on access to broader and earlier family support services, outside of intensive services, are limited and inconsistent due to a lack of agreed definitions of family support and inconsistent reporting frameworks between jurisdictions. Public expenditure data on child protection and family support services are also not available by Indigenous status nationally, which means that there is no clear picture of whether Aboriginal and Torres Strait Islander families receive an equitable share of resources relative to needs.

FIGURE 12 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous children commencing intensive family support services in 2020-21, and intensive family support services expenditure per child (general population), by state and territory



Notes: (a) IFSS refers to intensive family support services. (b) Data of Indigenous children commencing IFSS were unavailable for Tasmania. (c) Australian rate ratio excludes Tasmania. (d) Rate ratios calculated using number of children commencing IFSS and child population by state. Data sources: AIHW (2022b), Table P3; SCRGSP (2022b), Table 16.A34.

DATA GAP

ACCESS TO INTENSIVE FAMILY SUPPORT SERVICES

Available data reported nationally is limited to commencement of intensive family support services by Aboriginal and Torres Strait Islander status in only some states and territories. This data does not capture rates of completion, length of participation, or measures such as whether a family's support needs were fully met, whether children stayed with their families, or children were reunified following completion of the service. National child protection data development should target these indicators.

ACCESS TO NON-INTENSIVE FAMILY SUPPORTS

The gaps in understanding access to non-intensive family support services are compounded by definitional challenges and limited comparability of different types and levels of support provided by different services within and between states and territories. Data development should include the collection and publication of national data on Aboriginal and Torres Strait Islander children's and families' commencement of non-intensive family support services by program type, including efforts to more clearly define the types of services that are required and provided.

EVALUATION

There is a lack of thorough evaluation of early intervention programs for Aboriginal and Torres Strait Islander children and families, which limits governments' and ACCOs' ability to confirm the extent of and reasons for effectiveness. Better evidence as to the impacts of services that keep Aboriginal and Torres Strait Islander children with their families is critical to informing future policy and program development and implementation. Monitoring, evaluation and learning efforts should prioritise culturally appropriate evaluations of early intervention programs for Aboriginal and Torres Strait Islander children and families, particularly programs delivered by community-controlled organisations.

However, examination of real recurrent expenditure provides a useful indication of the level of funding dedicated to intensive and non-intensive family support for the purposes of family preservation or reunification/restoration, as compared to expenditure on protective intervention services – for example, receiving reports of child maltreatment, investigation and assessment of maltreatment concerns, children's court proceedings, and child protection interventions – and out-of-home care services. The premise of *Safe and Supported* is that redressing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care requires an increased focus on prevention and early intervention. In the short term, this would require a period of *double budgeting*, where increased resources are allocated to early intervention and prevention services in addition to full funding of tertiary services, in anticipation of long-term reduced demand in tertiary services (Burns et al. 2008).

Table 2 provides a snapshot of state and territory government investment in family support and intensive family support services as a percentage of total child protection government expenditure. Nationally, proportional investment in these services increased from 2019-20 (15.8%) to 2020-21 (17.0%). This has gone most of the way towards reversing the decrease observed between 2016-17 (17.3%) and 2019-20, and it

is to be hoped that this marks the start of an upward trend in the proportion of child protection funding directed towards family preservation and reunification. There is still a long way to go – the vast majority of child protection funding continues to be directed at protective intervention services (22.7%) and out-of-home care services (60.4%). In dollar figures, this means that of a total \$7.5 billion spent on child protection, only \$1.2 billion was directed to family support measures, compared to \$6.3 billion of expenditure on the tertiary end of the child protection spectrum.

During the 2020-21 financial year there were slight increases in overall child protection spending across all jurisdictions, except for the Northern Territory. There was, however, limited change in the composition of spending. The proportion of expenditure allocated to family support services remains concerningly low in most jurisdictions.

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). In spending just over a quarter of their child protection budgets on direct prevention services, these jurisdictions now have the third-highest and second-highest proportional expenditure rates nationally. The highest proportion of expenditure



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TABLE 2 Total percentage of child protection expenditure directed to family support and intensive family support services, by state and territory, 2016-17 to 2020-21

Jurisdiction	2016-17	2017-18	2018-19	2019-20	2020-21
NSW	16.15%	14.31%	13.44%	13.07%	14.99%
Victoria	25.72%	27.08%	25.21%	25.80%	27.35%
Queensland	15.50%	16.37%	16.28%	15.86%	14.22%
WA	6.71%	4.79%	5.34%	5.77%	5.63%
SA	14.97%	8.13%	8.67%	8.81%	9.78%
Tasmania	14.04%	13.10%	12.83%	18.49%	25.20%
ACT	12.38%	12.50%	12.02%	12.26%	10.73%
NT	25.26%	23.85%	24.80%	23.70%	26.47%
National	17.32%	16.45%	15.94%	15.81%	16.95%

Data source: SCRGSP (2022b), Table 16A.8.

directed to family support and intensive family support services was seen in Victoria (as has been the case for at least the past five years), which also saw its proportion increase slightly from 25.8% in 2019-20 to 27.3% in 2020-21. Slight proportionate increases were also observed for New South Wales (13.1% in 2019-20 to 15.0% in 2020-21) and South Australia (8.8% in 2019-20 to 9.8% in 2020-21), though the latter remains critically low.

Concerningly, proportionate expenditure on family support and intensive family support services decreased in the Australian Capital Territory (from 12.3% in 2019-20 to 10.7% in 2020-21) and Queensland (from 15.9% in 2019-20 to 14.2% in 2020-21). This was also the case for Western Australia, where the proportion remains alarmingly low at just 5.6%; as can be seen in Table 2, Western Australia has consistently directed the lowest proportion of its child protection funding towards family support and intensive family support services of any jurisdiction over the past five years.

While they can offer a useful proxy, data regarding the proportion of expenditure on family support must be interpreted with caution when considering to what extent states and territories are prioritising family support for Aboriginal and Torres Strait Islander children. Factors to consider include the amount of funding provided relative to the number of families requiring support, the quality of services funded, whether services are genuinely focused on prevention rather than child protection intervention, the cultural safety of services, and whether they are used by – and effective for – Aboriginal and Torres Strait Islander families.

For example, although Victoria had the highest proportional expenditure on family support and intensive family support, only 10.6% of children who commenced an intensive family support service in 2020-21 were Aboriginal or Torres Strait Islander (the lowest proportion out of any jurisdiction for which data are available). When compared to the 23.6% of children in out-of-home care in Victoria who were Aboriginal or Torres Strait Islander, this suggests that the level of culturally safe and accessible services is not aligned to the level of support needs for Aboriginal and Torres Strait Islander families.

The flow-on impact of this critically low investment is that only 36,416 children nationwide accessed intensive family support services in 2020-21 (AIHW 2022b). This is despite 120,800 children being the subject of an investigation for abuse or neglect, and 49,000 children being subject to substantiations (AIHW 2022b). Across Australia (excluding the Northern Territory), there are only 460 intensive family support service providers (AIHW 2022b). The capacity of these organisations to provide adequate and ongoing support to all families in need is severely limited.

As identified in SNAICC's consultations for *Safe and Supported*, these numbers point to significant systemic failures in providing access to support services for vulnerable families. High case numbers, combined with risk-averse practices, create an environment where family preservation and reunification work is minimal. While many systemic and individual barriers to access to family support services for Aboriginal and Torres Strait Islander families are known, there are no national Aboriginal and Torres Strait Islander-specific data on access to broader family support services.

INVESTING IN ACCOS

The shameful legacy of colonisation and the Stolen Generations, alongside continuing high rates of removal of Aboriginal and Torres Strait Islander children from their families, has led to a fundamental lack of trust in non-Indigenous service providers (SNAICC 2010). Furthermore, these organisations are often based in metropolitan centres and are difficult to access for families with resource constraints living in regional and remote communities. The lack of available services leads to referrals not being progressed in a timely manner. As a result, challenges faced by families are often not resolved before escalation to the removal of children (SNAICC 2016). There is an urgent need to support ACCOs to deliver holistic and culturally safe services to Aboriginal and Torres Strait Islander families.

To support ACCOs effectively, a meaningful proportion of funding is required to help ACCOs deliver relevant initiatives intended to service the broader population across the socioeconomic outcome areas of the National Agreement (per Clause 55, under which

government parties have agreed to implement measures to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations, particularly ACCOs). A meaningful proportion should take into account the service demands of Aboriginal and Torres Strait Islander people. Despite all jurisdictions committing to reporting on the proportion of their expenditure on ACCOs through the previous (2009–2020) *National Framework for Protecting Australia's Children*, current publicly available data products do not capture this measure. However, some states and territories provide this data to inform the Family Matters reports.

In 2022, seven states and territories (all except the Northern Territory) provided some data on their 2020–21 expenditure on ACCOs, broken down into family support, intensive family support, and out of home care services (very few jurisdictions currently contract out protective intervention services to ACCOs or other NGOs). These data are presented in **Table 3** measured against the total expenditure for child protection services as published annually in the *Report on Government Services*.

TABLE 3 Real recurrent child protection expenditure on Aboriginal and Torres Strait Islander community-controlled services, 2020–21, by state and territory

Jurisdiction	Type of service	Total expenditure (\$'000)	Direct funding to ACCOs (\$'000)	% of total expenditure on ACCOs
New South Wales	Family support and intensive family support services	384 896	20 727	5.39%
	Care services	1 577 305	117 832	7.47%
Victoria	Family support and intensive family support services	476 272	55 204	11.59%
	Care services	853 253	41 242	4.83%
Queensland	Family support and intensive family support services	214 573	45 321	21.12%
	Care services	990 898	7 175	0.72%
Western Australia	Family support and intensive family support services	34 489	7 279	21.11%
	Care services	347 469	6 417	1.85%
South Australia	Family support and intensive family support services	62 588	3 309	5.29%
	Care services	500 038	24 791	4.96%
Tasmania	Family support and intensive family support services	36 040	285	0.79%
	Care services	78 470	0	0%
Australian Capital Territory	Family support and intensive family support services	9 132	1 100	12.05%
	Care services	56 560	0	0%

Data source: SCRGSP (2022b), Table 16A.8; data provided by governments for the Family Matters Report.

Queensland leads the nation in the proportion of expenditure on ACCOs for the delivery of family support and intensive family support services (21.12%), which is commendable given the priority call of the Family Matters campaign for investment in community-led prevention and early intervention. However, Queensland has one of the lowest [non-zero] levels of investment in ACCOs to deliver out-of-home care services such as case management or carer supports. Western Australia also invests a relatively high proportion of its family support and intensive family support services expenditure in ACCOs (21.11%), but, as noted above, Western Australia invests the lowest proportion of funds in *overall* family support services (and by far the lowest per child on intensive family support) of any state or territory. So, while the percentage of funding to ACCOs is high in those categories, the amount of funding is comparatively low.

Relative to the other jurisdictions that provided complete data, the Australian Capital Territory's proportion of family support and intensive family support services expenditure directed to ACCOs (12.05%) was also relatively high, as was Victoria's (11.59%). The proportions that other state governments invested in ACCOs to deliver family support and intensive family support services – including New South Wales (5.39%) and South Australia (5.29%) – were disappointingly low, particularly for Tasmania (0.79%). However, New South Wales invested the highest proportion of any jurisdiction in ACCOs' delivery of out-of-home care services (7.47% of the total expenditure on care services), which is an important investment stream.

Overall, these data represent urgent and major concerns. A strength-based approach aimed towards keeping families together is the best practice solution for supporting children at risk of abuse or neglect while ensuring the maintenance of connection to family, community, culture, and Country as integral components of lifelong wellbeing. To reduce unnecessary state intervention in Aboriginal and Torres Strait Islander family life, expenditure must be re-balanced from statutory child protection intervention (that is, tertiary level and court-ordered) towards early intervention family support services (voluntary and secondary level) in order to ensure their widespread availability and use. This does not mean simply shifting funding away from out-of-home care systems that are also under-resourced – it means investing more to support families in the short- to medium-term, which evidence shows will lead to enormous tertiary systems savings in the long-term. Increased funding towards ACCO-led, strengths-based and culturally responsive family support services is immediately necessary to provide better protection for Aboriginal and Torres Strait Islander children and turn the tide of their over-representation in out-of-home care.

1.2 CHILDREN IN OUT-OF-HOME CARE BY 2031: AN ALARMING PROJECTION OF GROWING OVER-REPRESENTATION

Following endorsement by the Commonwealth, State and Territory governments of the first co-designed *National Agreement on Closing the Gap* in 2020, the development of the second *National Framework for Protecting Australia's Children* ('Safe and Supported') throughout 2021 was carried out in accordance with Closing the Gap Priority Reform Two – formal partnerships and shared decision-making. Developed through a co-design process with SNAICC and a national Leadership Group of Aboriginal and Torres Strait Islander experts, Safe and Supported marked a fundamental shift in national child protection policy. It recognises Aboriginal and Torres Strait Islander peoples' right to self-determination and supports Closing the Gap Target 12 – to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031. Under Safe and Supported, for the first time Aboriginal and Torres Strait Islander peoples will have our own specific Action Plan (to be released December 2022).

Attention among governments and ACCOs alike has now turned to how policymaking and service systems need to be overhauled to enable progress against the Closing the Gap Priority Reforms, Outcome Areas, and the goals of Safe and Supported. Alongside the release by most jurisdictions of their second Closing the Gap Implementation Plans, 2022 has also seen the establishment of the Early Childhood Care and Development Policy Partnership. Co-chaired by SNAICC and the Commonwealth Government, the Policy Partnership brings together multiple government agencies from each jurisdiction with Aboriginal and Torres Strait Islander peak bodies and community representatives. It will target a joined-up approach to policy areas that affect the early years of Aboriginal and Torres Strait Islander children's lives, including by driving implementation of the Early Childhood Care and Development Sector Strengthening Plan.

However, policy commitments are just the beginning – against the backdrop of these new and refreshed frameworks, the future projection of Aboriginal and Torres Strait Islander children in care remains deeply concerning and highlights just how much needs to change. The number of our children living in out of home care is projected to increase by 50% over the next decade (**Figure 13**) – compared to an increase of just 13.5% for non-Indigenous children, or a *fourfold* difference – if the current trajectory is not interrupted by profound and wholesale change to legislation, policy and practice.

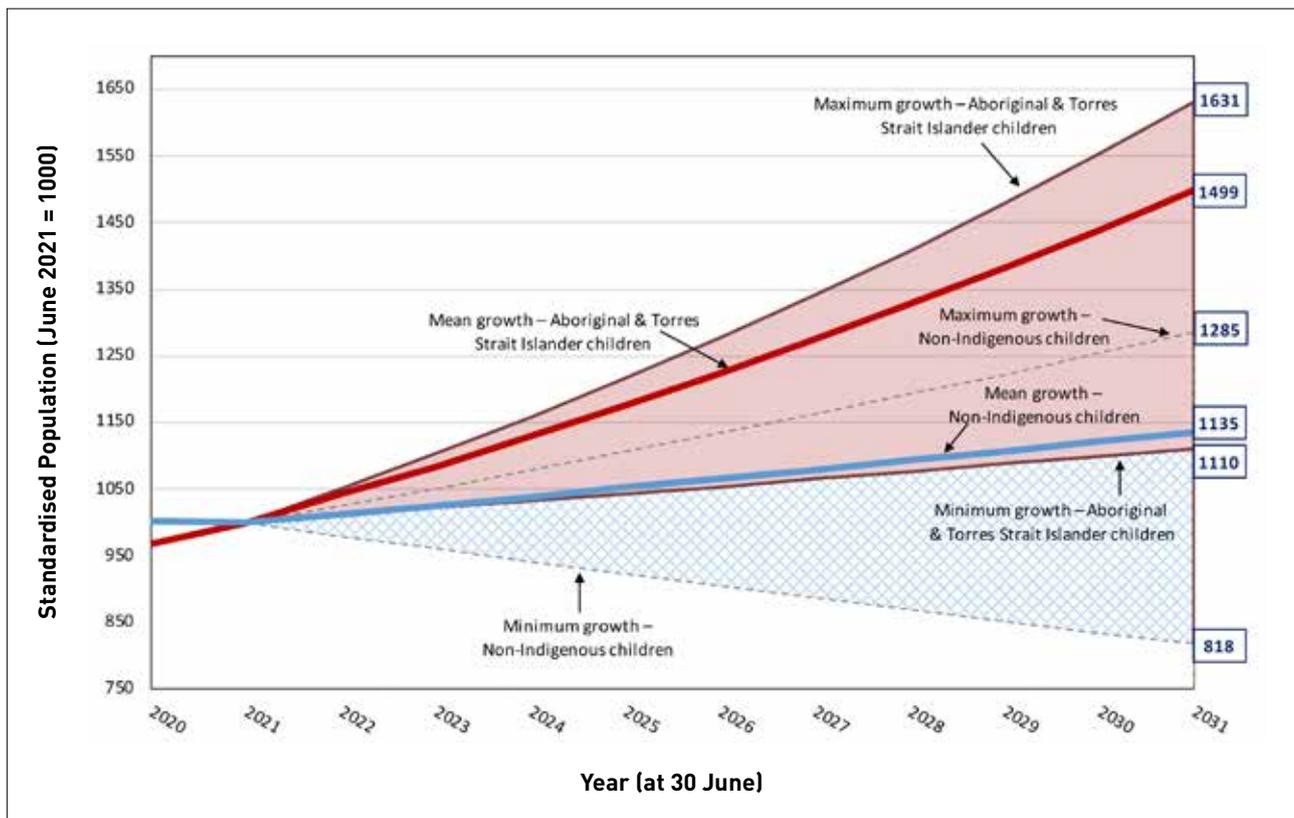
The projection shown in Figure 13 was calculated based on a simple model of population growth. Methods and caveats for the projection scenarios are described in Appendix 1. The dark red curve represents the mean projected growth of the Aboriginal and Torres Strait Islander out-of-home care population over the next 10 years, while the light blue line represents the mean projected growth of non-Indigenous children in out-of-home care.

The 2031 projected out-of-home care populations for both groups of children are marginally lower than those estimated in *The Family Matters Report 2021*, which projected that Aboriginal and Torres Strait Islander children would make up an absolute majority of *all* children in care by the year 2030. The difference is likely due to a slight slowdown in the growth rate for the overall number of children being placed in out-of-home care – in isolation, a potentially promising change. But this slowdown appears to be more significantly affecting the number of non-Indigenous children placed in care, which will tend to compound the over-representation of Aboriginal and Torres Strait Islander children more quickly. It is also troubling to see that both the numbers and proportions of Aboriginal and Torres Strait Islander children in care are projected to continue increasing in *all* scenarios shown above, while the minimum growth scenario for non-Indigenous children is one of a *reduction* in the out-of-home care population.

However, there remains hope that with increased efforts to support families and address the drivers of child protection intervention, this trajectory can be altered. By applying a more advanced model of population dynamics (currently being refined), University of Melbourne academics have shown that if early intervention and prevention efforts could reduce the rate of entry to out-of-home care for Aboriginal and Torres Strait Islander children by just 5% per year, the Closing the Gap target to cut over representation by 45% before 2031 can be met (Tan 2020). If efforts can also be applied to support increasing numbers of Aboriginal and Torres Strait Islander children in out-of-home care to reunify with their parents and family members, the target can be exceeded.

With such a sobering projection of growth for Aboriginal and Torres Strait Islander children in out of home care before us, the Family Matters campaign remains steadfast in its resolve to address this challenge and create better futures for our children. We call on governments at all levels to work with us, doubling and tripling their efforts to make sure that this projected tragedy – of Aboriginal and Torres Strait Islander children being separated from their families, communities, culture, Country and languages – does not play out.

FIGURE 13 Population growth trajectories of Aboriginal and Torres Strait Islander and non-Indigenous children in out-of-home care in Australia, 2020-21 to 2030-31



Data sources: Monash University modelling using Child Protection Australia data (AIHW 2022b)

In line with the National Agreement, to be successful, these changes must be driven by resourcing Aboriginal and Torres Strait Islander community-controlled organisations to provide family preservation, reunification, and other prevention and early intervention supports for our families; strengthening Aboriginal and Torres Strait Islander organisations and communities to be involved in the design of legislation, policy and practice at all decision making levels; and transforming government agencies and mainstream service providers to operate in ways that are genuinely culturally safe, responsive, and accountable to Aboriginal and Torres Strait Islander communities.

1.3 STRUCTURAL FACTORS AND SERVICE GAPS THAT AFFECT CHILD AND FAMILY WELLBEING

Overview

For thousands of generations, Aboriginal and Torres Strait Islander families and communities have raised their children strong and safe in their culture, caring for and nurturing their children despite significant challenges. But the consequences of colonisation, intergenerational trauma, and systemic racism continue to cause enduring physical and mental harm and perpetuate inequities relating to the social determinants of health (Thurber et al. 2021). One of the most significant and traumatic areas of government intervention in the lives of Aboriginal and Torres Strait Islander people has been the widespread removal of children from their families, carried out for more than a century under policies described as protection but which were found to constitute genocide by *Bringing Them Home: the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (HREOC 1997). The hundreds of thousands of people who were removed from their families under these policies – known collectively as the Stolen Generations – experienced the tragic loss of their family connections and cultural identity, and frequently suffered abuse, forced labour, and deprivation of educational opportunities.

In a series of reports on the Aboriginal and Torres Strait Islander Stolen Generations and their descendants, the AIHW and The Healing Foundation have established clear links between this mass child removal and long-term challenges for individuals. The reports estimated that, in 2018-19, there were 36,400 Stolen Generations survivors and 142,200 *adult* Stolen Generations descendants in Australia. This represents 36% (well over one third) of the adult national Aboriginal and Torres Strait Islander population (AIHW 2021a). These reports highlight that, compared to Aboriginal and Torres Strait Islander people who were not removed from their families, Stolen Generation descendants

are significantly more likely to have experienced discrimination, violence, criminalisation or poor health, and to have low levels of trust in the general community. If left unresolved, such intergenerational trauma can have debilitating, pervasive and long-lasting impacts on our future generations, leading to sustained overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems.

Compounding the effects of trauma, the pervasive nature of systemic racism also renders mainstream services ineffective and culturally unsafe for Aboriginal and Torres Strait Islander people, obstructs them from having decision-making power, and contributes to unjust outcomes (Liddle et al. 2021). To safeguard the rights of Aboriginal and Torres Strait Islander people to safety, family, housing, health, education, culture, and participation, it is critical for governments to invest in services that are accountable, high quality, and culturally safe. Moreover, these services must be holistic – multidimensional oppression and disadvantage cannot be successfully tackled from a siloed perspective.

A. Summary of headline indicators in key policy areas

SOCIOECONOMIC DISADVANTAGE AND POVERTY

Socioeconomic disadvantage impacts every aspect of a child's life, compromising their physical and mental health, educational outcomes, and access to healthcare (AIHW 2020). Children living in areas of socioeconomic disadvantage are more likely to experience insecure housing, social exclusion, and increased contact with the justice system (AIHW 2020). Aboriginal and Torres Strait Islander people face disproportionate socioeconomic disadvantage resulting from (among other causes) displacement, systemic racism, disenfranchisement, and stolen wages. They experience higher unemployment rates than non-Indigenous Australians and are more likely to live in areas with fewer employment opportunities, lower levels of education and training, and lower household incomes (AIHW 2021c).

The links between poverty and child welfare 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 overrepresentation was even more significant for Aboriginal and Torres Strait Islander children, at 42.5% of substantiations relating to children living in the bottom quintile of socioeconomic areas. Economic disadvantage is clearly a significant driver of child protection substantiations for Aboriginal and Torres Strait Islander children, with 30.7% of substantiations in 2020-21 being primarily due to neglect (compared to 17.2% of substantiations for

non-Indigenous children: AIHW 2022b). This reflects the significant barriers our families face in accessing the resources and supports they need to provide safe and appropriate care for their children.

POOR ACCESS TO SAFE AND AFFORDABLE HOUSING

Access to safe and appropriate housing significantly impacts the capacity of families to provide the care and protection required for their children to thrive. Across a range of housing measures, Aboriginal and Torres Strait Islander people consistently and disproportionately face barriers in accessing stable, affordable, and quality housing. 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 (three times faster than for non-Indigenous clients over the same period) (AIHW 2022d).

The National Aboriginal and Torres Strait Islander Health Survey also indicates that, in 2018-19 (the most recent survey year), Aboriginal and Torres Strait Islander people were:

- less than half as likely as non-Indigenous people to own their own home,
- 11 times more likely to live in social housing, and
- almost four times as likely to live in homes that are overcrowded (AIHW and NIAA 2020).

This is particularly detrimental in remote and very remote areas, in which residents face extremely high costs of living and challenges in accessing appropriate support due to a lack of service infrastructure (Liddle et al. 2021).

MATERNAL AND CHILD HEALTH INEQUITIES

Maternal health is an important factor in child mortality rates, and pregnancy, birth, and early childhood present crucial transition points for a child's healthy growth and development. Although some improvements have been made, Aboriginal and Torres Strait Islander mothers and babies have substantially worse health outcomes than non-Indigenous mothers and babies (Department of Health 2020). 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) (AIHW 2021b). And in 2020, Aboriginal and Torres Strait Islander mothers were roughly twice as likely to give birth to low-birthweight babies (12%) than were non-Indigenous mothers (6.2%) (AIHW 2021b).

Many of these worse outcomes are in part driven by Aboriginal and Torres Strait Islander mothers' higher exposure to risk factors such as poor nutrition, chronic illness, and high levels of psychological distress, all of which increase the likelihood of pregnancy complications (Department of Health 2020). Economic disadvantage and social exclusion also have a detrimental impact on the development of healthy babies and children, compounded by the fact that women from economically disadvantaged areas are the least likely to access important antenatal care, particularly during the first trimester when risk of foetal harm is heightened and when service links and referrals are best established (Moore et al. 2017). Quality antenatal care services not only have a positive effect on health outcomes for both mothers and infants (Arabena et al. 2015), but also provide opportunities to establish trusted relationships between families and healthcare professionals, address any risk factors for engagement with child protection services, and provide referrals to a range of other beneficial health and wellbeing services.

Aboriginal and Torres Strait Islander women are less likely to access antenatal care in their first trimester than non-Indigenous women – in 2020, the difference was almost 9%, with 68.8% of Aboriginal and Torres Strait Islander women and 77.7% of non-Indigenous women attending their first antenatal visit before 14 weeks gestation (AIHW 2021b). Aboriginal and Torres Strait Islander women also access fewer antenatal care visits overall; in 2020, 87.9% of Aboriginal and Torres Strait Islander mothers had attended 5 or more antenatal care visits during the full term of their pregnancy, compared to 94.6% of non-Indigenous mothers. With Aboriginal and Torres Strait Islander infants being removed at increased rates, the fear of having their pregnancy reported to child protection services (along with a broader distrust of non-Indigenous, potentially culturally unsafe services) may lead some Aboriginal and Torres Strait Islander women to avoid accessing antenatal healthcare completely. This reflects an urgent need to expand the provision of antenatal care by ACCOs, who can offer culturally safe and holistic wraparound care, including family support services where needed (Liddle et al. 2021).

EXPOSURE TO FAMILY VIOLENCE

The prevalence of family violence is considered to be significantly under-reported for all population groups across Australia, but it is estimated that Aboriginal and Torres Strait Islander women experience family violence much more frequently than non-Indigenous women (AIHW 2018, 2019). The limited evidence available suggests that many Aboriginal and Torres Strait Islander women do not disclose their experiences with family violence due to a range of factors, including fear of having their children removed, lack of confidence in police and community support, language and cultural barriers, and lack of culturally safe support services (Willis 2011).

Family violence is a leading cause of homelessness for Aboriginal and Torres Strait Islander women and children, and consequently contributes significantly to the overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems (Cripps and Habibis 2019). There are limited pathways to stable accommodation for Aboriginal and Torres Strait Islander women and children if they choose to leave family violence, as there are 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 violence (SNAICC, NFVPLS and NATSILS 2017). Further, witnessing family violence is typically categorised by child protection reporting rules as experiencing emotional abuse – which is the most common primary type of substantiated abuse or neglect for Aboriginal and Torres Strait Islander children, making up 47.7% of all substantiations in 2020-21 (AIHW 2022b). Finally, family violence can repeat throughout many generations, as people who have witnessed family violence as children are sadly more likely to perpetrate or be victims of violence in adulthood (AIHW 2018).

SUBSTANCE MISUSE

Parental substance misuse has been identified as a significant risk factor for child abuse and neglect – it can adversely impact a person’s ability to parent consistently, provide a safe and stable environment, maintain household routines, and respond to their children’s needs (AIHW 2022c). The use of substances during pregnancy can also present a risk of children developing foetal alcohol spectrum disorders (FASD). It is not uncommon for FASD to drive repeated contact with child protection systems, as parents are often ill-equipped with – and have very few ways of accessing – the knowledge and support required to manage children’s resulting complex needs (Williams 2017).

In 2020-21, Aboriginal and Torres Strait Islander people (age-standardised) were almost 6.5 times more likely than non-Indigenous people to access services to treat addiction to alcohol and other drugs (AIHW 2022a). The misuse of alcohol and other drugs is closely related to issues such as socioeconomic disadvantage, trauma, and mental ill-health. However, the relative lack of culturally safe, trauma-informed, and holistic services available to Aboriginal and Torres Strait Islander people means that the intersectional factors that contribute to substance misuse are often not addressed (Liddle et al. 2021).

B. Focus area: early childhood education and care

The most critical time in a child’s development are the early years. Evidence suggests that what happens during this period sets the foundations for future outcomes (Centre on the Developing Child 2010; Fox et al. 2015; Zeanah and Zeanah 2018). Experiences in early childhood shape the communication, language and literacy skills; numeracy and other non-verbal cognitive skills; self-regulation; and social and emotional wellbeing of children (OECD 2015). These domains have the greatest impact on children’s school readiness and engagement and longer-term health, social and wellbeing outcomes (VAEAI 2020).

There is overwhelming evidence that access to early childhood education and care (ECEC) for Aboriginal and Torres Strait Islander children in their early years can give them a greater start in life, lead to a smoother transition to school, and provide more positive experiences (Sims 2011; Biddle and Bath 2013). Yet many Aboriginal and Torres Strait Islander children miss out on accessing quality early years education. The ability to participate in culturally responsive ECEC services is crucial for strengthening Aboriginal and Torres Strait Islander children’s cultural pride, identity and sense of self (Saffigna et al. 2011; SNAICC 2012).

CURRENT LANDSCAPE FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND PROGRESS AGAINST CLOSING THE GAP TARGETS

The Australian Early Development Census (AEDC) measures children’s development at the time they commence full-time schooling across five domains: physical health and wellbeing; social competence; emotional maturity; language and cognitive skills; and communication skills and general knowledge. The results of the 2021 AEDC show increased developmental vulnerability for Aboriginal and Torres Strait Islander children since 2018. As shown in **Figure 14**, the 2021 results highlight an increase in inequality (AEDC 2022). That is, the gap that exists across developmental domains between Aboriginal and Torres Strait Islander children and non-Indigenous children by the time they start school has widened from 2018 to 2021 (noting, however, that most developmental assessment tools are designed from a Western paradigm and, as such, may not demonstrate Aboriginal and Torres Strait Islander children’s full strengths).



RELEVANT SOCIOECONOMIC OUTCOME AREAS OF THE NATIONAL AGREEMENT ON CLOSING THE GAP

OUTCOME 3: *that children are engaged in high quality, culturally appropriate early childhood education in their early years; corresponding target –to increase the proportion of Aboriginal children enrolled in year-before-full-time schooling early childhood education to 95% by 2025.* This outcome area acknowledges the role that quality ECEC plays in meeting the developmental needs of children.

Nationally, 96.7% of Aboriginal and Torres Strait Islander children are enrolled in year-before-full-time schooling, which is an increase from 93.1% in 2018 (PC 2021). The national rate of Aboriginal and Torres Strait Islander children enrolled in preschool has stayed on par with that of non-Indigenous children since 2017. However, enrolment data do not necessarily reflect levels of actual attendance and engagement of Aboriginal and Torres Strait Islander children in preschool programs. Aboriginal and Torres Strait Islander children who are not engaged in early years education are at a higher risk of developmental delays that will impact on their long-term health, education outcomes, and social wellbeing.

OUTCOME 4: *children thrive in their early years; corresponding target –the proportion of Aboriginal children assessed as developmentally on track in all five domains of the Australian Early Development Census is increased to 55% by 2031.*

Between 2018 and 2021 the proportion of Aboriginal and Torres Strait Islander children on track in all five domains of the AEDC dropped from 35.2% to 34.3%, indicating that progress is going backwards against the target. The gap is also widening, with Aboriginal and Torres Strait Islander children now less than half as likely to be on track on all domains than their non-Indigenous peers. The language and cognitive skills domain was the main driver of the decline among Aboriginal and Torres Strait Islander children, with the proportion of children on track dropping from 62.6 % (in 2018) to 59.4% (in 2021).

The impacts of the COVID-19 pandemic

The 2021 AEDC report provided insight into early impacts on children from COVID-19. It found that the impacts have not been evenly felt – Aboriginal and Torres Strait Islander children, and children living in the most disadvantaged areas of Australia, showed a larger increase in developmental vulnerability.

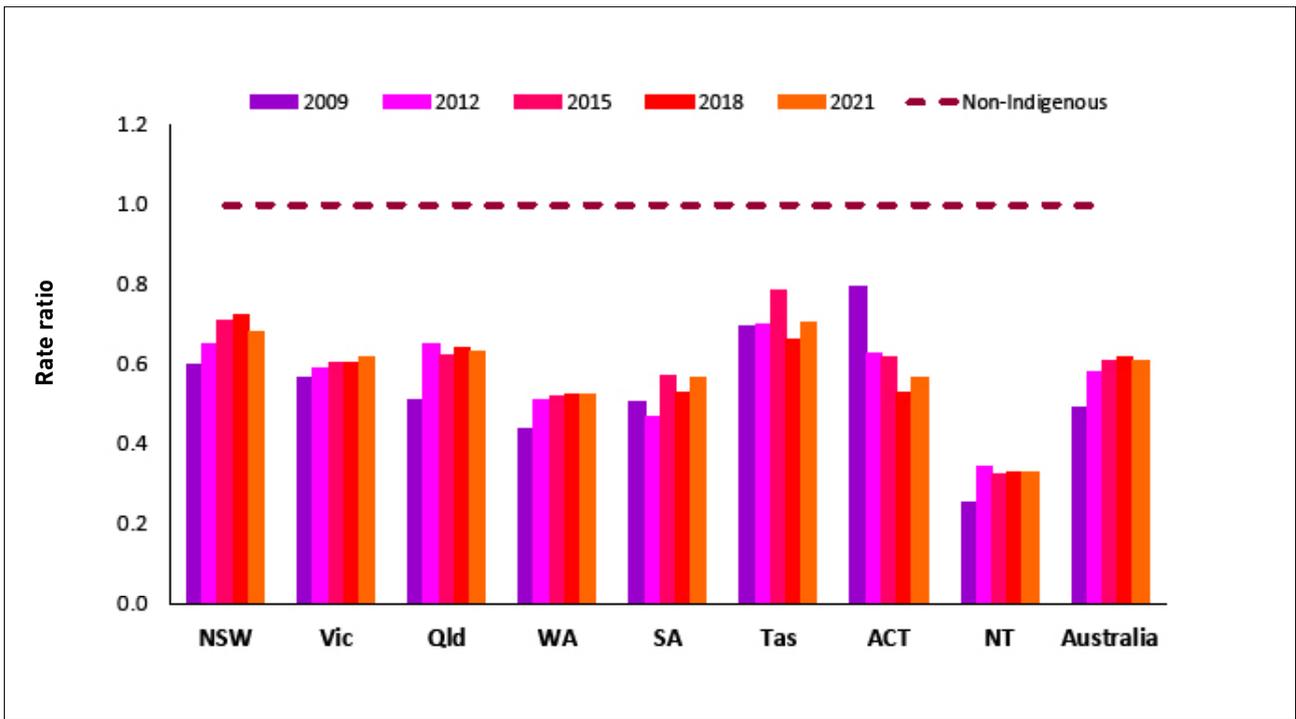
Whilst these statistics show a backward step in terms of developmental outcomes for Aboriginal and Torres Strait Islander children (likely made worse by COVID-19 lockdowns interfering with children's ability to attend ECEC services), ACCO services are driving change through high-quality, culturally safe early years services.

SNAICC has commenced development of a national intermediary, known as THRYVE, to support and represent Aboriginal and Torres Strait Islander early years services. THRYVE has three pilot state teams in New South Wales, Victoria and Western Australia, and a national team that supports early years services across the country. Through THRYVE's policy and sector development work (and working in partnership with ACCO early years services), community-controlled data are now being gathered in order to ensure the strengths and resilience of Aboriginal and Torres Strait Islander children and their families are adequately captured.

ATTENDANCE AT CHILD CARE SUBSIDY-APPROVED CHILDCARE SERVICES

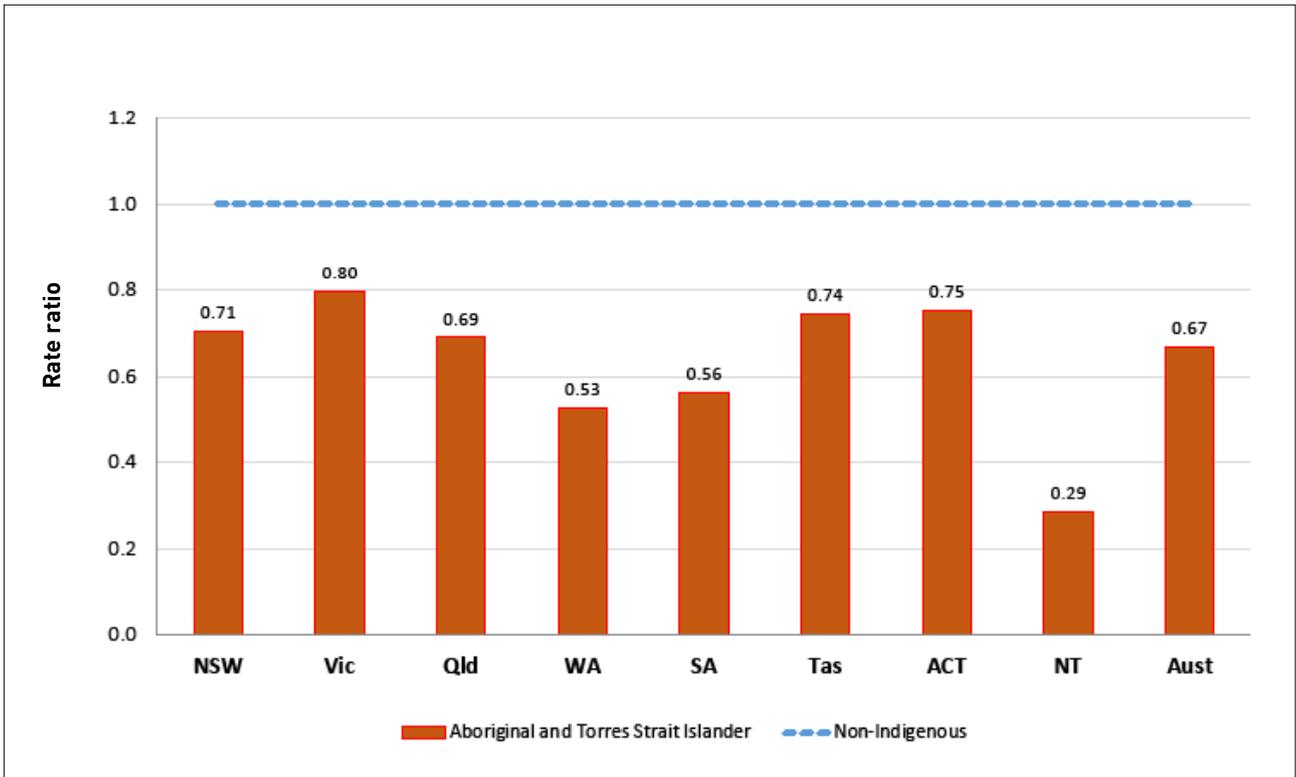
Despite a higher proportion of Aboriginal and Torres Strait Islander children enrolling in and attending preschool in the year before school, these gains are not reflected in access to education and care services earlier in childhood. Aboriginal and Torres Strait Islander children continue to be under-represented in ECEC services, such as long day care, family day care and out-of-school-hours care. As **Figure 15** shows, Aboriginal and Torres Strait Islander children aged 0–5 years across Australia were attending Australian Government Child Care Subsidy-approved childcare services at 67% the rate of non-Indigenous children during 2020–21, a slight increase from 65% in 2019–20 (SCRGSP 2022a). The attendance rate for Aboriginal and Torres Strait Islander children compare to non-Indigenous children was lowest by far in the Northern Territory (29%), and highest in Victoria (80%).

FIGURE 14 Proportions of Aboriginal and Torres Strait Islander children and non-Indigenous children on track against all five domains of the AEDC, rate ratios by state and territory, 2009–2021



Data source: AEDC (2010, 2013, 2016, 2019, 2022).

FIGURE 15 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous children aged 0–5 years attending Australian Government Child Care Subsidy-approved childcare services in 2020–21, by state and territory



Source: SCRGSP (2022a)

BARRIERS TO ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S PARTICIPATION IN ECEC SERVICES

The majority of Aboriginal and Torres Strait Islander families rate education as a primary aspiration for their children (Skelton et al. 2014). Yet there are wide ranging, complex and interrelated factors that prevent Aboriginal and Torres Strait Islander families from accessing and participating in ECEC services – services that are crucial in setting a strong foundation for the entire education journey (NIAA and SNAICC 2021). These barriers cross over four domains: individual, service, system and cultural (SNAICC and ECA 2019). Research has identified key barriers as including:

- family stress and challenges such as housing instability, lack of access to transport, unemployment, financial hardship, and discrimination
- preventable health conditions that stem from histories of colonisation, child removal and the long-term impacts of intergenerational trauma
- the complexity of the enrolment process, including the requirement for documents such as birth certificates and immunisation reports
- a lack of supports for families with low levels of literacy and/or low levels of awareness and confidence, who consequently may struggle to enrol their children (SNAICC – THRYVE NSW 2022).

To address these barriers and support Aboriginal and Torres Strait Islander children's participation in culturally safe ECEC services, policymakers must take both family-level *and* systemic approaches.

CULTURAL-LEVEL BARRIERS AND THE ROLE OF ACCOS

The ability to participate in culturally responsive integrated ECEC services is crucial for strengthening Aboriginal and Torres Strait Islander children's cultural pride, identity and sense of self (SNAICC – THRYVE NSW 2022). ACCO-led early years services are grounded within and managed by local communities, and have the unique ability to support children and families who have been marginalised by the continuing impacts of colonisation. They work with communities to make sure services provide a trusted, nurturing and culturally safe place for families and are best placed to transition children to school as ready and confident learners, proud of who they are. It is the relationships surrounding these centres that provide learning, knowledge, culture and connection every day.

Integrated services – such as Multifunctional Aboriginal Children's Services and Aboriginal Child and Family Centres – operate as fundamental hubs for Aboriginal and Torres Strait Islander families. These centres often provide a range of wraparound supports in addition to ECEC services, including allied health services (such as

regular health screenings, maternal and child health checks, speech pathology and occupational therapy), family supports, and referral pathways to specialist services. These services are vital for Aboriginal and Torres Strait Islander children and families and set these types of providers apart from non-Indigenous ECEC providers, as they act as an anchor point for relationship-building and to facilitate later referrals, as required.

At 30 June 2021, there were 99 integrated early years services nationwide that were Aboriginal and/or Torres Strait Islander community-controlled. This number has increased each year since the baseline year of 2016, when there were 86 services. However, for many of these ACCOs, there is currently a significant gap between how they want to respond to the needs of children and the reality of what funding and educational programs are set up to provide. Barriers to the most effective delivery of services include:

- funding models that are insufficient and poorly targeted towards Aboriginal and Torres Strait Islander methodologies
- burdensome and complex compliance and reporting requirements
- insufficient pay scales and limited recognition of cultural skillsets
- limited ability to demonstrate impact, particularly where most indicators are Western-centric
- trauma among the cohort of children and their families, contributing to absenteeism and low retention rates
- geographic and cultural isolation
- lack of recognition for local cultural challenges impacting on service delivery
- ACCOs having a limited role in decision-making at policy and commissioning levels (SNAICC – THRYVE NSW 2022).

SYSTEMIC BARRIERS TO AFFORDABILITY

System-level barriers, such as the Child Care Package and accompanying Activity Test (introduced in 2018), continue to impact negatively on Aboriginal and Torres Strait Islander children and families. With these models of funding reflecting an ECEC system that is largely set up to support working families, many Aboriginal and Torres Strait Islander children are missing out. For parents and/or carers who do not meet the minimum employment or study thresholds for the activity test, their children may be left without any access at all, despite evidence suggesting that children experiencing vulnerability may require up to 30 hours per week of high quality early education (Sims 2011).

Recent analysis by Impact Economics and Policy (2022) has found that Aboriginal and Torres Strait Islander families are over five times more likely than non-Indigenous children to be limited to one day of



subsidised ECEC per week as a result of the Activity Test. The same report found that low-income families earning between \$50,000 and \$100,000 are over six times more likely than other families to be limited to one day of subsidised ECEC per week. Not only are children from lower socioeconomic status families receiving less care, but a higher percentage are also receiving no care at all – with many parents that do not meet the minimum threshold for the Activity Test ultimately not engaging with the ECEC system at all (Impact Economics and Policy 2022). The temporary suspension of the Activity Test during the COVID-19 pandemic demonstrated how removing the barriers created by the Activity Test can lead to higher levels of engagement for Aboriginal and Torres Strait Islander children in early education. In alignment with the period of suspension of the Activity Test, Aboriginal and Torres Strait Islander children’s ECEC participation increased by 12% in the 9 months to June 2021. An early childhood education system should be based on a commitment to give all children strong early developmental opportunities, regardless of their parents’ and/or carers’ work and study participation.

In September 2022, the newly-elected Commonwealth Government extended the hours of subsidised ECEC available to Aboriginal and Torres Strait Islander families. Under these reforms, Aboriginal and Torres Strait Islander children are able to access 36 hours of subsidised childcare per fortnight from July 2023, an increase of 12 hours per fortnight. This is a positive step; however, at least 30 hours per week of subsidised care should be provided to improve educational and life outcomes for Aboriginal and Torres Strait Islander children (in line with the evidence base). Further, removing the activity test entirely would ensure that every Australian child can benefit from a quality early childhood education.





PART 2

THE YEAR IN REVIEW – JURISDICTIONAL BREAKDOWN OF EFFORTS TO ADDRESS THE OVER-REPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT-OF-HOME CARE

2.1 REVIEWING IMPLEMENTATION OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The Aboriginal and Torres Strait Islander Child Placement Principle was first developed in the late 1970s in response to the continued discrimination faced by Aboriginal and Torres Strait Islander children and families in child welfare systems across Australia. The Child Placement Principle contains five inter-related elements – prevention, partnership, placement, participation and connection – and is a central guiding framework for legislation, policy and practice to ensure self-determination for Aboriginal and Torres Strait Islander children and their families in contact with the child protection system. **Diagram 1** describes each of the five elements.

After 40 years, implementation of the Child Placement Principle remains poor and highly limited across the country. Full implementation of the Child Placement Principle aligns with all four Closing the Gap priority reforms: committing parties to partnerships with Aboriginal and Torres Strait Islander people, building the community-controlled sector, transforming government organisations, and sharing data at a regional level. Furthermore, all governments have committed in *Safe and Supported* to “undertake reform in each jurisdiction’s next review of relevant legislation

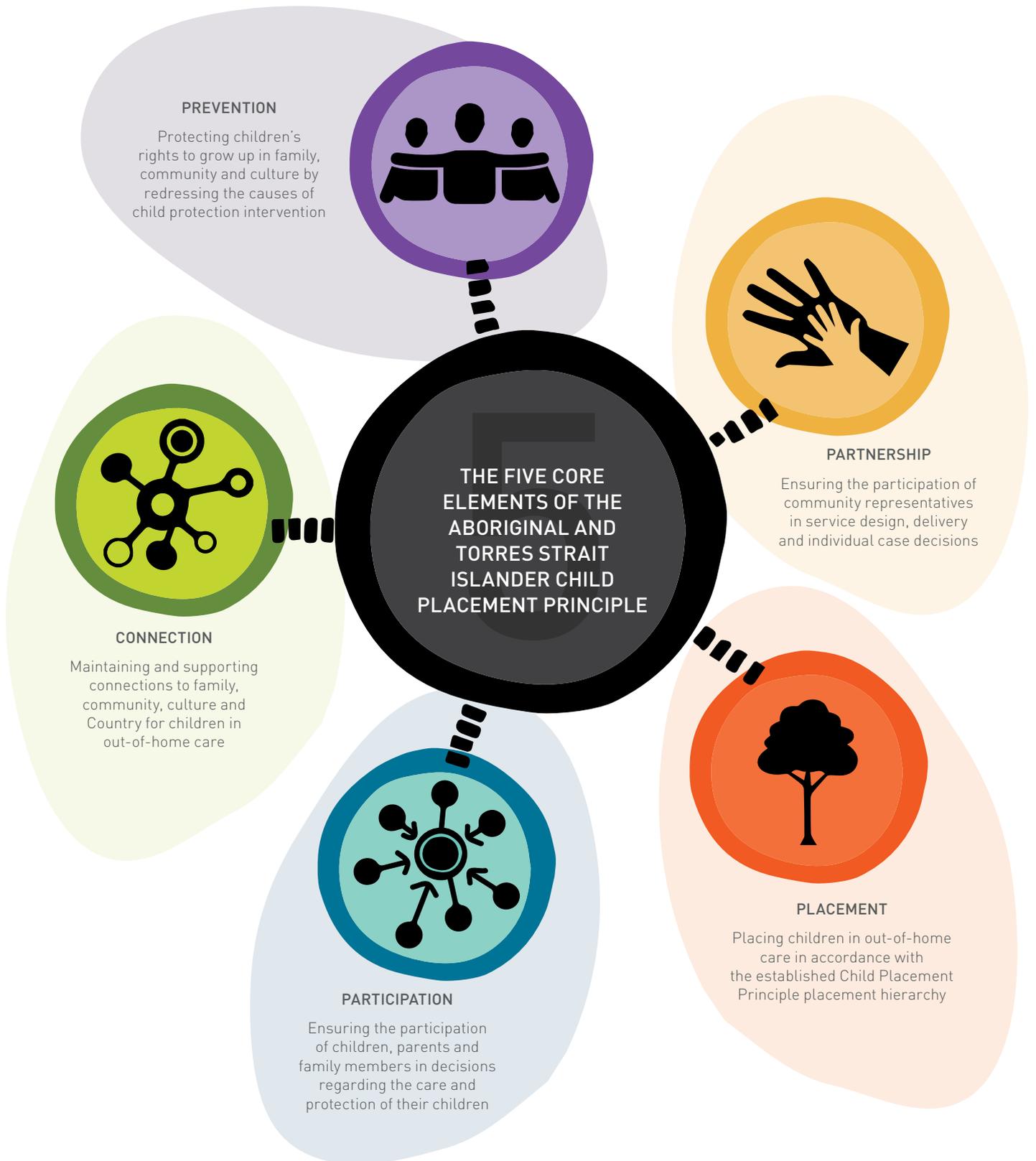
and policy, with a view to fully embedding the 5 elements of the Aboriginal and Torres Strait Islander Child Placement Principle” (DSS 2021). Governments have also committed through *Safe and Supported* to “promoting and enabling full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, including identifying, implementing and reporting on active efforts across each of its 5 elements, and through legislation, policy, programs, processes and practice” (DSS 2021).

Every year, SNAICC reviews the progress of each state and territory government in implementing the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle. These reviews are developed with input from both ACCOs and governments, and are informed by the best practice approach set out in SNAICC’s Child Placement Principle resource series. Quantitative and qualitative analysis is used to measure and review jurisdictions’ progress against the five elements and across five interrelated systems elements – legislation, policy, programs, processes, and practice.

Coverage of each jurisdiction in this part of the Report includes an overview of that state or territory’s Child Placement Principle review for the 2020-21 financial year. The full review reports will be made available on the SNAICC website, and we encourage readers to access these reports to examine their jurisdiction’s implementation progress in more detail.



DIAGRAM 1 The five elements of the Aboriginal and Torres Strait Islander Child Placement Principle



2.2 STATES AND TERRITORIES

The Australian, state and territory governments were requested to provide information about their current strategies, actions and investments to reduce over-representation, and to provide data in key gap areas relating to support and outcomes for Aboriginal and Torres Strait Islander children. This year, all governments provided input. Data provided has been used for the quantitative analysis in Part 1 of this report, and the responses from governments on their efforts to address over-representation are provided below. Governments were requested to provide a 500-word response. Where this was significantly exceeded, responses have been published in part. Full responses and data are available from the Family Matters website.

Family Matters jurisdictional working groups and Aboriginal and Torres Strait Islander community-controlled peak bodies and organisations play a key role in leading the campaign and calling for change and accountability in their states and territories. Accordingly, each year they are invited to comment on progress to address over-representation, including by responding to the government input described above. Commentary on progress to address over-representation was also sought from Aboriginal and Torres Strait Islander commissioners for children and young people (or similar roles) in various jurisdictions.



COMMUNITY VOICES

ACT

Building Block 1. All families enjoy access to quality, culturally safe, universal and targeted services needed for Aboriginal and Torres Strait Islander children to thrive

The ACT Government has not invested adequately in universal services through either sufficient funding to existing community-controlled health or family service providers or supporting development of new ACCOs. The community and ACCOs have been calling for increased funding for ACCOs to meet current demand, as well as expanding service offerings.

Building Block 2. Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children

ACCOs continue to support the implementation of the full complement of the *Our Booris, Our Way* review recommendations, including the transfer of case management of Aboriginal and Torres Strait Islander children to ACCOs.

The sector continues to call for further investment in existing and new ACCOs to ensure that Aboriginal and Torres Strait Islander children and families have access to services that meet their needs in culturally appropriate ways. This needs to be delivered alongside an increased role for ACCOs in case management and family-led decision making that is respected and acknowledged by Children and Youth Protective Services (CYPS). Mechanisms for Aboriginal and Torres Strait Islander Family Led Decision Making need to be independent of the Directorate and be delivered by ACCOs.

Building Block 3. Law, policy and practice in child and family welfare are culturally safe and responsive

The ACT community continues to be alarmed by the lack of culturally safe and responsive practice from CYPS. Aboriginal and Torres Strait Islander families continue to experience racism and discrimination at all points of the child protection system. Levels of training for staff are inadequate and are not resulting in culturally safe practices.

ACCOs and community members engaged with SNAICC in consultations on legislative reform to embed the ATSI CPP. The final report and Government response is not yet available publicly. ACCOs and Aboriginal community members expressed significant concerns that the recommendations from SNAICC will not be followed through on in changes to the legislation or in implementation.

Current practice for identifying Aboriginal and Torres Strait Islander children is extremely poor. Families are not being properly engaged in conversations about identity. This is resulting in children's identity being ignored or inaccurately recorded. This is reflected in low rates of placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander kinship carers.

Building Block 4. Governments and services are accountable to Aboriginal and Torres Strait Islander people

The announcement of the establishment of a Commissioner for Aboriginal and Torres Strait Islander children in the ACT in September was a welcome one. Although progress towards the implementation of this recommendation from the *Our Booris, Our Way* Review has been slow, it is a significant step forward that there will be a clear legislated role for the Commissioner and that the government are investing \$3.5mil for the establishment of the office.

Other/overall comments:

Community continues to call for the implementation of all of the *Our Booris, Our Way* Review recommendations. The progress that has been made is welcome but is happening to slowly and the experiences of children and families interacting with the child protection system continue to be unsafe and racially discriminatory.

GOVERNMENT INPUT – PROVIDED BY THE COMMUNITY SERVICES DIRECTORATE

The Community Services Directorate (CSD) remains committed to becoming a First Nations First organisation that enables self-determination. The implementation of recommendations from the *Our Booris, Our Way* review (OBOW) seeks to reduce over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, improve experiences while in care, and support safe restoration.

OBOW recommendations are reinforced through inclusion as the first domain in the recently released *Next Steps for our Kids 2022-2030: ACT Strategy to Strengthen Families and Keep Children and Young People Safe* (Next Steps). Next Steps sets out an ambitious reform agenda for the child protection and out-of-home care system. Reducing the number of First Nations children and young people interacting with the child protection and youth justice systems is a continued focus, as is self-determination and culturally safe practice in child and youth protection. A priority initiative under Next Steps is the development of Aboriginal Community Controlled Organisations (ACCOs) in child and family support services, as well as work towards transitioning of responsibility for case management of Aboriginal and Torres Strait Islander children to one or more ACCOs.

A key recommendation of the OBOW review was the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner, and this is progressing. The new role will be established through legislation, be independent and publicly report to the ACT Legislative Assembly and the Aboriginal and Torres Strait Islander community. The Commissioner will advocate both at an individual and systemic level, to promote rights and wellbeing. The Government will continue to engage the Aboriginal and Torres Strait Islander community to inform the establishment and recruitment of the Commissioner.

A mandatory Cultural Development Program forms part of orientation for new Child and Youth Protection Services staff. In addition to specific training, policies and procedures are reviewed regularly to ensure that the Child Placement Principle is embedded, applied and implemented in policy and practice. All policy changes are undertaken in consultation with the Ngura Naraganabang Advisory Group.

In December 2021, CSD engaged SNAICC - National Voice for Our Children (SNAICC) to progress embedding the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle in legislation. Throughout 2022, SNAICC has worked with local Aboriginal and Torres Strait Islander communities to build a consensus view and provide advice to the ACT Government. SNAICC's Final Report is due in the second half of 2022.

Monash University, Curijo and the Centre for Evidence and Implementation were commissioned to develop an External Merits Review process for the ACT child protection system. Aboriginal and Torres Strait Islander communities, organisations and service users have been consulted. A proposed model of external merits review is due in the second half of 2022.

A Family Group Conference Awareness Campaign has been launched to encourage participation by families.

Finally, the 'Recording the cultural identity of Aboriginal and/or Torres Strait Islander children and young people' policy was developed. This policy recognises that the accurate recording of the identities of children and young people is essential to fulfilling cultural, legal, policy and practice obligations.

OVERVIEW OF SNAICC'S 2020-21 ATSI CPP COMPLIANCE REVIEW

Prevention: During the reporting period, the ACT Government took steps to implement recommendations from the *Our Booris Our Way* review, the Territory's Aboriginal and Torres Strait Islander co-designed and led review on ways to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care. As part of this, the government committed \$5.7 million over five years to fund delivery of the Functional Family Therapy - Child Welfare Program (FFT-CW), through a partnership between Gulan

Gulwan Youth Aboriginal Corporation and OzChild. FFT-CW seeks to provide Aboriginal and Torres Strait families with the supports needed to prevent children from entering or remaining in care. Thirty-nine (39) Aboriginal and Torres Strait Islander families, including 120 children, successfully completed the program, according to data provided by the ACT Government. Despite this, Aboriginal and Torres Strait Islander children in the ACT were 13.8 times more likely than non-Indigenous children to be in out-of-home care (AIHW 2022). This is well above the national rate of 11.5 times for the same period (AIHW 2022). Of the children in out-of-home care, 48.5% have been in care for five years or more (AIHW 2022). This is an unacceptable rate of overrepresentation that must be addressed. In addition, the proportion of child protection funding provided to culturally safe prevention services was minimal compared to the need. The ACT's spending on family support and intensive family support services comprised only 10.73% of total funding spent on child protection in 2020-21 (SCRGSP 2022). This is a decrease from 12% during the last reporting period (2019-2020) and well below the national average of 16.92% (SCRGSP 2022).

Partnership: In a promising move, the government established the *Our Booris Our Way* Implementation Oversight Committee (OBOW IOC), to oversee implementation of the recommendations of the review, including legislative and policy reform. The OBOW IOC has however expressed frustration at the lack of progress with implementing review recommendations.

In the reporting period, the government continued to support ACCOs through the New and Emerging Aboriginal and Torres Strait Islander Organisations program. This program provides financial support to businesses and community organisations that develop and deliver culturally safe services to Aboriginal and Torres Strait Islander people. Yerrabi Yurwang, an ACCO established in 2019 to meet the needs of children and families of the North-Western Ngannawal region, received \$25,000 to assist with start-up costs in the reporting period. The government also committed \$425,000 over two years to support the design of a new facility for Gulan Gulwan to better meet its need to deliver a range of services for Aboriginal and Torres Strait Islander children and families.

Given Aboriginal children are significantly overrepresented in the child protection system in the ACT, it is essential that ACCOs are provided with the necessary funding and autonomy to meet the needs of families and carry out work across the child protection spectrum. This includes early intervention/prevention work, work to find and support kinship carers, provision of out-of-home care services and reunification services.

Placement: In 2020-21, 41.4% of Aboriginal and Torres Strait Islander children in out-of-home care in the ACT were placed with Aboriginal and Torres Strait Islander relatives/kin (SCRGSP 2022a). This is above the national average of 32.1% and above the 2019-2020 rate of

37.8%. In 2020-21, 26.26% of Aboriginal and Torres Strait Islander children in out-of-home care in the ACT were placed with non-Indigenous relatives/kin (SCRGSP 2022a). Community leaders reported that many placements were being listed as kinship placements when children are placed with non-Aboriginal family members. Community leaders felt strongly that, while these placements meet the definition of kinship care, they do not conform to Aboriginal community definitions of Aboriginal kinship care.

The rate of children being placed with other (non-relative/kin) Aboriginal or Torres Strait Islander carers was only 2%, well below the national average of 9.5% (SCRGSP 2022a).

ACCOs have not been funded and empowered to find, assess, recruit and support Aboriginal and Torres Strait Islander kinship carers. Due to the very low rate of placement of Aboriginal and Torres Strait Islander children with their Aboriginal and Torres Strait Islander kin, ACCOs must be supported to carry out this work. They are best placed to find carers given their knowledge of kinship ties.

Participation: From the commencement of the Family Group Conferencing Program (November 2017) to 30 June 2021, 49 Aboriginal and Torres Strait Islander families were involved in a family group conference, involving 106 children and young people (according to data provided by the ACT Government). Sixty-four (64) of the children and young people did not subsequently enter out-of-home care (at January 2021). It is promising that many children that participated in the program were not placed in out-of-home care. However, community leaders expressed concern about a lack of an Aboriginal and Torres Strait Islander-led process that is independent from government. In order for family group conferencing to bring about the best results for families, the program must be delivered by ACCOs with Aboriginal and Torres Strait Islander convenors, as this will create a culturally safe space for families and children to have a genuine say in decisions about the care of children (SNAICC 2017).

Connection: The number of Aboriginal and Torres Strait Islander children in out-of-home care with a current cultural care plan in place has declined in the reporting period. At 30 June 2021, 84.8% of Aboriginal and Torres Strait Islander children had a current cultural plan in place (AIHW 2022). Although this was above the national average of 73.4%, the rate is gradually declining in the ACT (86.5% in 2019-2020 and 91.9% in 2018-2019) (AIHW 2022). Community leaders reported that the information being included in cultural plans is tokenistic and plans are not fit for purpose.

Positively, 33.3% of Aboriginal and Torres Strait Islander children in care were reunified with their families in 2020-21 (AIHW 2022a). This is the highest rate of reunification compared to other jurisdictions, and well above the national average of 16.4% (AIHW 2022a). There has generally been a significant increase in reunification

rates over the past few years in the ACT (11% in 2019-2020 and 26.4% in 2018-2019) (AIHW 2022a).

In 2019-2020, 12 Aboriginal and Torres Strait Islander children between 0-16 years of age exited out-of-home care to a permanency arrangement (SCRGSP 2022b). While this is a relatively small number of children, community leaders expressed a strong concern that long-term orders were being used too often and without proper time and investment in family preservation and restoration.

NEW SOUTH WALES

COMMUNITY VOICE – PROVIDED BY ABSEC (NSW CHILD, FAMILY AND COMMUNITY PEAK ABORIGINAL CORPORATION)

Communities have again petitioned for fundamental change to the NSW child protection system, calling for an end to the harm of Aboriginal children, families and communities continue to endure. While there were some positives to note since the last report, a number of negatives need to be discussed. Community members are seeking improvement in practice and processes built on Aboriginal culture, and investment in the strengths and expertise of local communities. As highlighted in 2021, recommendations repeatedly called for by Aboriginal communities to drive their own solutions must be prioritised and implemented. Furthermore, NSW communities believe that the intended impact of these programs will not be met if they are exclusively Government-led.

The ongoing cycles of Government-led reforms have continued despite their inability to produce change. Specifically, the Family Is Culture recommendations were watered down and ongoing implementation suffered from a lack of partnership with Aboriginal communities. This lack of meaningful collaboration remains unaddressed, especially in the legislative review of Family Is Culture. While we welcome the progress made regarding the Closing the Gap funding proposals, we would like to note that Aboriginal communities and peak organisations have driven this progress; communities need to be trusted to take the lead on budget bids going forward. This continues to be a problem area, one that needs to be addressed - one ultimately solved by the Government taking a refined and dedicated approach to partnership.

Since the last report, AbSec intervened based on community voices in the review of the Structured Decision Making tools and the safety in care assessment design through consultation and policy advice based on community perspectives to the Office of the Senior Practitioner with the objective to enhance the Department of Communities and Justice (DCJ) child protection assessment tools. Further work was

completed in partnership with the DCJ regarding the Out-of-home care (OOHC) transition project, Aboriginal Family Preservation framework and the transformative recommissioning of the Permanency Support Plan, all in consultation with Aboriginal and non-Aboriginal organisations. We would like to acknowledge that all require recommitment in the next 12 months to implement stronger processes that ensure these projects meet the expectations of community and AbSec.

Family is Culture

Family is Culture, the 2019 independent review of Aboriginal children and young people in OOHC in NSW, called for the child protection system to be reformed at a structural level, guided by self-determination and accountability. Despite the *Children and Young Persons (Care and Protection) Amendment (Family is Culture Review) Bill 2022* currently under discussion by the NSW Parliament, ongoing input from Aboriginal communities and organisations have been either sidelined, overlooked or watered down.

We acknowledge the continued misrepresentation and dilution of recommendations outlined in the Family Is Culture report by the Department of Communities and Justice. It is imperative that these recommendations are implemented wholesale, reflecting the intent and the spirit of the commitments as they were submitted by Aboriginal communities. We would also like to note that this overdue legislative reform was delayed, with a commitment to begin in 2024, but only through advocacy efforts with the community saw action on this matter from the NSW Government.

Once more, the NSW Government has failed to adequately partner with Aboriginal people as key decision-makers. The sector, communities and supporters throughout NSW continue to advocate for the full implementation of the recommendations in partnership with Aboriginal people.

Closing the Gap

Over the last 12 months, the NSW Coalition of Aboriginal Peak Organisations have been working closely with communities and the government to finalise the 2022-24 NSW Closing the Gap Implementation plan. Ultimately, holistic support is needed for Aboriginal children and families to thrive. This must be built on a foundation of culturally safe and appropriate support, implemented by localised, culturally appropriated services, delivered by a skilled Aboriginal workforce. It is only through Aboriginal-led child and family commissioning, Aboriginal-led holistic system co-design and embedding the Aboriginal Case Management Policy in the child protection system that progress will be made. With the new Closing the Gap Implementation Plan in place until 2024, it is time for the rubber to meet the road, and ensure the Government meets the financial promises they have

made, as commitment alone will see the Closing the Gap targets unmet.

Aboriginal communities have again made themselves clear: self-determination is the only way forward. We would like to again note that Aboriginal communities are best placed to make the right decisions to support strong and thriving Aboriginal children and families, and they need to be allowed to drive the change they seek.

ABORIGINAL DEPUTY CHILDREN'S GUARDIAN (OFFICE OF THE CHILDREN'S GUARDIAN) – RICHARD WESTON

The Office of the Children's Guardian (OCG) has undertaken a significant program of reform over the past five years to improve how we regulate, oversee, and support organisations to uphold children and young people's right to be safe, including Aboriginal and Torres Strait Islander children and young people.

The Child Safe Scheme commenced on 1 February 2022. This scheme requires certain organisations to implement the Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse, in order to improve the safety of children engaging with NSW organisations. Out-of-home care designated agencies and adoption service providers are now in scope of the Child Safe Scheme.

The OCG welcomes the findings of the *Family is Culture: Independent Review into Aboriginal Out-of-Home Care in NSW* and is encouraged by the acceleration of the timeline for legislative reforms pursuant to the Family is Culture recommendations. The OCG will continue to implement reforms to better meet the needs of Aboriginal and Torres Strait Islander children and young people who come into contact with the child protection and out-of-home care systems. This includes a review of the accreditation criteria for statutory out-of-home care providers. Consultation has commenced with Aboriginal and Torres Strait Islander organisations delivering statutory out-of-home care, in order to identify practices that promote the safety, welfare and wellbeing of Aboriginal and Torres Strait Islander children and young people. The review of accreditation criteria will also incorporate the Child Safe Standards, as recommended by the Royal Commission, to create a safer out-of-home care system.

Mr Richard Weston, a Meriam Mir (Torres Strait Islander) man, took up his position as Deputy Children's Guardian for Aboriginal and Torres Strait Islander Children and Young People in January 2021. The position was created as part of the NSW Government's response to the Family is Culture review. As part of the Statutory Review of the *Children's Guardian Act 2019* (NSW), the OCG is reviewing the role of the Deputy Children's Guardian. This will include consideration of whether the role should be an identified position and what, if any, additional functions it could have to help reduce the overrepresentation of Aboriginal children in out-of-home care.

GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF COMMUNITIES AND JUSTICE (DCJ)

The NSW Government has made significant progress in its efforts to reduce the over-representation of Aboriginal children in the statutory child protection system. In July 2020, the NSW Government signed the *National Agreement on Closing the Gap*, which commits it to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC by 45%, and to reduce violence and abuse against Aboriginal and Torres Strait Islander women and children, by 2031. DCJ has developed delivery plans in partnership with the NSW Coalition of Aboriginal Peak Organisations, including Aboriginal Legal Services (NSW/ACT) and AbSec, to achieve these targets. NSW's 2022 Budget provided \$400 million funding for Closing the Gap initiatives, including three projects aimed at addressing the over-representation target:

- \$3.9 million over 4 years to develop an Aboriginal-led commissioning model,
- \$8.6 million over 4 years for the *Strong Families, Our Way: NSW Aboriginal Child and Family Self-Determination Project* to support local community-determined consultation mechanisms in districts across NSW and advance the implementation of the Aboriginal Case Management Policy,
- \$9.9 million over 4 years for legal/advocacy support for families at risk of having children removed.

The 2022 Budget also provided an additional \$98.7 million to establish six new Aboriginal Child and Family Centres and expand the culturally safe, integrated health and early childhood services provided by the existing nine centres to children, women, families and communities.

The NSW Government has also signed up to *Safe and Supported: the National Framework for Protecting Australia's Children*. This commits NSW to develop a jurisdictional plan to implement the ATSICPP across child protection legislation, policy, programs, processes and practice.

Family is Culture

The *Family Is Culture: Independent Review of Aboriginal Children and Young People in OOHC in NSW*, released in 2019, examined the reasons for the disproportionate and increasing number of Aboriginal children in OOHC in NSW. As at September 2022, 97% of the 3,026 case file recommendations made in the FIC Review had been implemented. Implementation of the 125 systemic recommendations is underway, guided by a partnership approach with Aboriginal stakeholders and communities. During April and May 2022, the NSW Government consulted with Aboriginal community members, service providers (including ACCOs) and legal stakeholders to seek feedback on the 25 systemic recommendations made by FIC around changes to laws

and court processes. A consultation report was released in September 2022 detailing the outcomes of those consultations, including which recommendations can be progressed immediately and which recommendations require further consideration and consultation.

Aboriginal Case Management Policy

The NSW Government is implementing the Aboriginal Case Management Policy, a framework for working with Aboriginal families in the statutory child protection system. The Policy helps caseworkers promote self-determination for families, including through Aboriginal family-led decision-making, using Aboriginal advocates and facilitators, and engaging with Aboriginal community-controlled mechanisms. The aims of the Policy are to reduce the need for more intensive/intrusive services through effective engagement and case management, and to address risks early and build the trust of Aboriginal children, families and communities in the child and family service system. DCJ has now commenced full implementation of the Aboriginal Case Management Policy in the Hunter Central Coast District.

Family preservation

During 2021-22, Family Preservation Programs delivered services to close to 17,000 children and young people, with over a third being Aboriginal children. DCJ is now recommissioning current family preservation contracts and co-designing a new service model for Aboriginal Family Preservation, with the design process including Aboriginal service providers, families and communities. All funding for Permanency Support Program family preservation packages (up to \$11 million per annum, or 140 packages) will be diverted to ACCOs by June 2024, supporting approximately 300 more Aboriginal children and young people each year once this transition has occurred.

Training and supervision for DCJ staff

Through improved training and supervision for Department staff, DCJ is working to embed a cultural lens across its work with Aboriginal children and families. DCJ has redesigned mandatory training for new child protection caseworkers, including on how to work better with Aboriginal families. The new 17-week Caseworker Development Program was developed in partnership with AbSec, Stolen Generation Organisations and Grandmothers Against Removal. The Connecting with Aboriginal Communities program has also been redesigned and relaunched as an online two-day cultural capability training for all DCJ staff. Finally, Group Supervision (where non-emergency decisions about a child at risk are made through a shared decision-making process that prioritises self-determination and strengthening children's cultural connections by involving family, kin and community) has been rolled out to caseworkers across NSW.

New Aboriginal leadership in DCJ

In late 2021, a new Deputy Secretary for Transforming Aboriginal Outcomes (Wiradjuri man Brendan Thomas) was appointed to lead a new division within DCJ dedicated to improving Aboriginal outcomes in criminal justice, child protection, housing, and domestic and family violence. And in 2022, DCJ's Office of the Senior Practitioner established a new Director of Aboriginal Culture in Practice role to develop a Quality Assurance Process for case work and decision-making involving Aboriginal children and young people. Ngiyampaa-Weilwan woman Noni Greenwood has been appointed to the role.

OVERVIEW OF SNAICC'S 2020-21 ATSI CPP COMPLIANCE REVIEW

Prevention: The New South Wales Government's *Aboriginal Outcomes Strategy 2017-2021* sets out its commitments to increase access to early intervention for Aboriginal families and reduce the overrepresentation of Aboriginal children in out-of-home care. This strategy lapsed over this review's reporting period. As part of this strategy, the Department committed to delivering 30% of early intervention funding to ACCOs by 30 June 2021 (NSW Government, 2017). This goal has not been met, with Targeted Earlier Intervention Program funding to ACCOs increasing by less than 1% between 2017 and 2021, bringing the total to just 14.71% (Family Matters 2021).

At 30 June 2021, 41.5% of the children and young people in care were Aboriginal and/or Torres Strait Islander; an increase from 40.2% the previous year (SCRGSP 2022, Tables 16A.2 & 16A.3). At 30 June 2021, Aboriginal and Torres Strait Islander children in New South Wales were just over 10 times as likely to be living in out-of-home care than their non-Indigenous peers (SCRGSP 2022, Tables 16A.2 & 16A.3); a slight increase from the previous year's rate of 9.5 (SNAICC 2021).

Partnership: Aboriginal and Torres Strait Islander sector leaders in New South Wales continue to report limited compliance with the *Partnership* element, including a lack of follow-through in fully implementing reforms that will enhance the involvement of ACCOs and communities in the design and delivery of child protection services. For example, according to the Department's data, 46.83% of organisations receiving funding to deliver Aboriginal-specific programs under the Targeted Earlier Intervention Program are non-Indigenous organisations. In 2012 NSW made a commitment to transition of out-of-home care case management of all Aboriginal and Torres Strait Islander children to ACCOs by 2022. Increasing numbers of Aboriginal children are being placed with ACCOs, but not at a rate high enough to meet the original target and, as of 30 June 2021, it was only at 20.6% (Davis et al. 2019)

Placement: At 30 June 2021, 72.4% of Aboriginal and Torres Strait Islander children in out-of-home care were living with family, kin or other Aboriginal and/or Torres Strait Islander carers (SCRGSP 2022, Table 16A.22). Of these children, just 48.9% were placed exclusively with Aboriginal or Torres Strait Islander kin or other Aboriginal and Torres Strait Islander carers (SCRGSP 2022, Table 16A.22). While this is still higher than the national average, New South Wales is experiencing a slight decline in the placement of Aboriginal and Torres Strait Islander children with their family, kin or other Aboriginal and Torres Strait Islander carers, dropping by 1% since the previous year.

Participation: Departmental data shows a promising increase in the number of families accessing the Family Group Conferencing (FGC) program. In 2020-21, 51% (463) of the families who participated in a FGC were Aboriginal and Torres Strait Islander, compared to 47% in 2019-20. Of those who participated, only 25% proceeded to Children's Court for interim or final orders. However, Aboriginal and Torres Strait Islander sector leaders continue to be concerned by the lack of meaningful involvement of children, their families, and broader kinship and community networks in child protection decision-making. They also argue that raw numbers are not enough to provide an indication of the quality of the FGC process from the perspective of Aboriginal and Torres Strait Islander children and their families.

Connection: The Department maintains a policy that is focused on moving children and young people onto permanent guardianship and adoption orders to reduce the number of children in out-of-home care, this presents a significant risk that Aboriginal and Torres Strait Islander children will be further disconnected from kin, community and culture. In 2019-20, New South Wales had the highest rate of permanent guardianship in Australia, with 18.7 per 1,000 Aboriginal and Torres Strait Islander children being placed in permanent care, up from 18.2 per 1,000 the previous year (at the time of writing, data for 2020-21 were not yet available). This is approximately 11 times the rate for non-Indigenous children (SCRGSP 2022a, Table 16A.22).





NORTHERN TERRITORY

COMMUNITY VOICES – INCLUDING COMMENTS COORDINATED BY ABORIGINAL PEAK ORGANISATIONS OF THE NORTHERN TERRITORY (APO NT) AND AGENCIES THAT PARTICIPATED IN SNAICC SECTOR FORUMS IN SEPTEMBER 2022

COMMENTS FROM COMMUNITY AGENCIES COORDINATED BY APO NT

Building Block 1: Quality and culturally safe universal and targeted services

Aboriginal children remain overrepresented in the out of home care and child protection system in the Northern Territory (NT) and continue to experience high levels of harm and ongoing issues in practice and application of policy and legislation, especially the application of 2020 legislative changes which require Care Plans to appropriately identify and support cultural needs, and to provide adequate leaving care planning for children exiting care and entering adulthood.

We will not improve outcomes for Aboriginal children and families in the NT without the Department of Territory Families Housing and Communities (DTFHC) committing to a change in culture and practice that listens to and acts with Aboriginal advice, in line with meaningful investment in Aboriginal led, managed and delivered programs.

DTFHC consistently struggle to complete kinship carer assessments within a reasonable timeframe and government managed Family Support, Family Finding, Carer Recruitment, Assessment and Support services are under-resourced and over capacity; meanwhile, Aboriginal children are placed with non-Aboriginal carers.

There is an urgent need for review and an adequately resourced commitment to proper, timely implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). Including where Aboriginal children are placed with non-Aboriginal Carers, there must be ongoing assessment of the foster carer's suitability; investment in building their technical competencies around cultural safety and trauma-informed practice; and demonstrated adherence to the Connection elements of the ATSCIPP to ensure bonds to family, language, culture and Country are maintained.

Building Block 2: Participation, control and self-determination

The implementation of the 10-year Generational Strategy (the Strategy) must articulate and appropriately resource specific mechanisms that give Aboriginal

children, families and organisations genuine decision-making powers, such as Aboriginal Family Led Decision Making (AFLDM) and delegation of statutory authority to Aboriginal organisations. Under the Signs of Safety framework and court directed Case Conferences, no independent mediator is present and a major power imbalance exists between the family and the CEO.

We question where and how the NT Government's local decision-making policy has led to better outcomes for children and families, given the *ad hoc* nature of its implementation, and lack of public evaluation findings. We hope to see more public commitment to true control of system design and program implementation transitioned to the Aboriginal community-controlled sector. Moreover, we advocate for commitments to resourcing a specialist Aboriginal child and family services peak body in the NT as an important step in realising the opportunity of Closing the Gap Priority reforms.

The decision to not legislate the Multi-Agency Community and Child Safety Framework (MACCSF) in 2021 and instead initiate a 'review and rest' process in partnership with AMSANT was positive. However, during the implementation of the revised Child Wellbeing and Safety Partnership, to ensure the NT Government fulfils its commitment to developing the model in partnership with communities, it will be important that the resourcing recommended in the review is fully realised, and that data and information sharing is upheld to rigorous of ethical and legal standards.

Building Block 3: Culturally safe and responsive systems

The NT Government's Transforming Out of Home Care plan ended in 2021 yet it remains unclear how the plan has improved outcomes for Aboriginal children and young people in the child protection system. Central to this reform were commitments to phase out the purchased based model of OOHC and prioritise and increase support for family and Kin caregivers, however, neither has materialised and the number of Aboriginal children placed with non-Aboriginal carers - far from their communities and family - has risen and there is no clear future plan from the NT Government.

For meaningful change to occur, increased trust and investment must be put into ACCOs to run services to support Aboriginal families in their communities. While funding for the Remote Child and Family Safety Program is a good initial step, the program has taken an increasing focus on statutory work at the expense of early support and does little to prevent families having contact with the child protection system.

We also advocate for:

- needs-based funding for Aboriginal organisations in the NT to address the drivers of child protection involvement, including; mental health, family and domestic violence and alcohol and drug services.

- culturally competent lawyers representing the NT Government and children in care and protection court matters, including enduring and adequate funding for the establishment of an Aboriginal controlled youth specific legal service for children subject to care and protection proceedings (and parents of those children who are minors).

Building Block 4: Accountability

Five years on from the NT Royal Commission (NTRC) it is hard to see what tangible, meaningful improvement has been made. We see little progress on the fundamental, structural reforms recommended to change the system and its responses from punitive to supportive, and enable healing, preservation and reunification for our families.

We will continue to call for the fulfilment of unmet or partially met NTRC recommendations, including better resourcing for a Commission for Children and Young People in the NT. Through the Generational Strategy, we expect greater transparency on funding, and that local accountability is embedded in community planning processes, using existing cultural authority where possible. In line with Closing the Gap (CTG) reforms, we will continue to advocate for Aboriginal community control in governance and service delivery.

Ultimately, because we know this leads to the best outcomes for our families, Aboriginal self-determination will remain our primary focus of advocacy. This is the best way we know that will disrupt the cycles of child protection and justice involvement for many of our families, especially those with intergenerational trauma and complex, high needs.

Further issues raised in SNAICC sector forums in September 2022

Aboriginal community members and ACCOs raised the need for the NT Government to accurately and adequately value the knowledge, relationships and expertise of ACCOs. ACCOs are not being supported to perform a role in family finding, case planning and reunification, and the importance of ACCOs in delivering these services to children in out-of-home care is not recognised in TFHC funding and commissioning processes.

Community members recognised the important roles that have been funded and progressed by ACCO operated kinship care services, Child and Family Centres, and newly resourced family support services. A significant increase in ACCO investment by the NT Government has been welcomed in recent years and helped to increase culturally safe and strong programs for families. However, the amount of funding in these programs was identified as being inadequate to respond to the needs of families. Community members also identified that where ACCOs do have funded roles in finding family, carer assessment and supporting kin

carers, that they do not ultimately have any authority in case decisions and their work and advice is too often ignored.

Aboriginal community members have been asking governments for years to provide honest answers about why they are not trusted to lead decision-making for Aboriginal children (either in the context of their individual families or in the design of the system at large). This question is particularly critical when it is so clear that the top-down government approach is not working (and when all governments have signed on to the National Agreement on Closing the Gap).

There is a strong feeling among ACCOs that the NT Government will not hand over real control of system design and implementation, but rather wishes to retain ultimate administrative power while providing lip service to self-determination.

This corresponds with a perception that the NT Government may not be taking its CTG commitments seriously where children and families are concerned (the early 2021 youth bail reforms are a prime example). ACCOs and community members need a way to effectively pull the NT Government up on this and demand change.

An independent community-controlled peak body would be an important part of the landscape in the NT, particularly in terms of helping to maintain good relationships between service provision ACCOs, who otherwise can find their connections fragmented if they do not often work closely together, and facilitating their effective collaboration.

ACTING CHILDREN'S COMMISSIONER – NICOLE HUCKS

The DTFHC submission to the Family Matters Report demonstrates the fragmentation in the approach currently taken to engage and support Aboriginal children and families. Several different strategy and reform agendas are referred to, and a number of these are either not yet finalised or not publicly released.

Reference is made to the *10-Year Generational Strategy for Children and Families in the Northern Territory*, which was developed a year ago and is reported as complete in the *2021 Generational Change Impact Report* released by the NT Reform Management Office. However, the Generational Strategy has not been released to the public. The 2021 Impact Report also lists the Coordinated Investment Framework as complete; however, the framework has also not been made publicly available – nor has the evaluation of the Remote Child and Family Safety Program. The lack of accountability, transparency and independent scrutiny of reporting by the NT Government on their own progress against major reforms is of significant concern.

With regard to the three specific Generational Strategy actions listed by DTFHC, these are not new, and more attention is needed to ensure these are implemented

rather than simply re-iterated in plan after plan. Specifically, Section 12(3) of the *Care and Protection of Children Act 2007* (NT) already includes a commitment to the Aboriginal and Torres Strait Islander Child Placement Principle, yet AIHW data show that, as of 30 June 2022, 61.5% of Aboriginal children in out-of-home care in the NT were not placed in accordance with the ATSICPP. Compliance with the ATSICPP has not improved in the NT since 2017.

The *Safe, Thriving and Connected Strategy* (the Strategy) released four years ago stated the NT Government is 'ensuring the connection of children and young people to their cultures and communities', yet AIHW data show that 56.3% of Aboriginal children in out-of-home care did not have a current cultural support plan. For Aboriginal children living in out-of-home care for 6–12 months, this figure was even worse, at 68%. The Strategy committed \$5.7 million over four years to work with families and introduce family group conferencing, with full delivery slated to take place within three years of the Strategy's launch (that is, in 2021). However, family group conferencing or family-led decision-making continue to be critical missing components in the NT child protection model. Until the model shifts to be underpinned by principles of self-determination and community control, we are unlikely to see any significant improvements towards Closing the Gap Target 12, or any of the other multitude of reports or strategy commitments in the NT.

It is positive that the NT has seen an overall reduction in the number of children in care, though Aboriginal children continue to be significantly overrepresented and account for 91% of this cohort. Kinship care placements have not increased, and despite the *Transforming Out-of-Home Care Strategy* committing to phase out purchased home-based care by December 2021, the number of these extremely expensive care arrangements have instead increased for four consecutive years.

Positively, we have started to see some progress in funding of ACCOs (or requiring mainstream services to partner with ACCOs) in the delivery of family support services. However, this falls short of the Don Dale Royal Commission recommendation to establish a differential response model as we see in other jurisdictions.

Aboriginal communities are tired of the countless reports and strategies outlining plans for action. Aboriginal people and communities want to see these actions progressed, and accompanied by robust monitoring and evaluation to show what is working and what needs further improvement.



GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF TERRITORY FAMILIES, HOUSING AND COMMUNITIES (DTFHC)

Building Block 1: Universal and targeted services

TFHC concluded consultation on widely supported legislative reforms that will keep children connected to their families, communities, culture and country by embedding the ATSICPP in the *Care and Protection of Children Act 2007* (NT). Additionally, reforms implemented in 2021 to that Act now provide for access to pre-birth family support services when an unborn child is assessed to be in need of care when born.

The Family Support Services program under the *Safe, Thriving and Connected: Generational Change for Children and Families* agenda is a series of reforms aimed at delivering services, with the community sector, to support families and parents during and after contact with the care and protection system.

Building Block 2: Participation, control and self determination

The NT Government's Local Decision-Making initiative is a 10-year plan that will provide a pathway to enable communities to have more control over their own affairs, including service delivery based on a community's aspirations and needs. It is a commitment to provide opportunities to transfer government service delivery to Aboriginal Territorians and organisations. Aboriginal communities can choose from a range of government services, and how much control they want for their communities.

The *10-Year Generational Strategy for Children and Families in the Northern Territory* includes actions such as:

- Embedding in full the Aboriginal and Torres Strait Islander Child Placement Principles
- Ongoing support for foster carers of Aboriginal children, to enhance their technical proficiencies in cultural safety, child development and care
- Embedding family-led decision-making, independently facilitated by Aboriginal people or Aboriginal organisations where appropriate.

The Strategy also outlines approaches for transitioning more services to Aboriginal organisations and building a local Aboriginal workforce.

Building Block 3: Culturally safe and responsive systems

The Everyone Together Strategy provides an overarching approach to Aboriginal Affairs in the NT, highlights the government's commitment to reshape the way it works with Aboriginal Territorians to support community aspirations, improves government coordination to achieve better outcomes, and outlines the government's

commitment to lead a regional approach which will place Aboriginal communities at the centre of decision making.

DTFHC continues to deliver (in partnership with the Commonwealth) the Remote Child and Family Safety Program, which aims to recruit place-based Aboriginal support workers in 26 remote communities to deliver women's safe houses and family support programs. In 2021-22, DTFHC commissioned an independent evaluation of this Program. Among other findings, the evaluation identified that having trusted, local staff in communities helped to solve family problems early and that, as a result, fewer children were removed from families. Communities with local staff employed by the program also saw a bigger drop in children on Care and Protection Orders compared to communities that were serviced by staff visits.

The Transforming Out-of-Home Care program's key initiatives have included the development of a comprehensive, culturally safe, Aboriginal family care service model and the implementation of recruitment programs by Aboriginal organisations.

Building Block 4: Accountability

Following the development of the first implementation plan under the *National Agreement on Closing the Gap* in 2021, the Office of Aboriginal Affairs (within the Department of Chief Minister and Cabinet) is developing draft actions for the second NT *Closing the Gap Implementation Plan* through the NT Partnership Working Group. This will build on the first Implementation Plan and will also report on new actions for the socio-economic targets and the focus areas of the Northern Territory *Aboriginal Affairs Strategy*.

The Coordinated Investment Framework (CIF) is an agreement between the NT Government and the Commonwealth that outlines the commitment to working together to plan, fund and deliver services to prevent harm and improve safety and wellbeing outcomes for children in the NT.

Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031 provides a further 10-year national framework for all jurisdictions, including the Northern Territory, for a coordinated and consistent approach to achieving better outcomes for children and families under four strategic priorities:

- a national approach to early intervention and targeted support
- addressing over-representation of Aboriginal and Torres Strait Islander children in child protection systems
- improved information sharing, data development and analysis
- strengthening the child and family sector and workforce capability.

OVERVIEW OF SNAICC'S 2020-21 ATSI CPP COMPLIANCE REVIEW

Prevention: There were promising developments to prevent Aboriginal children from entering out-of-home care. For example, DTFHC released seven regional grant rounds for Aboriginal organisations, or non-Indigenous organisations in partnerships with Aboriginal-led organisations, to deliver Family Support Services. At the time of drafting this implementation review, there were seven ACCO-led Child and Family Centre centres across the NT providing prevention and early intervention supports to families. Yet, 90.7% of all children in out-of-home care in 2020-21 in the Territory were Aboriginal, the highest percentage in any jurisdiction (SCRGSP 2022, 16A.2). Aboriginal children were 13.8 times more likely to be placed in out-of-home care than non-Indigenous children in 2020-21, a rate that increased compared to previous years. In 2019-20 Aboriginal children were 12.2 times more likely than other children to be placed in out-of-home care, and in 2018-19 they were 11.5 times more likely.

Partnership: There was increased funding for ACCOs to provide prevention and early intervention services, and for the recruitment and support of kinship carers. The proportion of funding granted to ACCOs in comparison to non-Indigenous organisations in the child protection context was not provided by DTFHC. Despite some increased funding to ACCOs, many reported that their services were operating at or beyond capacity and increases in funding were not sufficient to meet demand. While ACCOs now have increased power to provide certain services to children and families, they are still not resourced to provide out-of-home care services. Given Aboriginal children are significantly overrepresented in the child protection system in the NT, it is essential that ACCOs are provided with the necessary funding and autonomy to carry out work across the child protection spectrum, from early intervention/prevention work to the provision of out-of-home care services, to reunification services.

Placement: The NT's rate of placing Aboriginal children in care with their Aboriginal kin or other Aboriginal carers reduced since the last reporting period. In 2020-21, 240 Aboriginal children (27.3% of all Aboriginal children in care) were placed with Aboriginal kin compared to 266 (29.0%) in 2019-20 (SCRGSP 2022, 16.A22). Given that over 90% of children in care in the NT are Aboriginal, this data indicates a continued and widespread failure to ensure that out-of-home care placements adhere to the ATSI CPP placement hierarchy. ACCOs argued that the apparent shortage of Aboriginal kinship carers reflected by this placement data was not congruent with the broad kinship structures present in communities in the NT. On a promising note, seven ACCOs are now funded to find, assess, train and/or support kinship carers. However, further supports to ACCOs to deliver these services are necessary to redress the declining number of Aboriginal

children being placed with kin. These children are at risk of losing ties to their families, communities, Country and culture resulting in long-term harm.

Participation: There remain no legislatively mandated Family-Led Decision-Making (FLDM) processes in the NT to support active participation of children and their families in child protection decision-making. This is highly problematic. ACCOs reported that while mediations that include families are provided for in the legislation, these rarely occurred in practice. Many families reportedly feel they have no input in the welfare of their children and that “goal posts” for reuniting with their children are continually shifting.

Connection: On 30 June 2021, just 43.8% of Aboriginal children who were required to have a current cultural support plan had one (SCRGSP 2022, Table S2.2a). The percentage of Aboriginal children with current cultural support plans has declined over the past 3 years, as the rate in 2021 was lower than in 2020 where 47.1% of children in care had a cultural support plan and in 2019, where 51.7% of children in out-of-home care had a cultural support plan (SCRGSP 2022, Table S2.2a). DTFHC’s reunification policy was updated in May 2021 to stress that when a child is removed from their parents, all possibilities for reunification must be explored. In 2020–21, 15.4% of Aboriginal children in out-of-home care were reunified with their families (SCRGSP 2022, Table S2.2b). This was slightly less than the 17% reunited in 2019–20, but higher than previous years (from 2016–17 to 2018–19) (SCRGSP 2022, Table S2.2b). While Aboriginal children in out-of-home care were slightly more likely to be reunified with their families than non-Indigenous children (1.11 times) (SCRGSP 2022, Table S2.2b), neither rate of reunification is promising. Given over 90% of children in care are Aboriginal, further effort is needed to safely reunify more children with their families and ensure familial and cultural ties are meaningfully maintained.

QUEENSLAND

COMMUNITY VOICES – PROVIDED BY THE QUEENSLAND FAMILY MATTERS WORKING GROUP

The *Our Way Strategy (2017–2037)*, co-designed by Family Matters Queensland and the Queensland Government to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system by 2037, is in the final year of its first phase (‘Changing Tracks’). The First Nations-led Queensland First Children and Families Board has oversight of the *Our Way Strategy* and is focused on improving whole of government accountability to our children and families.

The Queensland Government engaged Deloitte Access Economics and Murawin Consultancy to evaluate the Changing Tracks phase of *Our Way*. This evaluation highlighted improvements to embedding co-design, shared decision-making, and investment in Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs), as well as progressing the delegation of statutory powers to ACCOs and the development of the *Family Caring for Family* kin care model. However, the evaluation noted systemic barriers that prevent access to culturally safe services, power imbalances in partnerships between government and ACCOs, and variability in accountability mechanisms to report on government services to communities. Co-design partners Family Matters Queensland, QATSICPP and the Queensland Government are developing the next action plan, *Breaking Cycles 2023–2025*, informed by results of this evaluation. *Breaking Cycles* will focus on addressing socioeconomic drivers of contact with the child protection system by increasing engagement across government agencies (housing, health, education and justice), addressing cultural bias and racism in the service system, and enabling self-determination and cultural authority in decision making.

Transformational change is key to successfully realising the *Our Way* and *Closing the Gap* visions and goals. Currently there are a range of extensive reforms underway. This includes commitments from government to:

- reduce the number of children in residential care
- increase the number of children placed with kin
- transition funds from mainstream organisations to ACCOs.

An integrated reform plan is needed to align multiple targets with clear timeframes and measurable milestones, to be achieved across successive stages, with resources allocated accordingly. The ACCO sector wants to lead change in service design, delivery and commissioning as per the intent of the *Our Way Strategy*.

The Queensland Government’s adherence to legislative requirements has improved in practice, but consistent state-wide application of self-determination and cultural authority in child protection decision-making is still needed. The *Child Protection Reform and Other Legislation Amendment Act 2022* (Qld) intends to improve application of the participation and partnership elements of the ATSI CPP to the level of active efforts. However, the allocation of funding to Family Participation Programs (FPPs) – only 25% (\$14m) of annual funding to ACCOs – is insufficient to meet demand. Many families that would be eligible when a significant child protection decision is being made are not able to access FPPs due to funding and resource limitations.

Mainstream organisations that completed the Phase Two trial of the Family Matters National Reflective Practice Tool (RPT) are eager to support a transition process, and reported that using the RPT assisted them to effect change that extends beyond practice and incorporates system-level action and advocacy. The trial findings showed that greater investment in cultural leadership, workforce development and partnership strategies are required across the child and family sector (including the government, non-government and community-controlled sectors). The trial group unanimously agreed that there is value in using the tool – for both Family Matters signatories and campaign leaders – to strengthen collective calls for action to uphold the campaign principles across the work of the child and family sector.

Calls to better address the campaign principles and building blocks include specific requirements to:

- improve data measures to support operational decision-making and the monitoring and evaluation of key drivers of over-representation
- develop culturally safe complaints processes across government services
- provide transparency of information regarding the alignment of reforms to address inconsistencies across regions in intent and delivery.

COMMISSIONER, QUEENSLAND FAMILY AND CHILD COMMISSION – NATALIE LEWIS

Over-representation in child protection systems indicates a failure to achieve equity across social and economic policy for Aboriginal and Torres Strait Islander children and their families. The Queensland Family and Child Commission (QFCC) sees over-representation as a child rights issue.

In August 2021, the QFCC launched its Principle Focus program to monitor over-representation across Queensland's child protection system. Reducing over-representation requires:

- exits from care to exceed entries,
- a reduction in the duration of time children spend in care,
- a short-term focus on reunification to increase exits from out-of-home care, and
- a long-term focus on reunification to reduce duration of time in out-of-home care.

As part of this program, the QFCC released data from 2020-21 that indicated:

- 64% of all finalised investigations and assessments about Aboriginal and Torres Strait Islander children across Queensland were unsubstantiated;
- of the 4,822 Aboriginal and Torres Strait Islander children who were in out-of-home care, only 194 children were included in formal efforts to be reunified with family; and

- the length of time Aboriginal and Torres Strait Islander children spend in care continues to be high.

Our 2021-22 data are due for release in late 2022.

The QFCC acknowledges the Queensland Government's positive efforts in legislating all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). However, more work is needed to ensure the rights of Aboriginal and Torres Strait Islander children are not in any way limited by the constraints and convenience of responsible agencies.

Amendments to the *Child Protection Act 1999* (Qld), which require active efforts in the application of the ATSICPP across significant decisions about an Aboriginal or Torres Strait Islander child, are to be commenced shortly. I call on the Queensland Government to build on its positive progress so far and ensure the ATSICPP is applied consistently (through purposeful, thorough and timely efforts), and embedded as it was legislatively intended, to uphold the rights of Aboriginal and Torres Strait Islander children.

We have seen some good leadership across Queensland. Family Matters Queensland and the Queensland First Children and Family Board have a strong partnership in delivering the Our Way Strategy; however, as government priorities shift, the Queensland Government must sustain its effort and commitment to achieving the Closing the Gap target for children in out-of-home care.

The QFCC congratulates Refocus and Central Queensland Indigenous Development for their courage in leading the implementation of delegated authority in Queensland and upholding the rights to culture and kin for Aboriginal and Torres Strait Islander children and their families.

GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF CHILDREN, YOUTH JUSTICE AND MULTICULTURAL AFFAIRS

Our Way Strategy

The Queensland Government continues its long-term commitment, in partnership with Family Matters Queensland and the Queensland First Children and Families Board, to implement the *Our Way Strategy* and Action Plans to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander children and families in the child protection system by 2037. To date, the Queensland Government has invested an estimated \$535.48 million in Our Way from 2016-17 to 2025-26. The second action plan, *Changing Tracks 2020-2022*, continues to set the foundations for change across the Queensland child protection system to achieve the Our Way vision. It comprises 24 targeted actions; 5 have been completed, with 15 on track to be delivered by December 2022. An independent evaluation of the *Our Way Strategy* and *Changing Tracks Action Plans* is near finalisation. It has been informed

by active engagement with Family Matters Queensland, QATSICPP, Aboriginal and Torres Strait Islander communities across Queensland, non-Indigenous service providers and peaks, the broader child protection sector and government partner agencies.

Co-design of the third action plan (*Breaking Cycles 2023–2025*) is underway, led jointly by DCYJMA and QATSICPP on behalf of Family Matters Queensland. This is the second implementation phase under Our Way for 2023–2031, with a focus on changing the way that services are designed and delivered. *Breaking Cycles 2023–2025* will be informed by and aligned with the Family Matters Building Blocks, Queensland Government commitments under Closing the Gap, Path to Treaty, Local Thriving Communities and the priorities of *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*. The department maintains strong strategic relations with Family Matters Queensland and QATSICPP to oversee reforms.

Aboriginal and Torres Strait Islander Family Support

In 2021–22 the Queensland Government invested \$40.8 million in Aboriginal and Torres Strait Islander Family Wellbeing Services (FWS), delivered by Aboriginal and Torres Strait Islander community-controlled organisations (ATSICCOs) in 34 locations. An independent evaluation of FWS found that these services are highly successful in de-escalating risks and addressing needs for Aboriginal and Torres Strait Islander families. Of the children who had the majority (or all) of their needs met, 89% had no further contact with the department in the following 6 months. Families interviewed for the evaluation indicated that the FWS helped them to feel more in control of their lives, develop strategies for raising children and coping with their circumstances, and improve their self-confidence and capacity to form healthy relationships.

The implementation of family-led decision-making, to ensure Aboriginal and Torres Strait Islander children and families are actively engaged in all key decisions across child protection systems, has continued. This includes funding of \$14 million in 2021–22 for the Family Participation Program, which has resulted in many positive outcomes for children remaining safely with their families and having strengthened safety and support networks. In addition, the *Strengthening Families, Protecting Children Framework for Practice* is seeing an increasing number of children reunified and not returning to care within 12 months.

Support for young people leaving care to 21 years

From 2023–24, the foster care allowance will be extended by two years for carers of young people who remain living with them, up to the age of 21. The department will also fund culturally appropriate case worker support and financial support for young people leaving non-family-based care up to the age of 21.

Active Efforts in implementing the Aboriginal and Torres Strait Islander Child Placement Principle

The *Child Protection Reform and Other Legislation Amendment Act 2022* (Amendment Act) was passed in May 2022. The Amendment Act amends the *Child Protection Act 1999* to require that the Chief Executive (Child Safety), authorised officers, and Director of Child Protection Litigation make active efforts to apply the ATSICPP when making a significant decision about an Aboriginal or Torres Strait Islander child. It also amends the partnership element of the ATSICPP in the *Child Protection Act 1999* to reflect and clarify the department's commitment to partnering with Aboriginal and Torres Strait Islander peoples, community representatives and organisations in policy/program development, service design and practice. The amendments will commence in the first half of 2023.

The department continues its journey to replace the existing Integrated Client Management System with the Unify system, aiming to improve capability for frontline staff, government agencies and partners to share information and integrate service delivery. Unify will improve the collection, use and availability of client cultural information, which will in turn assist in implementing the five core elements of the ATSICPP across the child protection continuum. Unify has recently released the 'Care Arrangements' product, which assists staff and care services in client matching and locating care arrangements for children in care and includes a focus on the active efforts of Child Safety staff and care services staff to apply the ATSICPP when placing a child. Efforts are underway to ensure the five ATSICPP elements are woven into all areas of Unify.

Placement Reform

The department is committed to increasing the number of children placed in kinship care to 70% by 2026 and reducing the number of children in residential care by 7% by 2027. Whilst over half of all Aboriginal and Torres Strait Islander children in family-based care are living with kinship carers, the department is also committed to ensuring that all Aboriginal and Torres Strait Islander children have services delivered by Aboriginal and Torres Strait Islander organisations within 10 years. In partnership with QATSICPP and Family Participation Providers, the department is reviewing the system for children entering care, with particular focus on decision-making and assessment tools impacting Aboriginal and Torres Strait Islander children and families. A review of children under three on permanency orders is also underway.

The department is partnering with QATSICPP and two ATSICCOs to co-design, develop and trial a new kinship care program ('Families Caring for Families'). This program embeds the ATSICPP in the delivery of kinship care services to Aboriginal and Torres Strait Islander children and families. Program resources will be completed by June 2023 and will increase the department's capacity to provide culturally responsive

family care services. The percentage of Aboriginal and Torres Strait Islander children placed with kin, other Indigenous carers or Indigenous residential care services is expected to improve to 58% through 2022-23.

Investment in ATSICCOs

The department has committed to transition all services to Aboriginal and Torres Strait Islander children and families to be delivered by ATSICCOs over the next 10 years. In 2021-22, the department allocated 12% of its total funding for key services, 21% of funding for Family Support Services, and 35% of funding for Intensive Family Support Services to ATSICCOs. The department continues to consult with the Queensland First Children and Families Board on recommissioning investment to ATSICCOs for the delivery of culturally responsive services. Where full delivery of a service by an ATSICCO is not possible, other NGOs will need to partner with an ATSICCO and/or Indigenous business and be able to demonstrate capacity to apply the ATSICPP, employ Aboriginal and Torres Strait Islander peoples and ensure a culturally safe workplace.

In 2021-22, planning was completed for an additional 366 family-based care places, 12 residential care places and eight Supported Independent Living places with ATSICCOs or Indigenous businesses.

Implementation of delegated authority

At 30 June 2022, 48 instruments of delegation have been approved, enabling particular powers and functions of the Chief Executive (Child Safety), for an Aboriginal or Torres Strait Islander child, to be delegated to the CEO of an Aboriginal or Torres Strait Islander entity. The department continues to partner with REFOCUS and Central Queensland Indigenous Development to pilot delegated authority. The support provided by these entities has enabled 11 children to be reunified with family, with the remaining children in the process of being reunified or connected with family, culture, Country and community. The department and QATSICPP are co-designing a strategic blueprint for the state-wide implementation of delegated authority. This will be informed by the lessons learnt from early adopter sites, an action research project led by QATSICPP, stakeholder feedback, and the experiences of other jurisdictions in this area.

Review of the Structured Decision-Making (SDM) Tool

At 8 August 2022, the department has ceased using the Family Risk Evaluation, Family Risk Re-Evaluation and Family Reunification Assessments from the suite of SDM tools. These changes aim to support evidence-based thinking and enable greater consideration of family and cultural factors in risk assessment. Three key practice guides will support staff in making the decisions previously assisted by the SDM tools, including 'Offer support to a family', 'Assess harm and risk of harm' and 'Decision-making for reunification'.

In forming a risk assessment about an Aboriginal or Torres Strait Islander child, staff are prompted to gather information about the child's and parents' connection to their culture and how this connection contributes to protection (acknowledging that a child's resilience can be promoted through a strong connection to culture). This may include information about kinship structures or traditional child rearing practices.

OVERVIEW OF SNAICC'S 2020-21 ATSICPP COMPLIANCE REVIEW

Queensland remains the first jurisdiction to enshrine all five elements of the Child Placement Principle into its child protection legislation and to commit to a whole-of-government, generational strategy to eliminate overrepresentation (Family Matters 2021).

Prevention: Queensland continued to have the second lowest rate of out-of-home care overrepresentation in Australia. However, Aboriginal and Torres Strait Islander children still made up 44.2% of all children in out-of-home care in the state during this reporting period, and 5.0% of all Aboriginal and Torres Strait Islander children in Queensland were in out-of-home care. Further to this, the state has seen an increase of Aboriginal and Torres Strait Islander children in out-of-home care since 30 June 2019, with the number rising by 757 children to 4,911 Aboriginal and Torres Strait Islander children in out-of-home care at 30 June 2021.

Queensland's key policy initiatives that support Aboriginal and Torres Strait Islander children and families continued to be *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017-37*; the strategy's second action plan, *Changing Tracks 2: an Action Plan for Aboriginal and Torres Strait Islander Children and Families 2020-22*; the whole-of-government *Wellbeing Outcomes Framework for Aboriginal and Torres Strait Islander Children and Young People in Queensland*; and the 10-year *Supporting Families, Changing Futures* reform program.

Nearly five thousand (4,903) Aboriginal and Torres Strait Islander children started intensive family support services in Queensland in 2020-21, making up 46% of all children who commenced these services in this reporting period. This was the highest number of Aboriginal and Torres Strait Islander children in any state commencing family support services.

Partnership: The state's second action plan under *Our Way* recognises and promotes ACCO participation in all significant decision-making and commits the government to genuine partnership in co-design of legislation and policy. Over this reporting period, the Department continued its partnerships with the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), Family Matters Queensland, and the Queensland First Children and Families Board through the co-design of the third *Our Way* action plan *Breaking Cycles 2023-25*. These partnerships are working towards reforming the state's

child protection system and implementing programs that support Aboriginal and Torres Strait Islander children and families in need of support and protection.

Placement: While there were promising policies and programs in place to ensure Aboriginal and Torres Strait Islander children in out-of-home care were being placed with family, the data reveals there is a long way to go.

Just 21.7% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with Aboriginal and Torres Strait Islander relatives or kin. This is well below the national average of 31.3%. In addition, 17.0% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with non-Indigenous relatives and 11.9% with other Aboriginal and Torres Strait Islander carers. In addition, 35.6% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with non-Indigenous carers who were not relatives or kin (Steering Committee for the Review of Government Service Provision 2022).

Participation: Queensland's legislation remains the most comprehensive of all jurisdictions, particularly in meaningfully supporting the participation of Aboriginal and Torres Strait Islander children, families and communities in decision-making. Existing government programs continue to encourage the participation of Aboriginal and Torres Strait Islander children, parents and family members in decisions regarding the care and protection of their children. The second Changing Tracks action plan and the Department's *Supporting Families Changing Futures 2019-23* strategy make provisions for culturally safe family group conferencing, mediation and/or other family participation programs, as supported and delivered by ACCOs.

Connection: Queensland had the second-highest proportion of Aboriginal and Torres Strait Islander children in care with current cultural support plans – 95.4% of Aboriginal and Torres Strait Islander children in out-of-home care who were required to have a current cultural support plan did so (AIHW 2022). This is a promising statistic and well above the national average of 73.4%.

The *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) was passed in this reporting period (September 2020). This legislation recognises the Ailan Kastom child rearing practice, whereby a child's biological (birth) parents may agree for another couple (the culture parents) within their extended family to permanently raise their biological child as the culture parent's own. Recognition of this practice and of the cultural parents of children raised with Ailan Kastom ensures that a child who has been raised in accordance with the practice will have their legal identity reflect their cultural identity.

In regards to reunification, 12.7% of Aboriginal and Torres Strait Islander children in care were reunified with their families in 2020-21, an increase from 12.2% in 2019-20 (AIHW 2022). This puts the state below the national average of 16.4% in 2020-21.

SOUTH AUSTRALIA

COMMUNITY VOICES – PROVIDED BY THE SOUTH AUSTRALIAN FAMILY MATTERS CAMPAIGN WORKING GROUP

In South Australia (SA), Family Matters Campaign efforts are led by grassroots Elders and community members, who champion change and provide Aboriginal community representative voices in Government-driven child protection system reform, whilst pursuing evidence-based advocacy asks that are grounded in the Principles of the Family Matters Campaign and supported by Aboriginal community capacity-building strategies at state and national levels.

The Family Matters SA Leadership Group continue to advocate that Aboriginal peoples are primarily responsible for the safety and wellbeing of Aboriginal children and families, and that we are best placed to understand matters affecting our children, families and communities. The Family Matters Roadmap is clear that the strengths to address child wellbeing and safety concerns lie within Aboriginal families and communities.

During the 2021-22 reporting period, the number of Aboriginal children in out-of-home-care placements has again risen, in spite of ongoing systemic reforms driven by the SA Department for Child Protection (DCP). This leads the Family Matters SA Leadership Group to question whether the Department's support for Aboriginal families has a genuine focus on addressing the *drivers* of child protection involvement. For Aboriginal families these drivers include poverty, housing issues, racism, and the broader chronic collective trauma symptoms brought about by colonisation.

The 2022 Report on Government Services indicates that the disproportionality ratio for Aboriginal children on care and protection orders has risen from 7.25 in 2019-20 to 7.37 in 2020-21, and the disproportionality ratio for Aboriginal children in out-of-home care has risen from 7.57 to 7.62 in the same period. This represents a rate of 96.1 per 1,000 Aboriginal children aged 0-17 in South Australia on a care and protection order in 2020-21.

Rather than offering support to SA's Aboriginal families who are in dire circumstances – such as financial support – the response by the DCP remains insufficient in keeping Aboriginal children at home with their families. For example, reasons for emotional abuse substantiations can include children witnessing domestic and family violence (Richards 2011). Rather than providing ways for victim-survivors of domestic and family violence (often women and children: AIHW 2019) to stay together, child removal often occurs.

Understandings of neglect and emotional abuse are subject to interpretation by child protection practitioners (Doyle and Timms 2014). These interpretations can be based on societal and cultural values that are often

incompatible with collective child-rearing, and do not account for the impacts of material poverty when raising children. The current understandings of risk, child abuse and neglect continue to be biased within legislation, policy and practice, in favour of white middle-class parenting practices.

In SA, there continues to be a lack of sufficient focus on the structural issues driving these problems (see, for example, Gupta 2017). Instead, blame is placed on the affected individual or families, and the child protection system is predicated on the failure of individuals to 'protect' and supply their children with certain provisions. However, there is minimal (if any) support from these services to supply resources needed for parents to feed, clothe, and house their children.

Broadly, though, the Family Matters SA Leadership Group welcomes the changes to Aboriginal people's lives through improved economic, cultural, social and emotional health and wellbeing that are currently being implemented by the Malinauskas Government in SA and the Albanese Government federally; we are quite optimistic that measurable changes will occur to the number of First Nations children in out-of-home-care placements during the 2022-23 period.

COMMISSIONER FOR ABORIGINAL CHILDREN AND YOUNG PEOPLE – APRIL LAWRIE

South Australia is currently well-positioned to create strong reform in the child protection system; there are several reviews, inquiries and reports examining areas for improvement. Of critical importance is the Commissioner for Aboriginal Children and Young People's (CACYP) *Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)*, and the mid-term review of the *Children and Young People (Safety) Act 2017 (SA)*; these provide a landmark opportunity to transform the system by prioritising self-determination and strengthening the ATSICPP. The Department for Child Protection (DCP) has made strong commitments to embed the ATSICPP in full to the standards of 'active efforts'. This commitment must be accompanied by the development of detailed policies and practice frameworks defining active efforts, with genuine participation and partnership with the Aboriginal community and its key stakeholders.

The SA Government has committed to the *National Agreement on Closing the Gap*; however, while the first state implementation plan was released in July 2021, the Commissioner was not included in the development or implementation processes (but was invited to attend negotiation workshops). There has been no progress with respect to the child protection targets, as negotiation workshops have ceased since July 2022. We are no closer to disrupting the trend.

DCP have stated that they recognise the importance of genuine partnerships with Aboriginal communities and stakeholders, yet despite this, they have failed to engage the Aboriginal community in policy development and service design and have failed to provide adequate opportunities for the Aboriginal community's input into the legislative review. The consultation process has been rushed; it has lacked promotion and partnerships to capture the voices of Aboriginal community and stakeholders regarding Aboriginal children.

The Commissioner continues to emphasise the demand for a strengthened Family Group Conferencing (FGC) process, Family-Led Decision Making (FLDM), and local level community partnerships through the Aboriginal Family Care Model (AFCM) as mechanisms for Aboriginal self-determination.

The Commissioner acknowledges the recent gathering of the Changemaker Collective*, bringing together local Aboriginal experts in the area of care and protection practice, policy, research and advocacy to form a 'call to action' statement to the SA Government. This statement centres around transforming outcomes for Aboriginal children through markedly improving Family Group Conferencing and changing the decision-making model, diverting children away from the care system, taking Aboriginal kinship care out of state control and legislating the full terms of the ATSICPP.

Whilst investment in the consultation process for an Aboriginal peak body for children and families was a positive step forward, the SA Government is yet to provide transparency on the outcomes of this process, the final report, and the plan for progressing the peak's establishment. The peak is already well overdue as an integral advocate and system navigator for Aboriginal children, families, and communities.

The proportion of Aboriginal children in out of home care (OOHC) has increased from 2019-20 (88.8 per 1000) to 2020-21 (96.1 per 1000). There are still disgraceful levels of Aboriginal children entering OOHC, as well as being placed with non-Aboriginal carers. Despite the ATSICPP hierarchy, the rate of placement with Aboriginal kin or carers is 30.6%. If DCP are to embed the ATSICPP in full, they must uphold their responsibilities to all pillars and make active efforts to repair and improve outcomes.

A significant funding disproportionality remains between early intervention (family support and intensive family support services) and tertiary care services. Slight increases in expenditure on ACCO-led service delivery (4.4% in 2020-2021 to 8% in 2021-2022) are insignificant in the context of the total expenditure in child protection; interstate comparisons show that SA remains well below the average compared to, for example, Queensland's expenditure proportion (21.8%). If the SA Government is to make any progress in reducing the over-representation of Aboriginal children in OOHC, these investment proportions must be reversed, and substantial increases need to occur to achieve 30% of expenditure in the ACCO sector.

Aboriginal children and young people have told me directly that DCP continues to fail to maintain and support their cultural identity and connections to family, community, and Country. Independent quality assurance mechanisms must be implemented to audit the tools and practices DCP utilise in developing and facilitating cultural connection plans for Aboriginal children. Again, Aboriginal families and communities must be included in the development of these tools, practices, and individual plans.

Despite the numerous reviews and inquiries being undertaken, DCP has the ability to initiate and implement strategy, policy, and practice initiatives and the five pillars of the ATSICPP, as they have publicly committed to doing. DCP have developed and published three consecutive Aboriginal Action Plans since 2019; however, these have not been designed in collaboration with the Aboriginal community and fail to report on whether targets from previous plans are being met, with each new plan setting different and new targets. The Actions Plans lack a systemic focus, a reform agenda and improvement for outcomes. DCP must assess whether these policies are having an impact when the data continue to show an increase in Aboriginal children's entry into OOHHC, as well as placement with non-Aboriginal carers.

It is hoped that the legislative review offers a very welcomed opportunity for a reset of legislation and policy – to enable Aboriginal self-determination in decision-making, and to amplify the voices of Aboriginal children in line with the human rights obligations that rest on DCP and other state agencies. It is also vital that DCP acknowledge the contributions from the Commissioner garnered from the Inquiry process to date.

**The Changemaker Collective are 'a collective of Aboriginal and Torres Strait Islander practitioners, leaders and change makers that deeply want to improve what is happening to Aboriginal and Torres Strait Islander children and families in South Australia'.*

GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF CHILD PROTECTION (DCP)

The SA Government is committed to taking active efforts to reduce the over-representation of Aboriginal children and young people in the child protection system, and to uphold all elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

We recognise that this work is made possible only through genuine partnerships with Aboriginal stakeholders - including Aboriginal children, families, communities, organisations and leaders. We know that the transformational shift required demands a commitment to action that will deliver sustained and structural change.

The SA Government has been working nationally and at a state level with Aboriginal and Government partners

to make sure we have the necessary foundations for transformation in place. This includes efforts through the *National Agreement on Closing the Gap and in supporting development of the Aboriginal and Torres Strait Islander Action Plan under Safe and Supported: The National Framework for Protecting Australia's Children and Young People 2021-31*. We are committed to work through these frameworks and the four priority areas that have been agreed in partnership with Aboriginal leaders. This year's activity includes:

- SA's commitment to Treaty and establishing an Aboriginal voice to Parliament (a First Nations Commissioner has been appointed to lead this work)
- The review of the *Children and Young People (Safety) Act 2017* through which SA is committed to implement the Child Placement Principle to the standard of active efforts, to enable self-determination and the exercise of legislative authority by Aboriginal people, communities and organisations.
- Engagement of SNAICC - National Voice for Our Children to undertake community consultations on a model for SA's first Peak Body for Aboriginal Children and Young People. The report has now been finalised and implementation of the Peak is to commence in 2022-23.
- Negotiations with the South Australian Aboriginal Community Controlled Organisations Network and stakeholders on the child protection schedule to Closing the Gap.
- Investment in targeted research to build the evidence base for practice and reform. For example, research to support Aboriginal Family-Led Decision-Making practice; testing of an ACCO-developed tool designed to measure safety and wellbeing outcomes for Aboriginal children and families; scholarships for Aboriginal-led research in partnership with the Australian Centre for Child Protection.
- Investment in workforce development. For example, development of the DCP Aboriginal Workforce Strategy, and ACCO-led delivery of the Yaitya Mingkamingka Purruapiinthi workshops.
- Funding to support the Commissioner for Aboriginal Children and Young People's review of the implementation of the Child Placement Principle.

Recognising the importance of a strong sector, SA continues to expand service partnerships and investment in ACCO-led service delivery. For 2021-22, DCP's investment footprint in the ACCO sector sits at approximately 8% of its total procurement spend, including foster and kinship care supports, family group conferencing, and reunification, as well as corporate services. Investment also continues in ACCO-led intensive family support, driven through the Roadmap for Reforming the Child and Family Support System 2021-23, with extended funding for relevant programs including Taikurtina Tirra-apinthe and Tiraapendi Wodli. Recognising the need for a public health approach



which recognises the social determinants impacting child protection engagement, SA is also continuing efforts to improve outcomes for Aboriginal children and young people in the areas of education, health, housing and justice.

OVERVIEW OF SNAICC'S 2020-21 ATSI CPP COMPLIANCE REVIEW

Prevention: The SA Government's whole-of-government child protection strategy, *Safe and Well: Supporting Families, Protecting Children*, included a major commitment to reforming the family support service system by prioritising prevention and earlier intervention. In 2020-21, 9.78% of child protection funding was spent on family support and intensive family support services (SCRGSP 2022, Table 16A.8). This reflects a slight increase (of about 1.2%) from 2019-20, but still places South Australia second last among jurisdictions for the proportion of expenditure invested in prevention. More promisingly, there was a significant increase in the proportion of children who are Aboriginal or Torres Strait Islander commencing intensive family support services, from 30.2% in 2019-20 to 36.3% in 2020-21. This proportion is now equal to the proportion of children in care who are Aboriginal or Torres Strait Islander (36.2%).

At 30 June 2021, Aboriginal or Torres Strait Islander children in SA were just over 11 times as likely to be living in out-of-home care as their non-Indigenous peers – a slight increase over last year's rate of 10.8 (SNAICC 2021). The proportion of all Aboriginal or Torres Strait Islander children in South Australia who were in out-of-home care on 30 June 2021 increased – from 8.5% to 9.3% (SCRGSP 2022, Tables 16A.2 & 16A.3).

Partnership: The South Australian Department of Premier and Cabinet's (DPC) *Aboriginal Affairs Action Plan 2021-22* contained DPC's commitment to provide funding for an Aboriginal-led process to establish a South Australian peak body for Aboriginal children and young people. This was in response to longstanding advocacy on this issue by Aboriginal community members and the state's Commissioner for Aboriginal Children and Young People ("Commissioner") (SACACY 2019). SNAICC was contracted to facilitate this process by leading engagement with Aboriginal communities and organisations across South Australia. The Department for Child Protection has committed to recurrent funding for the Peak.

The Department of Human Services (DHS) and Department for Child Protection (DCP) invested in several new or increased funding partnerships with ACCOs in 2020-21, including for family support services, family group conferencing (FGC), kinship carer support, and reunification services. The proportion of DCP's budget invested with Aboriginal businesses increased from 6.35% in 2019-20 to 7.8% in 2020-21, and DHS exempted ACCOs from competitive tendering requirements in intensive family support services

recommissioning (enabling them to negotiate funding proposals directly with DHS). However, many key services to Aboriginal children and families are still provided by non-Indigenous organisations.

Placement: At 30 June 2021, 61% of Aboriginal children in out-of-home care were living with family, kin or other Aboriginal carers – a slight increase on 2019-20 (60.2%) (SCRGSP 2022, Table 16A.22). This proportion remains below the average for all jurisdictions (63.8%) and lags substantially behind Victoria (80.6%) and New South Wales (72.4%). Further, the proportion of Aboriginal children with non-Indigenous family or kin increased from 21.8% to 23.6%. Acknowledging that some caution needs to be applied when interpreting these figures due to changes in counting rules and definitions over time, the proportion of children placed with all Aboriginal carers also fell from 38.5% in 2019-20 to 37.4% in 2020-21 (below the national average of 41.6%) and continues an extremely worrisome trend of this proportion decreasing by more than 30 percentage points since 2006-07 (SCRGSP 2022, Table 16A.2). Finally, South Australia continued to record the second highest proportion of Aboriginal children in residential care or group homes of any jurisdiction (SA 13.7% – with Queensland having the highest rate at 16%); though this proportion has been decreasing for several years (SCRGSP 2022, Table 16A.2).

Participation: The second year of the Ngartuitya Family Group Conferencing (FGC) program, operated by Relationships Australia South Australia (RASA), yielded promising results. This included achieving the target of 40% of all family group conferencing to support Aboriginal children and young people, and agreements resulting from family group conferencing satisfactorily managing all risks for 86.4% of participating Aboriginal families (with the child or children remaining in the care of their families). While Aboriginal staff members at Relationships Australia South Australia (RASA) and other cultural consultants contributed to the design and delivery of the Ngartuitya program, it was not designed, developed or delivered by an ACCO, and therefore falls short of the necessary criteria to implement the Participation element of the Child Placement Principle. In April 2021, further funding was also committed to RASA to pilot a new FGC program for unborn child concerns with a focus on Aboriginal families. DCP has provided dedicated funding to Aboriginal Family Support Services to deliver an Aboriginal-led family group conferencing service. This commenced in April 2021 with \$151,000 provided in 2020-21, and \$620,000 in 2021-22. There is an ongoing commitment to this ACCO led program.

DCP is also developing a new Aboriginal Family-Led Decision-making Framework aimed at promoting self-determination for Aboriginal families. The Framework was developed by DCP by and in consultation with Aboriginal employees and with oversight from DCP Aboriginal governance. However the Commissioner commented that she did not see evidence of broad consultation or partnership with other Aboriginal

community members in its design.

Connection: South Australia's proportion of Aboriginal children reunified with their families from out-of-home care in 2019-20 was just 7.0% – the lowest rate in the country, and only slightly more than half of the non-Indigenous child reunification rate at 13.3% (AIHW 2022, Table S2.3b). This rate has also decreased sharply from 2018-19 (11.9%) (AIHW 2022, Table S2.3b). DCP invests in reunification through nine providers, including two ACCOs (Aboriginal Family Support Services and Bookyana). A total of \$57.4 million is being invested over nine years via agreements with these providers. DCP has also launched a new non-Aboriginal-specific reunification program through Uniting Communities (New Parent and Infant Network – NEWPIN – program).

The *Children and Young People (Safety) Act 2017* (SA) sets out a requirement for timely decision-making (section 10). Concern has been expressed that this has led DCP to focus on transitioning children and young people into permanent guardianship orders. In 2019-20, South Australia had the second highest proportion nationwide of Aboriginal children on finalised long-term care and protection orders (80.6% of all Aboriginal children in out-of-home care), behind only New South Wales, where 80.8% of non-Indigenous children were on those orders. However, DCP has achieved significant improvements in the proportion of Aboriginal children in care who have a completed Aboriginal Cultural Identity Support Tool – from 56.5% in 2019-20 to 92.7% in 2020-21.

TASMANIA

COMMUNITY VOICES – PROVIDED BY THE TASMANIAN ABORIGINAL CENTRE

Successes

TAC continues to receive Intensive Family Engagement Services (IFES) funding from the State Government for Aboriginal children considered by the Department to be at medium to high risk of being removed from family and community.

The Department of Communities in Lutruwita/Tasmania continues to redirect Government funds and other resources to the TAC to provide effective services to keep Aboriginal children out of the child protection system. However, just as closer working relationships are being forged, there is yet another government reorganisation of its agencies, which sees the merger of the Department of Communities with other government departments.

Key Challenges

DATA

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

What the data shows is that Lutruwita/Tasmania is doing much better than most other jurisdictions in Australia. This unreliable statistical finding does not help the Aboriginal community be assured that the State is doing better in keeping Aboriginal children out of State care. Nor has it resulted in State agencies being keen to learn from the success of our efforts.

The TAC has found it impossible to obtain accurate data and information about the number and status of Aboriginal children in the child protection system. The number of families referred to TAC by State agencies indicates to us that self-identification or identification by those who refer is often an overstatement of Aboriginality and in other cases TAC believes there is an understatement.

ATSICPP

Implementation of the Child Placement Principle by the Department of Communities/Department for Education, Children and Young People is progressing slowly. There have been no changes to the *Children, Young Persons and Their Families Act 1997*; there are still no Aboriginal Family Group Conference facilitators, and there are no Department-established programs or policies for TAC to participate in child safety decision-making, to lead in family participation, or to take up case management or guardianship powers and functions.

FUNDING

Although TAC continues to receive fee-for-service funding for IFES, there are considerable challenges associated with this model, including burdensome administrative and reporting requirements.

Promising Initiatives

TAC is the Tasmanian partner of the Coalition of Peaks. The State Government and Tasmanian Aboriginal people have formed a new partnership environment, based on the acknowledgement that Tasmanian Aboriginal people are best-placed to determine and deliver services.



GOVERNMENT INPUT – PROVIDED BY THE FORMER DEPARTMENT OF COMMUNITIES (NOW THE DEPARTMENT FOR EDUCATION, CHILDREN AND YOUNG PEOPLE)

The Tasmanian Government shares the Family Matters commitment to eliminating the overrepresentation of Aboriginal and Torres Strait Islander children in out of home care by 2040. Initiatives that aim to improve outcomes for Aboriginal and Torres Strait Islander children in out of home care in Tasmania include:

- The Children, Youth and Families (CYF) partnership with the Tasmanian Aboriginal Centre (TAC) which continues to provide Intensive Family Engagement Services (IFES) to Aboriginal families. IFES supports families to develop parenting skills where there are concerns for the safety and wellbeing of children or young people.
- Continuation of direct funding to the Circular Head Aboriginal Corporation (North-West) and the TAC (North and South) for Aboriginal Liaison Officers in each region. These positions enhance the Advice and Referral Line's ability to provide culturally appropriate coordination, advice and assistance to Aboriginal families in need of this support and to better support and work more closely with the Aboriginal community. The first three Aboriginal Liaison Officers began in 2020 to facilitate increased participation of Aboriginal people in Child Safety decision making. A fourth Aboriginal Liaison Officer will commence in 2021-2022.
- A continual focus on the identification of Aboriginal and Torres Strait Islander children involved with the Child Safety Service (CSS). This has resulted in a significant decrease from 30% of children and young people in out-of-home care for whom Aboriginal and Torres Strait Islander status is 'unknown' to below 2%. This will support and enable targeting of culturally responsive practices.
- A Permanency and Stability Framework is in development which has a hierarchy of preferred placement options and incorporates the Aboriginal and Torres Strait Islander Child Placement Principle that recognises an Aboriginal child should remain within the Aboriginal community where possible. The Framework also identifies the importance of ensuring Aboriginal and Torres Strait Islander children are supported to have long lasting connections to family community, culture and country.
- Development and implementation of a new Care Teams and Care Planning Procedure and Practice Advice for the Child Safety Service in December 2020. The new processes support the inclusion of Aboriginal family and kin to be part of the Care Team that contributes to Cultural Safety Planning in the Care Plan.

The Tasmanian Government will continue to work with Aboriginal community organisations to:

- Develop an Aboriginal-led case management service model for Aboriginal children in out-of-home care; and
- Identify and build capacity for Aboriginal Family Group Conference Facilitators to oversee those conferences that relate to Aboriginal children and young people.

In addition, CYF is working with Aboriginal community organisations to develop a series of actions for fully realising the guiding aims of the Child Placement Principle including the above two initiatives.

OVERVIEW OF SNAICC'S 2020-21 ATSCPP COMPLIANCE REVIEW

Prevention: The Tasmanian Government's spending on family support and intensive family support services comprised 25.18% of total funding for child protection in 2020-21 (SCRGSP 2022). This was a significant increase from 13% during the last reporting period and higher than the national average of 16.9% (SCRGSP 2022). Aboriginal children made up 35.7% of children in out-of-home care in 2020-21, which was an increase from 34% during the previous reporting period.

Promising developments included continued funding to the Tasmanian Aboriginal Centre to provide culturally safe intensive family support services, and direct funding to Aboriginal organisations to employ three community liaison officers for the *Strong Families Safe Kids Advice* and Referral Line.

Aboriginal children in Tasmania were 4.88 times more likely to be in out-of-home care than non-Indigenous children.

Partnership: Tasmanian ACCOs were funded \$740,036 per annum during the reporting period to deliver services. This was 2.05% of the total funding for family support and intensive family support services, and 0.5% of the total expenditure on child protection services. When considered alongside the 35.7% of Aboriginal children in out-of-home care, this reflects an extremely limited allocation of funding for ACCO service delivery to Aboriginal children and families.

Placement: In 2020-21, just 10.7% of Aboriginal children in out-of-home care were placed with Aboriginal kin, well below the national average of 31.3% (AIHW 2022, Supplementary Table S2.1). This rate was the lowest of all jurisdictions, with Queensland having the second-lowest rate at 21.7% (AIHW 2022, Supplementary Table S2.1). The Tasmanian Government noted that the proportion of children placed with Aboriginal carers may be underreported due to the high proportion of caregivers with unknown Aboriginal status.

In addition, ACCOs were not funded to find, assess, recruit and support kin carers. This is concerning given the very low rates of Aboriginal children that were placed with Aboriginal kin.

Participation: Under the current family group conferencing model, 91 Aboriginal children participated in conferences, compared to 219 non-Indigenous children and eight children with unknown Aboriginal status. This was a significant increase from 35 Aboriginal children during the previous reporting period (2019-20). There were still no Aboriginal facilitators in the 2020-21 reporting period and the family group conferencing model in Tasmania does not fully align with the best practice model of Aboriginal Family-Led Decision-Making highlighted in SNAICC's Child Placement Principle resource series.

Connection: There was a concerted focus on improving the identification of Aboriginal children in out-of-home care since 2019, increasing the known Indigenous status of children from 70.3% in 2018 to 98.3% in 2020-21. However, the Tasmanian Government noted that the Aboriginal status of children was not reliably reported until children were already placed in out-of-home care, and data in relation to placement with Aboriginal members of a child's community and data in relation to proximity to the child's family were not readily available.

Just 62.4% of Aboriginal children in out-of-home care had a current cultural support plan at 30 June 2021 (AIHW 2022, Supplementary Table S2.2a). There are data limitations in Tasmania for this measure as cultural need is one domain of care planning and not a specific stand-alone plan on which data is collected. Over the same reporting period, the national average for the proportion of Aboriginal children 0-17 years who had a current documented and approved cultural support plan was 73.4% (AIHW 2022, Supplementary Table S2.2a). In addition, data limitations in Tasmania prevented the accurate reporting of this measure, including the extent to which these cultural support plans actively meet children's cultural needs.

Low reunification rates and a greater emphasis on permanency planning raise concerns about the risk of Aboriginal children in out-of-home care losing connection to their families, communities and cultures.



VICTORIA

COMMUNITY VOICES – PROVIDED BY THE VICTORIAN ABORIGINAL CHILD CARE AGENCY (VACCA) AND VICTORIAN ABORIGINAL CHILDREN AND YOUNG PEOPLE'S ALLIANCE (VACYPA)

While the Victorian Government has made some promising commitments over the past year in support of Aboriginal self-determination in child and family wellbeing, the Victorian Aboriginal Child Care Agency (VACCA) and Victorian Aboriginal Children and Young People's Alliance (VACYPA) have significant concerns about the effective implementation of these commitments. The over-representation of Aboriginal children in care in Victoria continues to escalate year after year, and our communities do not have time to wait.

Building Block 1 – Access to universal and targeted services

The Victorian Government's commitment to invest in an expansion of 'early help' under the *Roadmap for Reform: Strong Families, Safe Children* is significant. However, we note that there is currently no universal definition of early help in the Victorian child and family sector, and while the Roadmap to Reform proposes one, the definition is not fit for purpose and ACCOs will require resourcing in order to conduct consultation with their communities to determine what early help is needed and how, when and where it should be delivered. Further, early help needs to go beyond interventions with families that are already struggling – it must include universal services that support all Aboriginal children and families (plus coordination of services and outreach to regional areas). Clear plans for service coordination, led by ACCOs, should be developed to ensure broad and seamless coverage of early help services. At present there is only one DFFH-funded, ACCO-led early help program compared to four funded non-ACCO programs, and significant funding disparities between these programs are disproportionate to the number of Aboriginal children and their families needing earlier help.

Government investment in ACCOs continues to lag, with only 17% of budgeted 2021-22 prevention and care services expenditure going to ACCOs. Despite the policy commitment of proportionate funding (and its link to the Closing the Gap Priority Reforms), we still face challenges with Government procurement, particularly for early help, where around \$500,000 or 3% of the total budget – was allocated to ACCOs in 2021-22.

Workforce development remains an enormous challenge as service demand increases and ACCOs are forced to compete with government departments for staff and much better-resourced non-Indigenous NGOS

for the recruitment and retention of suitably qualified Aboriginal staff and staff in general. Several critical workforce objectives within *Wungurilwil Gaggapduir* have failed to progress. Matched funding to Victorian Public Sector salary levels and long-term initiatives and resourcing to develop the ACCO workforce – including through higher education, training and recognition of cultural skillsets – will be essential.

Building Block 2 – Participation in and control of decision-making

The success of *Aboriginal Children in Aboriginal Care* (ACAC) continues: as of 31 December 2021, 206 Aboriginal children and young people were authorised to an ACCO, with the program having recently expanded to Ballarat & District Aboriginal Cooperative and Njernda Aboriginal Corporation; as well as to VACCA's Inner Gippsland region. These ACCOs are now authorised under Section 18 of the *Children, Youth and Families Act* (CYF Act) to undertake specified functions and powers in relation to a Children's Court protection order for an Aboriginal child. It is less promising to see a decrease in the proportion of Aboriginal children in care being case-managed by an ACCO, from 50% in June 2021 to 47% in December 2021, and to note that this represents a further stalling of progress against the target to transition **all** Aboriginal children's case management to ACCOs by July 2021.

While funding for the ACAC program as a whole is ongoing, we note that the *quantum* of funding for each ACCO is not guaranteed, as it is driven by DFFH targets for the number of children to be authorised to ACCOs in each region. These targets create limitations on the numbers of children that ACCOs can nominate for authorisation under ACAC, rather than being able to set their own targets (as the experts in their local communities) and be resourced accordingly. There are no incentives for non-Indigenous NGOs to support transfer of an Aboriginal child's case-management under ACAC; as such, VACCA and VACYPA members have encountered significant barriers from some organisations where Aboriginal children are concerned. This displays a colonial mindset – one that is contrary to the principle of self-determination and is further reinforced by DFFH initiating a project on 'Building ACCOs' Aspirations', situating the problem within ACCOs and their capabilities viewed as deficits rather than holding the rest of the sector accountable.

However, there are some promising new initiatives to continue the Aboriginal self-determination reform agenda. At Bendigo and District Aboriginal Cooperative (BDAC) and VACCA, we have embarked on trials of Aboriginal-led Child Protection investigations (which will provide tailored cultural approaches to investigations in conjunction with DFFH officers) and Child Protection diversion pathways (which allow us to test new and innovative ways of diverting our children away from the child protection system at the earliest stages of their involvement). We are awaiting the

passing of legislation to ensure this continues (see below).

Building Block 3 – Law, policy and practice are culturally safe and responsive

VACCA and VACYPA were disappointed by the lapsing of the *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022* in September 2022. Both organisations had worked with DFFH to progress the inclusion of a Statement of Recognition (to recognise historic and ongoing injustices and trauma for Aboriginal people in Victoria), legally binding principles (to enact Aboriginal self-determination in child protection and provide the tools our communities need to reduce overrepresentation), and investigative powers for the Commission for Children and Young People. Anticipating the commencement of the Bill, DFFH and Aboriginal agencies had put in place organisational, funding and staffing arrangements to implement its provisions. The delay in passing the Bill thus further postpones measures to address critical numbers of Aboriginal children and young people coming into contact with child protection services. We call upon the next Victorian Government to enact the Bill as a matter of urgency.

It is highly concerning that approximately 40% of reports about Aboriginal children to child protection services – particularly for unborn children – originate in healthcare systems, but less than one-quarter of unborn reports about Aboriginal children (24%) result in removal to out-of-home care within one year of birth. Clearly, unsubstantiated reports are causing Aboriginal pregnant women unnecessary stress and trauma at an extremely vulnerable time. VACCA is commencing cross-disciplinary work with organisations in the health sector, including VACCHO and the Department of Health, in order to combat the discriminatory practices that underpin this phenomenon and encourage a more constructive approach to Aboriginal pregnant women. In addition to addressing racism, VACCA and VACYPA members need to be resourced appropriately to build relationships and formalise partnerships with local health providers to ensure pregnant Aboriginal women and their families receive culturally safe support before and after birth.

Building Block 4 – Accountability to Aboriginal children and families

The Aboriginal Children's Forum (ACF) continues to be the right mechanism for the progression of Aboriginal children's rights and interests underpinned by the tripartite agreement of *Wungurilwil Gaggapduir*. However, at there remains limited accountability for failure to achieve the agreed targets. For example, while it is legislated that 100% of Aboriginal children in care must have a cultural plan – a crucial factor in ensuring our young people leave care with the best chances for their adulthood – the proportion who had a current, endorsed

plan in December 2021 was just 63%. However, while leaving care remains a challenge, it is more encouraging to note that 100% of Aboriginal children scheduled to leave care (within 3 months) had a Leaving Care Plan in place.

On a broader scale, there is a widening disconnect between the aims of *Wungurilwil Gaggapduir* and the progress that is really achieved in advancing the needed reforms from year to year, particularly given that progress has also slowed on *Korin Korin Balit-Djak* and the two initiatives are closely linked. The 2022 state election presents an opportunity for the next Victorian Government to recommit to an Aboriginal-led refresh of *Wungurilwil Gaggapduir* and strengthen its approach to the national Closing the Gap priority reforms and targets. We hope that with the Victorian Government enabling true Aboriginal self-determination, we will continue to overcome the impacts of intergenerational trauma and support our children and families through community and culture.

COMMISSIONER FOR ABORIGINAL CHILDREN AND YOUNG PEOPLE – MEENA SINGH

Aboriginal children in Victoria continue to be overrepresented in the out-of-home care system at alarming rates. Whilst much work has been done supporting the *Aboriginal Children in Aboriginal Care* program, Aboriginal children, communities and organisations continue to identify prevention, early help and early intervention as areas that require much greater attention. The Victorian Government has committed to achieving Target 12 of Closing the Gap: to reduce the over-representation of Aboriginal children and young people in out-of-home care by 45% by 2031. Despite this commitment, the proportion of Aboriginal children in out-of-home care continues to increase from year to year. It is therefore clear that much more needs to be done to achieve Target 12.

This Commission remains concerned about current initiatives underway to reduce the over-representation of Aboriginal children in the child protection system. Achieving this requires a whole-of-government response. If the aim is to keep Aboriginal children out of the child protection systems, all government departments need to play a role in supporting Aboriginal children and their families earlier and providing them with the resources to avoid poor outcomes. Thus, it is concerning that responsibility for achieving Target 12 rests solely with the Minister for Child Protection. This limits the scope of actions that can be undertaken to prevent Aboriginal children from coming into contact with child protection in the first place.

Current actions under the *Wungurilwil Gaggapduir Agreement* and the Closing the Gap Implementation Plan are primarily focused on the tertiary/crisis end of the system. Further, there is inconsistency about what constitutes early intervention or early

help within the broader context of 'early intervention and prevention' between government departments, Aboriginal community-controlled organisations, and non-Indigenous community service organisations. Stakeholders have expressed the need for a shared definition of early help, early intervention and prevention across government. This lack of a shared definition operates as a barrier to government, ACCOs, and communities partnering to take coordinated and aligned action to 'close the gap'.

Overall, there appears to be a lack of coordinated investment on the part of the Victorian Government in supporting Aboriginal children and their families earlier. It is essential that the Victorian Government fundamentally shifts its approach, with any new ways of working centred on self-determination.

GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF FAMILIES, FAIRNESS AND HOUSING

The Victorian Government remains committed to self-determination and self-management for Aboriginal people. Since 2018, this Victorian Government has invested over \$160 million of new funding to implement *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement* and its nation leading initiatives to address the over-representation of Aboriginal children and young people in child protection and care. Victorian highlights during this period of this report include:

- The continued expansion of Aboriginal Children in Aboriginal Care (ACAC), a Victorian first initiative through which ACCOs assume full responsibility for children on Children's Court protection orders through authorisation under section 18 of the *Children, Youth and Families Act (Vic) 2005*. As at the end of June 2021, 102 Aboriginal children were authorised to the CEO of the Victorian Aboriginal Child Care Agency (VACCA) and 62 Aboriginal children were authorised to the CEO of the Bendigo and District Aboriginal Cooperative (BDAC). The 2020-21 State Budget made funding for ACAC ongoing, and it will support the authorisation of up to 396 Aboriginal children and young people by 2024.
- The Ballarat and District Aboriginal Cooperative (BADAC) and Njernda Aboriginal Corporation are currently preparing for authorisation to fully implement ACAC. Further ACAC growth funding enables an additional Aboriginal agency to prepare to deliver ACAC.
- Another nation-first is the establishment of a new Aboriginal response to child protection reports. This initiative included 2020-21 State budget investment of \$11.6 million over four years to establish Aboriginal-led teams at two pilot sites to respond to child protection reports, helping local families and addressing the over-representation of Aboriginal children in care. This pilot is a key initiative of *Wungurilwil Gaggapduir*, and aims to ensure that

all Aboriginal children and young people are safe, resilient and can thrive in Aboriginal families and communities.

- Victoria continued to grow the proportion of Aboriginal children in care who are case-managed by Aboriginal Community Controlled Organisations (ACCOs). As at June 2021, 50 per cent of Aboriginal children in care on contractible orders were case-managed by an ACCO.
- The continuation of the Aboriginal family preservation and reunification response and early intervention model, which began in 2020-21, over four years.
- Victoria signed the National Agreement on Closing the Gap (which now includes a target to reduce the rate of over-representation of Aboriginal children in out-of-home care by 45 per cent by 2031) in July 2020, and released its first state Implementation Plan (2021-23) in August 2021. The agreed actions in Wungurilwil Gapagpduir are the foundations on which Victoria sets out to achieve Target 12 of Closing the Gap.

Additionally, The Aboriginal Children's Forum (ACF), a quarterly meeting of ACCOs, government and community service organisation representatives, co-chaired by the Minister for Child Protection and the Chief Executive Officer of an ACCO, continues to provide shared governance to the design and delivery of services for Aboriginal children and families.

The ACF oversees the implementation of Wungurilwil Gapagpduir, a Victorian tripartite agreement that outlines a strategic direction to reduce the number of Aboriginal children in care by building their connection to culture, Country and community.

During the period of this report, some initiatives were delayed as government prioritised resources in response to the Coronavirus (COVID-19) pandemic. Government held regular forums with ACCOs to ensure essential service delivery for the most vulnerable members of community continued, developing policy and program responses in a rapidly changing environment.

OVERVIEW OF SNAICC'S 2020-21 ATSCPP COMPLIANCE REVIEW

Prevention: Over the reporting period, the Victorian Government has continued to progress its long-term reforms to the children, youth and family services system. Victoria has prioritised early intervention and prevention through the Roadmap for Reform and the *Wungurilwil Gapagpduir: Aboriginal Children and Families Agreement*. This prioritisation is reflected in the growing proportion of Victoria's child protection expenditure allotted to early intervention and prevention. In 2020-21, this accounted for 27.4% of its total expenditure. In spite of these efforts, the rate at which Aboriginal and Torres Strait Islander children are overrepresented in the system continues to climb.

At 30 June 2021, the Victorian rate per capita of Aboriginal and Torres Strait Islander children in out of home care was 21.9 times the rate for non-Aboriginal children. This is partially explained by the ongoing under-representation of Aboriginal and Torres Strait Islander children in intensive family support services. Aboriginal and Torres Strait Islander children made up only 10.6% of children commencing an intensive family support service in 2020-21, yet accounted for 23.5% of the out-of-home care population.

Partnership: The transfer of case management of Aboriginal and Torres Strait Islander children in out-of-home care to ACCOs has progressed over this period, albeit slowly. The rate of increase in authorisation under the Aboriginal Children in Aboriginal Care (ACAC) program has increased by almost 30% and at 30 June 2021, 181 Aboriginal and Torres Strait Islander children and young people were authorised to ACCOs under ACAC. However there has been only a 1% increase in the proportion of children case managed by ACCOs, progress over the past year has been obviously slow. As of 30 June 2021, 50% Aboriginal and Torres Strait Islander children in care are now case managed by an ACCO.

Placement: Positively, Victoria continues to experience an upward trajectory in placing Aboriginal and Torres Strait Islander children with family, kin or Aboriginal and Torres Strait Islander carers. At 30 June 2021, 80.6% of Aboriginal and Torres Strait Islander children in out-of-home care in Victoria were living with family, kin or other Aboriginal and Torres Strait Islander carers, compared to 55.2% in 2012. This is well above the national average of 63.8%. Unfortunately, the proportion of children placed exclusively with Aboriginal and Torres Strait Islander carers stands at 41.2% as at 30 June 2021. This represents a significant drop since the 2018 Child Placement Principle baseline analysis when, at 30 June 2017, 48.3% of children were placed with Aboriginal and Torres Strait Islander carers.

Participation: The expansion of the Marram-Ngala Ganbu Koori Family Hearing Day (Marra-Ngala Ganbu) to the Shepparton Children's Court in 2021 is an important development in strengthening implementation of the participation element. A 2019 evaluation (Arabena et al. 2019) found that families' involvement in Marram-Ngala Ganbu led to greater engagement of families with court processes and services and in complying with court orders. Aboriginal and Torres Strait Islander sector leaders have argued that Marram-Ngala Ganbu is hugely empowering for families and have called for the program to be expanded to all courts in Victoria. Marram-Ngala Ganbu is also leading to improved consideration by the child protection system, including the courts, of cultural connection when assessing the needs of children, as well as in the system's greater compliance with the Child Placement Principle and the Department's strengthened accountability to court process.

Connection: Victoria has expanded a number of initiatives to strengthen connection for Aboriginal and Torres Strait Islander children in out-of-home care, including the *Aboriginal Family Preservation and Reunification Response* and the ACCO-led cultural planning model. Evidence suggests that these programs are leading to some change, albeit slowly – for example, at 30 June 2021, 58% of Aboriginal and Torres Strait Islander children had an endorsed cultural support plan, in comparison to 44% at 30 April 2020. Aboriginal and Torres Strait Islander sector leaders continue to be concerned by the permanency amendments passed through the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), which legislated a rigid two-year timeframe for reunifying children with their families. The overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care in Victoria means that these children disproportionately feel the impacts of permanency planning trends. At 30 June 2020, Victoria had the highest rate of Aboriginal and Torres Strait Islander children on long-term or permanent care orders; at 80.1 per 1,000 children.

WESTERN AUSTRALIA

COMMUNITY VOICES – PROVIDED BY THE NOONGAR FAMILY SAFETY AND WELLBEING COUNCIL AND YORGANOP

Comments from the Noongar Family Safety and Wellbeing Council

The Department has supported the ongoing work of the Noongar Family Safety and Wellbeing Council (NFSWC) and utilises the knowledge and expertise of its membership of 10 ACCOs. NFSWC were contracted to run Perth community consultations for the Aboriginal Registered Organisations (ARO) pilot program, which will be delivered by Yorganop (with the other pilot taking place in the Kimberley). NFSWC sits on many government and sector forums and committees – ensuring input from Aboriginal people is a priority. NFSWC advocates strongly for system, policy and practice changes and has been key to ensuring the commissioning of out-of-home care services from ACCOs continued even when the Independent Reference Group ceased meeting in 2021. NFSWC also advocated and lobbied for Aboriginal Family-Led Decision-Making to be incorporated into legislation and tested in the community, with the Department committing to two pilot sites (Perth and Geraldton). However, NFSWC remained concerned that the funding allocated to this pilot was insufficient to meet the need.

Through SNAICC's work on a 10-year Roadmap to reduce the over-representation of Aboriginal children

in out-of-home care, NFSWC's membership are hoping that the WA Government sees benefits in having a council established in all regions in WA in order to create an opportunity for the community to have a state-wide peak on Aboriginal children and families.

Comments from Yorganop Association Inc.

Yorganop Association Incorporated (Yorganop) remains the only Aboriginal Community Controlled Organisation (ACCO) providing out-of-home care (OOHC) services in Western Australia (WA). Yorganop is currently funded to provide foster care arrangements for 123 Aboriginal children in Perth.

This year, the Department of Communities (Communities) has been consulting with ACCOs and the Noongar Family Safety and Wellbeing Council regarding increasing service provision by ACCOs in the out-of-home (OOHC) sector and has introduced changes to policy and legislation in alignment with the ACCO Procurement Strategy and the Aboriginal and Torres Strait Islander Child Placement Principle.

As a result of these advancements, Communities engaged Yorganop to partner with it to deliver several key projects. These projects include:

- Developing and drafting cultural reports to provide the Western Australian Children's Court. These reports provide an Aboriginal voice, that is external to Communities, on the cultural safety of a proposed Special Guardianship Order (SGO) where an SGO is being sought by a non-Aboriginal carer or carers;
- Supporting the entry of other ACCOs into the OOHC service system; and
- Exit and transitioning planning for Aboriginal children, in care arrangements with Community Service Organisations, and their carers to transition to ACCO provided care arrangements.

In addition, Yorganop was approached by Communities to implement a pilot service as an Aboriginal Representative Organisation (ARO) for the metropolitan area. Findings from the pilot services in Armadale Perth and also from a second pilot site in the Kimberley region, delivered by Arnja Ltd., will inform the broader commissioning of AROs further to the ratification of relevant sections of the *Children and Community Services Amendment Act 2021*. The pilot programs are the result of changes to WA's child protection laws, which now require Communities to engage AROs in placement consultations and cultural support planning for Aboriginal children entering OOHC, and care plan reviews for those already in care.

The engagement of Yorganop by Communities to deliver these projects/pilots aligns with the WA Government's *Aboriginal Procurement Policy – November 2021*, Closing the Gap targets, and *Aboriginal Empowerment Strategy – Western Australia 2021-2029*.

GOVERNMENT INPUT – PROVIDED BY THE DEPARTMENT OF COMMUNITIES

The Department of Communities (Communities) is committed to working with Aboriginal communities, families and children to improve outcomes.

The *Building Safe and Strong Families: Earlier Intervention and Family Support (EIFS) Strategy* is continuing to have an impact. The Aboriginal Intensive In-Home Support Service (AISS), delivered by Wungening Moort Aboriginal Corporation, provides a trauma-informed and culturally safe, intensive in-home support service to Aboriginal families with open child protection involvement, with a focus on keeping children from entering care and safely returning children from care to their parents. Analysis of AISS found that referrals for keeping children safe at home resulted in 89% of children not being in care 12 months later. Additionally, since the EIFS Strategy commenced in 2017, WA is seeing a gradual decline in the rate at which all children are coming into care. In 2020-21 there was a reduction of 2.8% (the first reduction since 1997). The number of Aboriginal children in care reduced by 0.8%, a reduction of 26 children, and the first reduction since 1996.

Supporting Aboriginal families' rights to make decisions about how to keep their children safe and connected to family, culture, Country and community is the cornerstone of the Aboriginal Family-Led Decision-Making (AFLDM) Pilot. In October 2021, following a co-design process, the Pilot commenced with ACCOs in the Mirrabooka and Mid-West Gascoyne Districts. AFLDM provides families with a culturally safe space, facilitated by Aboriginal convenors, in which they can make collaborative decisions to prevent children coming into care or work towards safely returning children to families. An evaluation of the Pilot is currently underway.

In October 2021, the WA Parliament passed the *Children and Community Services Amendment Act 2021*, which includes provisions for Aboriginal Representative Organisations (AROs) to support self-determination. These provisions will ensure AROs are consulted before a placement is made for Aboriginal and Torres Strait Islander children in care, and provide the opportunity to participate in the preparation and review of cultural support plans. This will strengthen the application of the ATSI CPP and help Aboriginal children in care maintain connections to family, culture, and Country. The WA Government has committed \$1.3 million to support the implementation of a 12-month ARO Pilot in Armadale and the Kimberley region, which will inform the rollout across the State. The Pilot is scheduled to commence in November 2022, following a pre-implementation phase that will focus on working locally with staff to embed the service model in practice.

Work is also continuing to amend our policy and practice to embed culturally safe and responsive ways of working. Focus groups were held with Communities'

Aboriginal staff in mid-2022 to inform an Aboriginal Cultural Framework and Aboriginal Cultural Learning Program. The Framework will focus on developing and maintaining our workforce's in-depth understanding of Aboriginal cultures, traditions, and protocols.

The ACCO Strategy 2022-2032 responds to the need to improve the way that Communities commissions and delivers services to Aboriginal children, families and communities, while supporting ACCOs to increase their capacity to deliver culturally appropriate services across WA. The recent ACCO out-of-home care (OOHC) grants are an example of the Strategy in action and will support ACCOs to be more competitive in the OOHC tender process. The current tender process for OOHC services is anticipated to lead to a significantly larger number of ACCOs contracted by Communities in the future.

Family violence is a significant factor in child removal, with up to 80% of Aboriginal children in care in WA having been exposed to family violence. The *Aboriginal Family Safety Strategy* was developed with extensive consultation and feedback from Aboriginal community members and ACCO. A cross-Government initiative, the Strategy forms one of the WA Government's four key actions in the Closing the Gap Implementation Plan to respond to Target 13 ('Aboriginal and Torres Strait Islander families and households are safe').

Communities has also partnered with SNAICC – National Voice for Our Children to develop a 10 Year Roadmap to reduce the number of Aboriginal children in care, and an Action Plan that will respond to calls from Aboriginal people for a different way of working. The Roadmap will build on the significant reforms already underway and reflect what Aboriginal people tell us can make a difference for their families and communities. It will bring together WA's responses to Target 12 of the *National Agreement on Closing the Gap and Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*.

Finally, the WA Government recently announced an investment of an additional \$114 million into the child protection system, supporting services to protect vulnerable children and their families so they can thrive.

OVERVIEW OF SNAICC'S 2020-21 ATSI CPP COMPLIANCE REVIEW

Despite some progress, in 2020-21, Aboriginal and Torres Strait Islander children in Western Australia were 18.75% times more likely to be placed in out-of-home care than their non-Indigenous peers. This is a slight decrease from the previous year (18.97%), yet Aboriginal and Torres Strait Islander children now represent 57% of all children in care.

Since the 2019 Aboriginal and Torres Strait Islander Child Placement Principle implementation review, the Western Australian government has been progressing

legislative reforms to the *Children and Community Services Act 2004* (WA) (the Act) to give full effect to the intent and direction of the recommendations of the statutory review of the Act in 2017. As legislative amendments were passed on 19 October 2021, outside of this review period (1 July 2020–30 June 2021), the full scope of the changes and their impact on implementation of the Child Placement Principle will be discussed in more detail in the 2022 implementation review. Still, key reforms to the Act and feedback from Aboriginal and Torres Strait Islander sector leaders are included where possible.

Prevention: Throughout 2020-21, the Western Australian government continued to maintain a policy focus on early intervention and prevention through the *Building Safe and Strong Families: Earlier Intervention and Family Support* strategy. Despite a continued policy focus on early intervention and prevention, this has not been matched by the necessary resourcing of programs to support policy implementation. The proportion of Western Australia spending on intensive family support services and family support services in relation to total child protection spending remains extraordinarily low – by far the lowest proportional investment in the country. In 2020-21, spending on these services accounted for only 5.62% of the state's total expenditure on child protection services, which is a decrease from 6.7% in 2016-17 when *Building Safe and Strong Families* was announced.

Partnership: The amendments to the Act include several provisions that formally recognise the role of ACCOs in delivering child and family support services and thus have the potential to strengthen implementation of the partnership element. These reforms reflect a shift by the Department of Communities (the Department) to increase the priority on ACCO-led solutions. Specifically, the *Children and Community Services Amendment Bill 2021* (the Bill) amends Section 14 of the Act to require that a kinship group, community or Aboriginal representative organisation is given the opportunity, wherever appropriate, to be involved in all significant decisions about a child and introduces more specific provisions relating to ACCO participation in placement decisions and cultural support plans. The provisions fall well short of best practice in requiring ACCO involvement in decisions, but are a step in the right direction. The Department has initiated a process to pilot this approach, which will be reported on in the 2022 implementation review. It is of some concern that despite the legislative changes, implementation is moving slowly through a pilot phase rather than fully resourced implementation in line with the legislation, which applies across the state. The success of such efforts is highly dependent on ACCOs being appropriately resourced to undertake this important work. Overall, just 2.38% of child protection expenditure went to ACCOs in 2019-20. Meanwhile, Aboriginal and Torres Strait Islander children accounted for 43.53% of children receiving a child protection service in the same year.

Placement: Western Australia is experiencing a decline in the number of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers. In 2020-21, 61.1% of Aboriginal and Torres Strait Islander children were placed with kin or other Aboriginal and Torres Strait Islander carers, compared to 62% in 2019-20. Still, placement with Aboriginal and Torres Strait Islander kin or other carers is slightly higher than the national average. 39.4% of children are placed with Aboriginal and Torres Strait Islander relatives or other carers in Western Australia, compared with 35.9% nationally. The new legislative provisions that come into effect after the current reporting period will introduce mandatory requirements for ACCO and family participation in placement decisions, and so significantly increase legislative alignment with the Child Placement Principle.

Participation: The Western Australian Government is taking positive steps to enhance the involvement of children and their families in child protection decision-making using formal programs such as Aboriginal and Torres Strait Islander family-led decision-making models (AFLDM). In August 2020, the Department announced that it would commit \$715,000 to establish a two-year AFLDM pilot. The pilot will be implemented in the Midwest/Gascoyne region and the Perth suburb of Mirrabooka by organisations yet to be announced. Whilst a promising step, the minimal amount of funding committed to the pilot has been described as '*tokenistic*' and '*several years behind other jurisdictions*' by the Noongar Family Safety and Wellbeing Council (NFSWC). SNAICC and the NFSWC have also been critical of the failure to include AFLDM in the scope of legislative reforms, as would be in line with best practice.

Connection: Aboriginal and Torres Strait Islander sector leaders in Western Australia continue to be concerned by the state's practice of relying on long-term and permanent care orders for managing the rising number of children entering care year upon year. The overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care in Western Australia means that they disproportionately bear the impacts of permanency planning trends. At 30 June 2020, Western Australia reported the third highest use of permanent care orders for Aboriginal children (10.4 per 1,000). Whilst the Bill proposes some measures to strengthen implementation of the connection element, NFSWC and SNAICC have argued that these are grossly inadequate for safeguarding the rights of Aboriginal and Torres Strait Islander children.

2.3 AUSTRALIAN GOVERNMENT UPDATES ON RELEVANT INITIATIVES

NATIONAL INDIGENOUS AUSTRALIANS AGENCY (NIAA)

The National Indigenous Australians Agency (NIAA) works in partnership with First Nations peoples and other government agencies to improve the safety and wellbeing of First Nations children and young people and address their over-representation in the child protection system.

Safe and Supported: The National Framework for Protecting Australia's Children (2021–2031) is the key mechanism for the Commonwealth to address the *National Agreement on Closing the Gap* (National Agreement) Target 12: to reduce the over-representation of First Nations children in out-of-home care by 45% by 2031. The Department of Social Services (DSS) leads the Commonwealth's work under *Safe and Supported*. The NIAA provides advice to ensure the perspectives and unique circumstances of First Nations families are considered and approaches are culturally appropriate, accessible and trauma-aware.

In December 2021 the *National Aboriginal and Torres Strait Islander Early Childhood Strategy* (the Strategy) was launched. The Strategy was developed by the NIAA and SNAICC — National Voice for our Children to support children to thrive in their early years across a range of priority areas including safety, family support, education, health and culture. Through close consultation and working together in partnership, the Strategy reflects the views and priorities of First Nations peoples and communities. It provides a suite of evidence-based reform opportunities across government and the community sector. The Strategy will enable stronger collaboration, inform investment and policy development, and align effort across services that impact early childhood outcomes.

Under the *National Strategy to Prevent and Respond to Child Sexual Abuse*, a nationally-coordinated strategic framework that seeks to reduce the risk, extent and impact of child sexual abuse and related harms in Australia, the NIAA is delivering two measures:

- a trauma-aware, healing-informed, and culturally appropriate resource to improve early disclosure experiences and access to specialist services for First Nations victim-survivors of child sexual abuse.
- Supporting Healing for Families (SHFF), which will provide funding in five locations for First Nations-led, trauma-aware healing initiatives for victim-survivors of child sexual abuse and their families. SHFF initiatives will be place-based and community-led, with communities co-designing their own service model through a facilitated process. An Indigenous Expert Group is guiding the development and implementation.

The NIAA is also working with DSS on the development of the next *National Plan to End Violence against Women and Children (2022–2032)*, which aims to improve safety outcomes for women and children. The National Plan will be underpinned by five-year action plans, including a dedicated Aboriginal and Torres Strait Islander Action Plan, which will detail priority areas for implementation and focus efforts and investment. The Australian Government has also committed to a range of new measures to address violence against First Nations women and children, including:

- Funding for 500 new frontline workers to support women in crisis, with a specific focus on the gaps for First Nations women in rural and regional communities.
- A \$3 million investment in the Family Violence Prevention Legal Services (FVPLS) Forum.

Progress on other targets in the National Agreement, including ensuring young people are engaged meaningfully in education and that all people have good health and wellbeing, will also support outcomes under Target 12.

The Indigenous Advancement Strategy (IAS) funds activities that strengthen families, support healing and enable children to thrive. The IAS Children and Schooling program provides around \$230 million each year to increase school attendance and improve educational outcomes through family and parenting support, early childhood development, preschool and school education, youth engagement and transition to higher education. In 2022-23, the IAS Safety and Wellbeing program has been appropriated with over \$410 million for activities that support communities to be safe, reduce violence, address alcohol and substance misuse, and support the social and emotional wellbeing of First Nations Australians.

DEPARTMENT OF SOCIAL SERVICES (DSS)

Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031

Safe and Supported was released in December 2021. The vision for this Framework is for children and young people in Australia to reach their full potential by growing up safe and supported, free from harm and neglect. Its goal is to make significant and sustained progress in reducing the rates of child abuse and neglect, and its intergenerational impacts. *Safe and Supported* was developed in the context of the *National Agreement on Closing the Gap* (Closing the Gap), and seeks to address the increasing numbers of First Nations children and young people in child protection systems. It is the key national initiative for achieving Target 12 under Closing the Gap. *Safe and Supported* will be delivered by two 5-year Action Plans to be finalised in late 2022: a General Action Plan and an Aboriginal and Torres Strait Islander Action Plan developed by First

Nations representatives, governments, and the non-government sector.

Key areas that the Aboriginal and Torres Strait Islander Action Plan intends to focus on are improving self-determination by First Nations families, communities and providers, growing the proportion of services delivered by First Nations community-controlled organisations, improving data sovereignty for First Nations community-controlled organisations, and building a sustainable First Nations workforce.

The Commonwealth has allocated \$30 million for five measures to support the delivery of *Safe and Supported*. The key measures include:

- \$8 million over five years to 2026-2027 to establish an Aboriginal and Torres Strait Islander Centre for Excellence in Child and Family Support. The Centre will be co-designed and implemented with First Nations partners to support evidence-based approaches to the development of policies and programs that affect Aboriginal and Torres Strait Islander children and families, particularly practical changes that can prevent harm to children.
- \$2 million over four years to 2025-2026 to establish a National Advocate for Aboriginal and Torres Strait Islander Children and Young People. The role of the National Advocate will be co-designed with First Nations partners. It is expected to include monitoring *Safe and Supported* actions and progress towards Target 12 of Closing the Gap.
- \$10 million over five years to 2026-2027 to support a National Child and Family Investment Strategy. The strategy will develop principles and approaches to support the child and family service system to shift away from crisis driven responses towards more early intervention and targeted supports.

FAMILIES AND CHILDREN'S PROGRAMS

The Australian Government invests more than \$290 million annually in early intervention and prevention services and programs under its Families and Children Activity, which delivers support to at-risk children and their families, including those of Aboriginal and Torres Strait Islander descent. This includes:

- Children and Family Intensive Supports (CaFIS), which replaced the previous Intensive Family Support Services (IFSS) program in late 2021, is an intensive home and community-based family support service, including practical parenting education and support, offered to highly vulnerable families. Whilst CaFIS is a mainstream program, a majority of providers are ACCOs.
- Family and Relationship Services (FaRS) provide early intervention and prevention services and focus on at-risk families.

- Family Mental Health Support Services (FMHSS) aim to improve mental health outcomes for children, young people and their families. FMHSS provide intervention support to children and young people who are showing early signs of, or are at risk of developing a mental illness, with the support of their families and carers. This is not a clinical service.
- Home Interaction Program for Parents and Youngsters (HIPPY) is a two-year, home-based parenting and early childhood learning program that helps families transition their child into school. HIPPY is delivered in 100 communities across Australia, including 50 Indigenous-focused communities.
- Children and Parenting Support (CaPS) services help build the capacity of parents, carers and children through activities such as community playgroups, parenting courses, home visiting, peer support groups, school readiness programs and web-based services or resources in identified areas of need.
- Communities for Children Facilitating Partners (CfC FP) is a place-based model of investment that facilitates a whole-of-community approach to support early childhood development and wellbeing.
- The Reconnect Program is a community-based early intervention and prevention program for young people aged 12–18 years (or up to 21 years in the case of newly-arrived youth migrants) who are homeless or at risk of homelessness.
- The Budget Based Funded (BBF) program funds 30 services to provide families with flexible, affordable and accessible adjunct care and early learning services in a number of locations where those services would otherwise not be available. Services promote positive learning and development outcomes for school readiness and allow parents to access educational and training opportunities.
- Stronger ACCOs, Stronger Communities is a two-stage program that aims to increase the involvement of ACCOs in the child and family sector funded by DSS. In Stage 1, initial research by SNAICC — National Voice for our Children assessed the strengths, needs, barriers and opportunities facing ACCOs. Stage 2 commenced in late 2022 and aims to support ACCOs and mainstream organisations to work together in genuine partnerships, and to build on the strengths and capability of ACCOs to deliver government services as part of the department's investment in the Families and Children Activity program.
- The Stronger Places, Stronger People initiative (SPSP), operating in 10 communities across Australia, aims to demonstrate that place-based collective impact can create better outcomes for children and families. SPSP focuses on working in partnership with local community leaders and organisations, state and territory governments,

and other stakeholders to disrupt disadvantage through a community-led agenda for change. Some SPSP communities are explicitly working to reduce the number of children (including Aboriginal and Torres Strait Islander children) interacting with child protection services.

DSS has also continued to fund the Transition to Independent Living Allowance, a nationally available one-off payment of \$1,500 to assist young people leaving formal out-of-home care and support them to transition to independence.

ATTORNEY-GENERAL'S DEPARTMENT

The Attorney-General's Department provided \$224.9 million in funding towards Family Law Services in 2021-22 under the Family Relationships Services Program. The objective of this Program is to improve the wellbeing of families (particularly with children) who are at risk of separating or have separated. Family Law Services support families dealing with separation and aim to assist them to resolve post-separation family disputes without going to court. Further, in recognition of the need for targeted services to support Aboriginal and Torres Strait Islander families, in 2022-23 the Attorney-General's Department will be inviting applications from ACCOs to seek grant funding to pilot the provision of culturally safe and appropriate Family Dispute Resolution services to their communities.





PART 3

FOCUS AREAS FOR ABORIGINAL AND TORRES STRAIT ISLANDER-LED TRANSFORMATION

OVERVIEW

To effectively respond to the needs of children and families and ensure that Aboriginal and Torres Strait Islander peoples' rights to participation and self-determination are fulfilled, Aboriginal and Torres Strait Islander community-controlled organisations must have adequate roles, resources and funding. Evidence from international and Australian research clearly outlines that the best outcomes in community wellbeing and development for Indigenous peoples are achieved when those peoples have control over their own lives and are empowered to respond to and address the challenges facing their own communities.

Across the country, Aboriginal and Torres Strait Islander peoples and their organisations are demonstrating excellence in supporting families and transforming the lives of our children for the better. Our communities have continued to grow, innovate and thrive despite the ongoing impacts of systemic racism, to say nothing of natural disasters and pandemics. We know the solutions that work best to deliver strengths-based, community-driven initiatives, which empower localised processes and cultural understandings to support the holistic wellbeing of our children and families. Governments must invest in these Aboriginal and Torres Strait Islander-led innovations if they are to support continued change.

This section of the Report focuses on three policy areas that are of critical importance to the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people. Each focus area includes a case study that highlights leading practice by Aboriginal and Torres Strait Islander community-controlled organisations and analyses how legislation and government policy across Australia can be transformed to scale up these innovations. Future Family Matters Reports will focus on a range of different policy areas over time.

3.1 REALISING ABORIGINAL AND TORRES STRAIT ISLANDER SELF-DETERMINATION IN CHILD PROTECTION

The right of Aboriginal and Torres Strait Islander peoples to collectively determine their political status and to "freely pursue their economic, social and cultural development" (UN 2007 Art. 3) has long been recognised as a critical precondition of addressing the disproportionate impact of child protection intervention in the lives of Aboriginal and Torres Strait Islander children, families and communities (HREOC 1997). In *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*, governments have again recognised the importance of achieving Aboriginal and Torres Strait Islander self-determination, and committed to the full implementation of this principle in child protection systems across all jurisdictions (DSS 2021). This commitment reflects consultations to inform the development of the National Framework, in which "genuine self-determination and empowerment" was a recurring theme in what Aboriginal and Torres Strait Islander people said was needed to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (DSS 2021 p. 57).

The National Framework builds on the ground-breaking commitments in the *National Agreement on Closing the Gap* (JCCTG 2020). In that agreement, Aboriginal and Torres Strait community control of government decision-making processes is recognised as an act of self-determination, supporting greater understanding and respect for the lived experiences of Aboriginal and Torres Strait Islander people (JCCTG 2020). Governments have committed to "progressive systems transformation that has Aboriginal and Torres Strait Islander self-determination at its centre" (DSS 2021 p. 28), a promise that is welcomed by Family Matters as a key step forward in addressing the over-representation of Aboriginal and Torres Strait Islander children in child protection.

WHAT IS SELF-DETERMINATION FOR ABORIGINAL AND TORRES STRAIT ISLANDER NATIONS?

Self-determination is a critical cornerstone of effective Indigenous policy, inherently connected to social and emotional wellbeing (Cornell and Kalt 2010). Professor Erica-Irene Daes, former Chair of the United Nations Working Group on Indigenous Populations has observed that: “self-determination means the freedom for Indigenous peoples to live well, to live according to their own values and beliefs, and to be respected by their non-Indigenous neighbours” (2001 p. 58).

Under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), self-determination is defined as the right to “freely determine ... political status and freely pursue ... economic, social and cultural development” (UN 2007 Art. 3). Self-determination extends to a right Aboriginal and Torres Strait Islander peoples to exercise autonomy and self-governance in Aboriginal and Torres Strait Islander affairs, inclusive of provision of the means for financing such autonomous governance (UN 2007, Art. 4). Ensuring that of Aboriginal and Torres Strait Islander people exercise free, prior and informed consent while participating in all decisions that affect their lives is a crucial component in the recognition of self-determination (UN 2007 Arts. 18, 19).

Self-determination was recognised in the *Bringing Them Home* report as “the key to reversing the over-representation” of Aboriginal and Torres Strait Islander children in child protection and youth justice systems (HREOC 1997, p. 15). As a basic peremptory right of all peoples under international law (UN 1966 Art. 1), self-determination is inherently connected with the true exercise of all other human rights and grounded in the principles of freedom and equality (Hannikaiken 1988, p. 421). Self-determination incorporates the right of all peoples to exercise equal participation in institutional governing processes. In doing so, self-determination works to mitigate the impacts of colonisation and oppression in supporting equal decision-making power and mutual respect (Gooda 2012 p. 12).

As a core right of all peoples, self-determination should be implemented as a legal and policy objective across all aspects of governance. As expressed by Lowitja O’Donoghue:

“Self-determination as a concept is not something which can be tacked onto program design or introduced through piecemeal consultation. It has to be accepted as a policy objective that pervades the relationship of Indigenous peoples to the wider community.” (1994)

Exercise of the right to self-determination will look different in different circumstances, as the character of the right is to be determined by the people who are empowered to exercise it (Gooda 2012 p. 101).

Accordingly, truly representative and accountable community governance structures are essential in upholding the right to self-determination, empowering Aboriginal and Torres Strait Islander communities to ‘articulate their interests, exercise their rights and responsibilities and reconcile their differences’ (NCFNG 2008 p. 1). To do so, communities will require the support of central organisations and governments.

Critical to self-determination is regaining Aboriginal and Torres Strait Islander control over decisions that affect their lives, and recognition of Aboriginal and Torres Strait Islander laws (Gooda 2012 p. 103). True self-determination goes beyond consultation – as articulated in the *Bringing Them Home Report* self-determination is “decision-making carried through into implementation” (HREOC 1997 p. 276). To enable Aboriginal and Torres Strait Islander communities to exercise self-determination, governments must limit their role to the provision of resources and finance for policies and programs designed by Aboriginal and Torres Strait Islander Peoples (HREOC 1997 p. 277). To do so requires governments to support Aboriginal and Torres Strait Islander governance structures that are well-funded, accountable to their communities, and invited to share decision-making with non-Indigenous governance bodies.

HOW CAN AUSTRALIAN GOVERNMENTS SUPPORT THE SELF-DETERMINATION OF ABORIGINAL AND TORRES STRAIT ISLANDER NATIONS?

The concept of self-determination has been explicitly raised as a cornerstone of child protection systems and practice for generations, most notably as a key (unimplemented) recommendation of *Bringing Them Home* in 1997 (HREOC 1997). However, the Australian Government has generally been reluctant to create provisions for Aboriginal and Torres Strait Islander communities to exercise the right in a collective manner. Justification for this lies in fear of Aboriginal and Torres Strait Islander challenges to the sovereign Australian state: the prevailing government understanding of self-determination is state-centric, presenting Aboriginal and Torres Strait Islander Peoples as oppositional to Australian governments (Gooda 2012 p. 104). This interpretation of the right does not accurately reflect the unique character of the right to self-determination as understood by Aboriginal and Torres Strait Islander Peoples in modern Australia.

For Aboriginal and Torres Strait Islander Peoples, self-determination “includes concepts such as representative government and democracy, the recognition of cultural distinctiveness and notions of the freedom of the individual that are embodied in liberalism. These claims take place by seeking a new relationship with the Australian state with increased self-government and autonomy, not through the creation of a new country.” (Behrendt 2003 pp. 101–102).

Adopting rights-based language such as self-determination, without addressing the fundamental underlying breaches of those rights through ongoing settler-colonialism further entrenches settler authority (Gray 2021 p. 472). Such “weak” forms of self-determination are “unlikely to achieve substantive change” for Aboriginal and Torres Strait Islander peoples (Davis 2019 p. 81). In the context of child protection, it is important to distinguish the collective self-determination of Aboriginal and Torres Strait Islander Nations as distinct from individual agency. *Individual agency* is the right of people to participate in decisions about their lives on an individual basis and includes initiatives such as Aboriginal and Torres Strait Islander family led decision-making. Collectively held self-determination is the right of Aboriginal and Torres Strait Islander Peoples, as sovereign First Nations, to exercise authority in the design and governance of law and policy systems. Both rights must be protected to support Aboriginal and Torres Strait Islander children’s connection to culture and community and provide the best outcomes for Aboriginal and Torres Strait Islander children and families (SNAICC 2019).

Self-determination is about recognition of the right of Aboriginal and Torres Strait Islander Peoples to exercise authority over their lives and Country (Gooda 2012 p. 105). Despite governments’ recognition of the harms of assuming that they know what’s best for Aboriginal and Torres Strait Islander people (JCCTG 2020), child protection systems continue to be characterise by this illegitimate exercise of authority into the lives of Aboriginal and Torres Strait Islander families and communities. This continued denial of Aboriginal and Torres Strait Islander authority in decision-making reinforces “dominance and disempowerment” (Rigney et al. 2022 p. 9). Such dominance is directly linked to Aboriginal and Torres Strait Islander health and wellbeing on both an individual and community level (Rigney et al. 2022 p. 9).

Self-determination inherently requires that Aboriginal and Torres Strait Islander peoples lead the development of legislation, policy and programs, and their implementation. In this context, strengthening Aboriginal and Torres Strait Islander nations provides a framework for the realisation of self-determination (Rigney et al. 2022 p. 46). As articulated by Rigney et al., “nation building enables healthy futures for Aboriginal and Torres Strait Islander peoples” (2022 p. 5). A nation building approach fosters community-driven reform in policy and legislation, predicated upon the culturally informed re-design of systems that have long operated to the detriment of Aboriginal and Torres Strait Islander children and families (Rigney et al. 2022 p. 46).

Nation building through collective self-determination provides a “supportive framework for personal and community healing” where community ownership and governance of policy and programs supports the ongoing protection of cultural knowledges and practices (Rigney et al. 2022 p. 34). There are significant

improvements in the wellbeing of children and young people when engaged in strong community driven nation building activities (Rigney et al. 2022 p. 34). Enabling children and young people to connect with their Country, and engage in cultural roles including governance, community representation and knowledge transfer cultivates a strong sense of identity and promotes Aboriginal and Torres Strait Islander wellbeing (Rigney et al. 2022 p. 34).

EMERGING SELF-DETERMINATION:

In some jurisdictions governments have engaged in initiatives to limit the interference and imposition of settler-colonial governments in the lives of Aboriginal and Torres Strait Islander communities, seeking to restore and recognise the rights of Aboriginal and Torres Strait Islander peoples to autonomy and self-governance. This has included so-called ‘delegated authority’ approaches, in which ACCOs exercise decision making normally vested in the Minister or Secretary, and early attempts at adopting Aboriginal community-led commissioning frameworks, intended to enable communities to determine local service systems for child and family support, towards more responsive, culturally safe and accountable approaches.

So-called ‘delegated authority’ approaches involve settler-colonial government authorities delegating some or all of the powers they normally exercise to Aboriginal and Torres Strait Islander community-controlled organisations and entities, enabling community-led decision making on issues such as risk and placement options. This has enabled them to make decisions that work for their communities, albeit under the authority of the department. The outcomes have been remarkable and demonstrate the significant positive outcomes that can be achieved when Aboriginal and Torres Strait Islander organisations (ACCOs) exercise authority in child protection decision-making.

In Queensland, the *Child Protection Act 1999*, Part 2A, provides for the delegation of one or more powers of the Chief Executive of the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) to an ACCO. The delegation of legislative authority is being piloted with two ACCOs, REFOCUS and Central Queensland Indigenous Development (CQID). The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is co-designing with DCYJMA a strategic blueprint for the state-wide implementation of delegated authority.

In particular, powers have been delegated in pilot phase under sections 87 and 88 of the *Child Protection Act 1999* (Qld). Sections 87 and 88 require DCYJMA to provide opportunities for contact between a child in out-of-home care and the child’s parents and family members. Implementing these provisions requires DCYJMA to make decisions about whether contact with different members of a child’s family, community or language group is appropriate or in the child’s best interests.

Through the Stronger in Family and Culture program, the Centre for Queensland Indigenous Development (CQID) is empowered to make these decisions, upon application to the department.

While early in its implementation, early indications suggests that this process has had exceptional results. CQID have developed local practices that are best suited for the needs of their community, extending beyond the capabilities of DCYJMA. CQID focusses programs upon children who are severely disconnected from their culture, primarily those in residential care or with a non-Indigenous carer. Working with traditional custodians, CQID develop family connection plans that strengthen connections with family and culture while also developing the cultural competency of carers. Unlike the DCYJMA, CQID can leverage existing relationships with their community to benefit from local knowledges in doing so. To support the program, CQID have built their own local data systems, facilitating better informed decision making in accordance with the principles of data sovereignty. As a result, CQID have successfully connected children with their family in instances where the DCYJMA has been unable or unwilling to make these connections for several years.

The Victorian government's *Aboriginal Children in Aboriginal Care* program is another promising example of emerging self-determination for Aboriginal and Torres Strait Islander communities in child protection. Under Section 18 of the *Children, Youth and Families Act 2005* (Vic), the Department of Health and Human Services can authorise an ACCO to assume responsibility for decision-making in relation to child protection for an Aboriginal or Torres Strait Islander children or young person.

The Victorian Aboriginal Child Care Agency (VACCA)'s Nugel Program was the first of its kind in Australia, where an ACCO has been authorised to exercise full responsibility for Aboriginal and Torres Strait Islander children and young people on Children's Court orders. VACCA commenced developing, piloting, and implementing this program in 2013 and have consistently reported positive outcomes for children involved. Through the program, VACCA exercise authority in decision-making regarding case planning and cultural planning; support for the child's out of home care arrangements; ongoing case management; provision of legal services; and support for family reunification. Building upon these successes, the Bendigo and District Aboriginal Co-operative (BDAC) have been engaged in a similar program since 2016, with extraordinary results for Aboriginal and Torres Strait Islander children.

These emerging practices of delegation of authority are promising progress in the transition of decision-making authority to ACCOs. Following on from the successes of the Queensland and Victorian programs, all governments have committed to plan for and implement delegation of authority under *Safe and Supported: The National Framework for Protecting Australia's Children*

2021–2031. However, the very framing of this authority as 'delegated' further implies a valid authority on behalf of settler-colonial governments that they are able to delegate, rather than recognition of the inherent rights of Aboriginal and Torres Strait Islander peoples and a true commitment to transfer power from the state to Aboriginal and Torres Strait Islander communities. Further, such framing also suggests that this 'delegation' can be revoked by governments at their discretion, making the recognition and exercise of these rights extremely precarious.

This progress is welcomed by the Family Matters campaign; however, it must not be conflated with an achievement of full self-determination. ACCOs do not have control over the systems and the laws that are delegated to them and face ongoing difficulties in securing funding to run these programs. An essential element of self-determination is that commissioning processes need to be developed, managed, and reviewed by ACCOs (AbSec 2018 p. 9). It is critical to recognise that a process by which an ACCO needs to provide ongoing justification for management and funding of essential community-led services is not self-determination. Building Aboriginal and Torres Strait Islander national and inter-national governance structures is urgently required for the implementation of Aboriginal and Torres Strait Islander-led commissioning on a state and nationwide basis.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY-LED COMMISSIONING

Through previous Family Matters Reports, Aboriginal and Torres Strait Islander communities have challenged government decision-making regarding commissioning and investment decisions and the way these approaches constrain the opportunity for Aboriginal and Torres Strait Islander community-controlled organisations to design and administer local service systems that are culturally safe and responsive to the needs of their children, families and communities. This includes but is not limited to the persistent under-resourcing of ACCOs relative to the disproportionate needs of Aboriginal and Torres Strait Islander families and communities, and the insistence on non-Indigenous models and evidence regarding the implementation of programs and supports. ACCOs continue to face significant ongoing difficulties in securing funding to design and implement their own approaches, and to build the evidence base for such community-led initiatives.

Aboriginal and Torres Strait Islander community-led commissioning has been raised as a possible approach to address some of these issues, and one which is intended to enable local community governance in the design and administration of child and family services. This approach recognises that the role of ACCOs is arguably fundamentally different to that of other non-government service providers. ACCOs are expected to provide governance arrangements that allow local communities to determine their own leadership

and shape their own service systems, whereas non-government service providers are intended only to deliver on government-led priorities. As *Bringing Them Home* noted, self-determination is fundamentally distinct from Aboriginal community participation in service delivery as it involves “Indigenous decision-making carried through to implementation” (HREOC 1997 p. 276).

It is critical to recognise that a process by which an ACCO needs to provide ongoing justification for funding essential community-led services is not self-determination. Commissioning processes need to be developed, managed, and reviewed by ACCOs (AbSec 2018, p. 9). Building Aboriginal and Torres Strait Islander institutions of governance structures is urgently required for the implementation of Aboriginal and Torres Strait Islander-led commissioning on a state and nationwide basis. Aboriginal and Torres Strait Islander community-led commissioning is inclusive of Aboriginal and Torres Strait Islander Nations exercising decision-making power in funding and commissioning processes, as self-determination is critically undermined where decision-making remains subject to externally determined outcomes (AbSec 2018 p. 9). Aboriginal and Torres Strait Islander led commissioning is a critical step forward in community driven development of programs in accordance with local priorities and aligned to community aspirations and outcomes (AbSec 2018 p. 9).

It is essential that Aboriginal and Torres Strait Islander led commissioning programs recognise the inherent difference between ‘business-as-usual’ government-led contracting, and Aboriginal community-controlled commissioning, which must be characterised by accountability to the local community served, through Aboriginal and Torres Strait Islander governance processes. Aboriginal community-led commissioning is a significant departure from government tendering processes, intended to shift authority and accountability of service system design and administration to Aboriginal and Torres Strait Islander community-controlled processes. Governments should work with Aboriginal and Torres Strait Islander community-controlled entities, or through appropriately developed Aboriginal and Torres Strait Islander commissioning bodies, to adequately invest in local communities (noting the additional costs of delivering services to regional and remote communities) and enable local decision making, aligned to shared high level outcomes frameworks that reflect Aboriginal and Torres Strait Islander community priorities and approaches to individual and community wellbeing.



CONCLUSION

While there has long been recognition by governments of the need to restore child protection decision making to Aboriginal and Torres Strait Islander peoples, through their own representative governance processes, consistent with the right to self-determination, governments have continually failed and even actively resisted these critical structural reforms and a true transfer of power. This includes inaccurate use of the concept of self-determination and efforts to diminish its impact to implementation to mere consultation and participation, ultimately retaining the problematic imposition of settler-colonial authority in the lives of Aboriginal and Torres Strait Islander children, families and communities. Doing so is central to addressing over-representation and promoting social and emotional wellbeing through securing the political determinants of wellbeing critical for Aboriginal and Torres Strait Islander communities to thrive (Rigney et al. 2022).

With all governments committing to the full implementation of self-determination over the next 10 years through *Safe and Supported: The National Framework for Protecting Australia’s Children*, this section has sought to emphasise the need for such efforts to focus on the transfer of authority from governments to Aboriginal and Torres Strait Islander communities. In addition to the guidance provided by *Bringing Them Home*, more recent approaches (such as the nation-building framework set out by Rigney et al.) offers guidance to delivering on these commitments, investing in Aboriginal and Torres Strait Islander institutions of self-governance and directing proportionate, needs-based resources to enable local communities to design and administer child and family service systems that are aligned to community expectations, priorities and aspirations for their children. While there have been some initial steps, such as ‘delegated authority’ and Aboriginal commissioning models, there remains some challenges with these approaches. Further, their breadth and scope remain limited, and must be expanded in partnership with local communities and at their own pace. This will be dependent on adequate investment by all governments in institutions of governance and service delivery and administration, enabling community involvement across service system design.

Aboriginal and Torres Strait Islander nation-building with a view to recognition of the right to self-determination provides a mechanism for community empowerment and significant improvements in collective and individual wellbeing. We call upon governments to be brave, and truly recognise the right of Aboriginal and Torres Strait Islander nations to exercise authority in decisions made about their children.

CASE STUDY

CENTRAL QUEENSLAND INDIGENOUS DEVELOPMENT – STRONG IN FAMILY AND CULTURE PROGRAM

Central Queensland Indigenous Development (CQID) is one of two Aboriginal and Torres Strait Islander Community Controlled Organisations authorised under *section 87* and *section 88 of the Child Protection Act* (Qld). Under these powers the CEO of CQID can sign off on approved connection plans including who children can have family contact with, and CQID can facilitate approvals and connections for young people to connect back to culture and country and learn about their cultural heritage and identity.

DRAWING ON CULTURAL STRENGTHS AND COMMUNITY CONNECTION TO SUPPORT ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND FAMILIES

CQID draws strength from its relationships with community to build on family connections:

“Because we’ve got a stringent finding family policy and being Aboriginal and Torres Strait Islander people from our community, we know our community, we know our mob”

Through this process CQID has the opportunity to find family members that weren’t known to the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA), and can find ways to reunify children with their families.

CQID prioritises the voice of the child in mapping family and planning for connections:

“We go out to the family, we sit down with them, we go through the family members that we’ve been able to identify, and we hear their voice in who would they’d prefer to be connected to from here. If they don’t want to be connected with those family members, we respect those wishes of the child.”

The Strong in Family and Culture Program is currently working with 18 children and young people under these delegated authorisations.

Through this work, CQID has been able to build trust with Aboriginal and Torres Strait Islander families where their trust in government had broken down.

“Because we are working with family members and we are reconnecting, they can see that we’ve got the best interests of their child and they’re more willing, and we are a trusted service to try and encourage them to engage in our other programs.”



CHALLENGES AND OPPORTUNITIES WITH IMPLEMENTING TRANSFERS OF LEGAL AUTHORITY

CQID worked with Aboriginal and Torres Strait Islander communities to develop their implementation of delegated authority:

“We went and had conversations and had community build our model. Having conversations with them and having their buy-in, there’s ownership from the whole community in doing that and I think that’s why it’s been highly successful.”

Implementation of delegation of authority has not been entirely smooth, and some of the implications for how it will be applied need to be thought through, and the solutions need to be shared:

“Delegation of Authority is purely just the process to transfer legal decision-making powers from the Department to a CEO from an ACCO. But what does that mean on the ground? What is happening for communities? What is happening for families, and what is happening for children? That’s the core of what they’re wanting to know. They are some of the challenges, but I think our challenges also need to be shared with that truth telling process to other ACCOs.”

The process of implementing the legislative provisions to transfer authority has had some operational issues. CQID has identified that it might be difficult for smaller ACCOs. There are still times where DCYJMA approves whether Aboriginal and Torres Strait Islander children can participate in cultural programs and activities, and areas where regional DCYJMA offices are making decisions about implementation in ways that do not always work for ACCOs.

“We’re constantly having to remind and raise awareness on what delegation of authority means, and that that delegation sits with us and we make those contact decisions. That’s one of the barriers, that sometimes there’s contacts that are happening that we’re not aware of. Then our staff are under the pump to try and get a formalized connection plan in place so that we are covered, and we know what contacts are occurring.”

CQID is collecting its own evidence to build their evidence base, and advocating strongly for these issues to be resolved, so their lessons can be shared to inform state-wide implementation:

“It’s also empowering because it’s our cultural obligation to make sure that we get this right and there needs to be truth telling around what some of the issues are that we’ve experienced. Because my fear is that if there is not truth telling from the Department around some of the operational challenges we’ve experienced and they roll this out as if it’s the golden fruit - that we have self-determination, delegation of authority, we’re going to improve these outcomes - that ACCOs will jump in.”



3.2 SOCIAL AND EMOTIONAL WELLBEING

Social and emotional wellbeing (SEWB) for children and families is a critical part of children growing up safe strong and connected to their culture and community. Supporting children and parents' SEWB is part of early support and prevention for families as a social determinant of health wellbeing. SEWB is distinct from concepts of mental health and ill health. As part of Aboriginal and Torres Strait Islander approaches to SEWB, mental health is one component that impacts social, emotional, physical, cultural, and spiritual wellbeing (Dudgeon, Milroy & Walker 2014). Mental health and mental ill health viewed within the context of a SEWB framework "makes explicit that, for many Aboriginal and Torres Strait Islander peoples and communities, mental health issues are still entwined with the past injustices associated with colonisation" (Dudgeon, Milroy & Walker 2014 p. 63).

This is an important and significant distinction for the delivery of mental health services for Aboriginal and Torres Strait Islander children and families. Services must be delivered in ways that are consistent with Aboriginal and Torres Strait Islander understandings of SEWB so that they respond to all of the domains that impact and support children and families. Given the cultural, spiritual, political, and social dimensions of SEWB, ACCOs and Aboriginal and Torres Strait Islander people are best placed to provide these services in culturally safe and responsive ways. Current burden of disease trends (including rates of suicide) and service access data are concerning and indicate that the service system is not meeting the needs of Aboriginal and Torres Strait Islander people. Not supporting families' SEWB can lead to increased risk of interaction with child protection systems, which in turn exposes children and families to further risk of lower SEWB. Investing in ACCO-led SEWB programs and services is the best way forward for supporting and improving SEWB outcomes for Aboriginal and Torres Strait Islander children and families.

IMPACT OF MENTAL ILL HEALTH AND BURDEN OF DISEASE

Aboriginal and Torres Strait Islander people continue to experience a disproportionately high burden of disease for mental ill health compared to their non-Indigenous counterparts (Page et al. 2022). Poor mental health can impact family functioning and quality of life and, in some circumstances without proper supports, can impact parents' ability to meet children's physical and/or emotional needs (Wade 2020). Additionally, mental ill health is a risk factor associated with higher risk of pre-birth child protection notifications (Taplin 2017).

The National Agreement on Closing the Gap responds to this inequity in burden of disease and recognises the importance of SEWB through Outcome Area 14, which is

that Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing. Under Outcome Area 14, the associated target is a significant and sustained reduction in suicide of Aboriginal and Torres Strait Islander people towards zero. Recent data from the Productivity Commission indicates that, nationally, progress towards the target is going backwards (Productivity Commission 2020)

Figure 16 presents data from the 2018–19 National Aboriginal and Torres Strait Islander Health Survey (NATSIHS), showing that 31% of Aboriginal and Torres Strait Islander respondents aged 18 years and over reported experiencing "high or very high" levels of psychological distress in the four weeks prior to the Survey. This was more than double the rate in the non-Indigenous population (13%) (ABS 2019).

IMPACT OF CHILD PROTECTION SYSTEMS ON SOCIAL AND EMOTIONAL WELLBEING

The SEWB of parents, families and communities and the availability of appropriate support services is an important determinant of child safety and wellbeing. The other key intersection between SEWB, mental ill health and child safety and wellbeing is the impact that child protection systems have on the children and families that interact with them. There is currently no regular national data collection or reporting on children's overall mental health and wellbeing; however, it is estimated that children who have been involved with child protection systems are twice as likely to experience mental illness than other children, and children who have experienced out-of-home care are five times more likely to experience mental illness than other children (Green et al. 2019; NHMC 2021). The mental health risks are likely higher for Aboriginal and Torres Strait Islander children given their adverse experiences in the child protection system, including disconnection from their communities, culture, Country, and languages. This occurs alongside the feelings of instability and disconnection from family experienced by other children in care (AIHW 2021j). Out-of-home care systems that are culturally unsafe or not trauma-informed risk further perpetuating intergenerational cycles of mental ill health.

Children and young people in out-of-home care often also have limited access to mental health assessments and treatments (AIHW 2021j; NHMC 2021). Combined with the limited availability of mental health screening tools and treatment methods that are culturally appropriate for Aboriginal and Torres Strait Islander people (AHMAC 2017b), this places Aboriginal and Torres Strait Islander children and young people in care at particular risk of receiving inadequate, poorly targeted, and culturally inappropriate mental health services.



ACCESS TO SOCIAL AND EMOTIONAL WELLBEING SERVICES

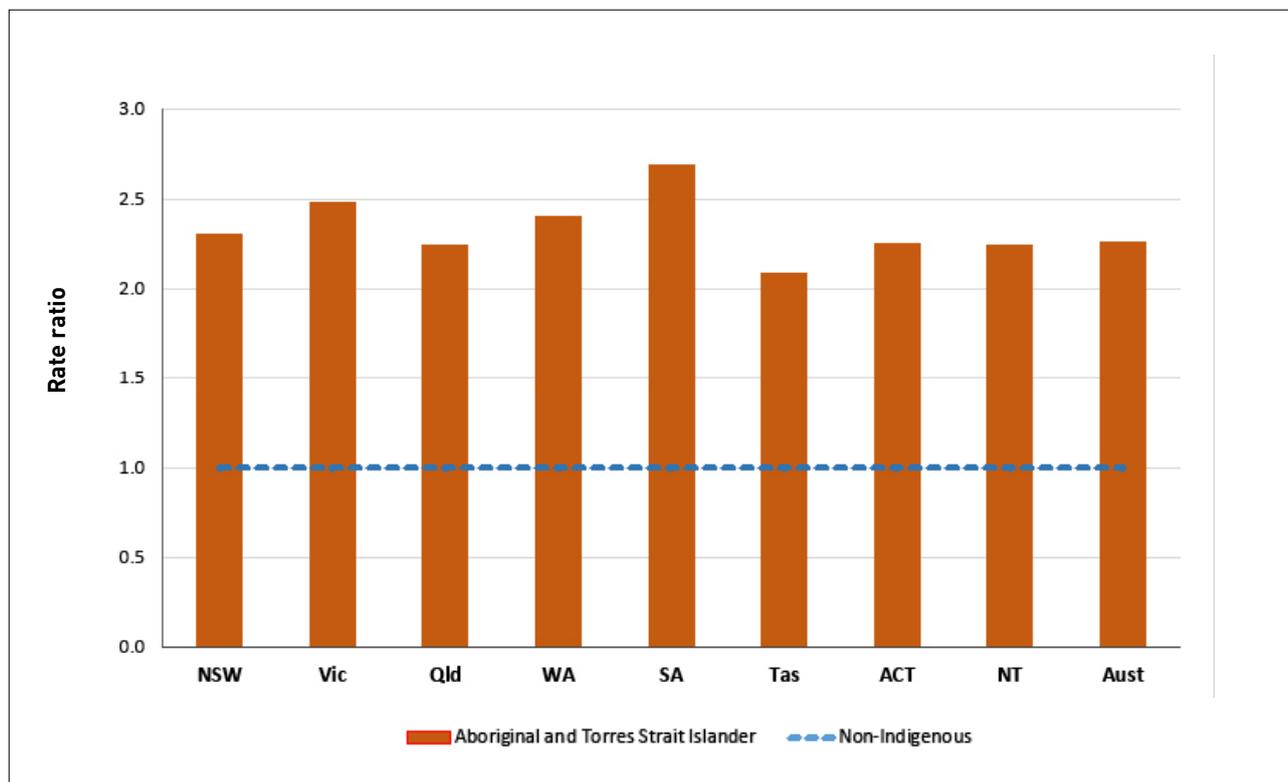
As reflected across a range of health and wellbeing issues, the disproportionate burden of disease does not translate to increased access to early intervention services for Aboriginal and Torres Strait Islander people. Almost one-third of respondents (30%) to the 2018-19 NATSIHS reported that they had not accessed healthcare when they needed to in the 12 months preceding the survey. Of those respondents, 32% reported reasons related to cultural safety, including embarrassment and fear (23%), concern that the service would be inadequate (9%), and mistrust (7%) (AIHW & NIAA 2020). A lack of culturally safe and appropriate services that reflect Aboriginal and Torres Strait Islander concepts of SEWB present a significant barrier to access. Experiences of racism in healthcare settings not only discourage or prevent Aboriginal and Torres Strait Islander people from accessing care, they are also associated with lower quality care. Research has demonstrated that racism can lead to poorer self-reported health status, lower perceived quality of care, failure to follow recommendations, and interruptions of care (IAHA 2019; Watego, Singh and Macoun 2021). The Productivity Commission's Inquiry into Mental Health accord with many of these concerns. The Commission highlighted that the *National Strategic Framework for*

Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023 had not been fully implemented, to the detriment of the mental health of Aboriginal and Torres Strait Islander people, and recommended that the Australian Government immediately entrust the development of an implementation plan for the Framework to Gayaa Dhuwi (Proud Spirit) Australia and the Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Advisory Group (PC 2020). It was also recommended that commissioning processes be reformed to treat Aboriginal community-controlled health services as preferred providers of mental health services to Aboriginal and Torres Strait Islander people.

SUPPORTING SOCIAL AND EMOTIONAL WELLBEING FOR CHILDREN AND FAMILIES

Current policies often ignore and fail to understand what changes need to happen to improve the overall wellbeing for Aboriginal and Torres Strait Islander people's health needs. It is evident that communities need more Aboriginal and Torres Strait Islander health workers, holistic services, and culturally appropriate treatment options. Adequate cultural training is also needed across all levels of the healthcare system and is essential to providing culturally appropriate health services to Aboriginal and Torres Strait Islander people.

FIGURE 16 Rate ratios of Aboriginal and Torres Strait Islander adults (2018-19) and non-Indigenous adults (2017-18) with high/very high levels of psychological distress



Data source: SCRGSP (2021b), Table 13A.48

In a recent systematic review of literature that assessed Aboriginal and Torres Strait Islander peoples' perceptions of SEWB programs, key features of well-received programs included holistic service delivery: programs that addressed social, emotional, physical, spiritual, and cultural wellbeing (Murrup-Stewart et al. 2018). This also included programs that connected people to other wraparound supports and practical supports such as psychologists, financial aid, housing support, or support with tasks like getting a birth certificate or driver's license (Murrup-Stewart et al. 2018). These findings reinforce the importance of addressing all of the social determinants of health and wellbeing for children and families through integrated and holistic services.

This same review also emphasised that cultural safety and appropriateness are essential elements of programs, in particular the need for staff and programs that come from a place of understanding Aboriginal and Torres Strait Islander conceptions of health and wellbeing that recognised the impact of colonisation and intergenerational trauma (Murrup-Stewart et al. 2018).

CASE STUDY

KIMBERLEY ABORIGINAL MEDICAL SERVICE - KIMBERLY EMPOWERMENT, HEALING AND LEADERSHIP PROGRAM (KEHLP)

The Kimberley Empowerment, Healing & Leadership (KEHLP) program is delivered by the Kimberley Aboriginal Medical Service (KAMS). Described as a psycho-social education program, KEHLP builds the capacity of and empowers participants as individuals, and members of their families and communities (Carlin et al. 2020).

KEHLP has three key learning areas which focus on self, family, and community (Carlin et al. 2020) KEHLP is delivered face-to-face via eight full days over four weeks, all facilitators are Aboriginal and/or Torres Strait Islander members of the KAMS SEWB team and have completed the program.

KEHLP was evaluated by the Rural Clinical School of Western Australia and the University of Western Australia in 2020. Findings from the evaluation report highlighted a clear distinction between the KEHLP model of care and Western approaches to mental health service delivery, particularly regarding the inclusion of content related to the political determinants and dimensions of SEWB. A reflection from one facilitator involved in the evaluation stated:

“KEHLP helps our people understand and be able to explore ways that they can change their behaviour but, in that process, we help them understand where they are. It could be historical events that have taken place, colonisation and the transgenerational trauma, learned behaviours. So we look at lots of aspects to help a person understand who and where they are. Especially with our Aboriginal people who have never ever given thought to who they are and what their strengths are (Facilitator 06, female).” (Carlin et al. 2020 p.9)

KEHLP is informed by lived experience and sharing that lived experience with others in the program – this is described as a “*culturally specific and unique adaptation to peer-based psycho-therapeutic group work*” (Carlin et al. 2020 p.11). The program is unique as it combines Aboriginal lived experience and peer-based work. It supports participants to engage in deep reflection and learn more about their culture and their identity (Carlin et al. 2020 p.5)



Girls Can Boyt
ing along



3.3 INFANT REMOVALS, CRIMINALISATION AND INCARCERATION: A PROBLEM UNDERPINNED BY CARCERAL LOGIC FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

By Jacyntha Krakouer¹, Tatiana Corrales¹, Paul Gray² and James Beaufilets², for the SAFeST Start Coalition

Affiliations

- 1 Health and Social Care Unit, Monash University
- 2 Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney

INTRODUCTION

Over the past few years, the Family Matters campaign has drawn attention to the rising rates of pre-birth notifications and infant removals for Aboriginal and Torres Strait Islander babies (see previous Family Matters Reports). This is a growing problem that impacts Aboriginal and Torres Strait Islander communities in profound ways, which will be explored in this special section. Not only does it represent continuity with harmful past policies and approaches – especially the Stolen Generations – the ongoing removal of Aboriginal and Torres Strait Islander babies at, or shortly after, birth by child welfare is a site of pain and distress, where the use of surveillance, control and coercive powers are particularly harrowing.

In last year's Family Matters report (Liddle et al. 2021), it was highlighted that "Aboriginal and Torres Strait Islander infants less than one-year-old are being removed and placed in out-of-home care at increased rates" (p. 16). This issue remains an area of pressing concern for Aboriginal and Torres Strait Islander communities. In 2020-21, 21% of Aboriginal and Torres Strait Islander children removed into out-of-home care nationally were under the age of 1, and were removed at ten times the rate of non-Indigenous infants under 1 (47.3 per 1000 compared with 4.5 per 1000) (Australian Institute of Health and Welfare [AIHW] 2022). Focusing on possible reasons for the disparity, the 2021 Family Matters report described lower rates of antenatal care access for Aboriginal and Torres Strait Islander women, and higher rates of infant removals among Aboriginal and Torres Strait Islander women with previous histories of child protection removals, domestic and family violence, and substance use (Liddle et al. 2021). Yet, the 2021 Family Matters report also described a lack of knowledge available about the reasons, and drivers, associated with increased unborn reports in

those jurisdictions who investigate babies in-utero, such as New South Wales and Western Australia. This was an issue also highlighted in the Davis (2019) *Family is Culture* report.

At 30 June 2021, unborn Aboriginal and Torres Strait Islander babies were the subjects of unborn child protection notifications at a rate of 200.9 per 1,000, eight times the rate of their non-Indigenous counterparts (24.9 per 1,000) (AIHW 2022). This rate reflects a trend in rising child protection involvement with babies in-utero in the Western world (Broadhurst et al., 2018; Critchley, 2020; Keddell et al. 2022; O'Donnell et al. 2019). Less well-known however, are the intersections between child protection and other governments systems, such as policing, juvenile justice and corrections, amongst pregnant Aboriginal and Torres Strait Islander women, their children and families.

In this special section, some members of the SAFeST Start Coalition – a consortium of Aboriginal and Torres Strait Islander, and non-Indigenous, community members, academics, health and welfare professionals, concerned with the rising rates of infant removals for Aboriginal and Torres Strait Islander families – highlight another driver associated with infant removals which requires attention. This is the intersection between child protection and criminal legal systems wherein infant removals can result from parents – including mothers and birthing parents – being pregnant or giving birth while incarcerated or facing matters before the court. This is an intersection which advocates have long been aware of; in the United States (US) for example, Black scholars and advocates, such as Dorothy Roberts, Alan Dettlaff and Angela Davis, have called attention to the carceral logic that underpin both child welfare and criminal legal systems, and the ways in which surveillance and punishment underpin both systems (see for example, Dettlaff et al. 2021, for the upEND Movement).

While race impacts, and operates differently, for Black and First Nations peoples in the US and Australia, both are settler-colonial contexts with some shared features. Further, in our experience as practitioners working with expectant parents and families, this characterisation is certainly consistent with the concerns raised by Aboriginal and Torres Strait Islander peoples in Australia. In this special section, we call attention to the intersection between child protection and criminal legal systems for Aboriginal and Torres Strait Islander peoples in Australia, and highlight the disproportionate – and often, harrowing – impact these systems are having on the welfare, and wellbeing, of Aboriginal and Torres Strait Islander babies, their parents and communities. This is a human rights issue that must be called out.

We call for significant, immediate transformation to both child protection and criminal legal systems, transferring power and authority to Aboriginal and Torres Strait Islander peoples and communities and reorienting family surveillance and punitive approaches

in favour of therapeutic, community-led approaches that centre individual and community wellbeing. With respect to the intersection between these systems, this should include urgent investment in alternate, community-led models that emphasise access to fundamental perinatal health services and sentencing approaches that consider the holistic circumstances of women and families. In line with the *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* ('the Bangkok Rules'; United Nations Office on Drugs and Crime 2011), incarceration should be a last resort option for pregnant women and mothers of infants and young children, allowing for child rearing practices and bonds to be developed.

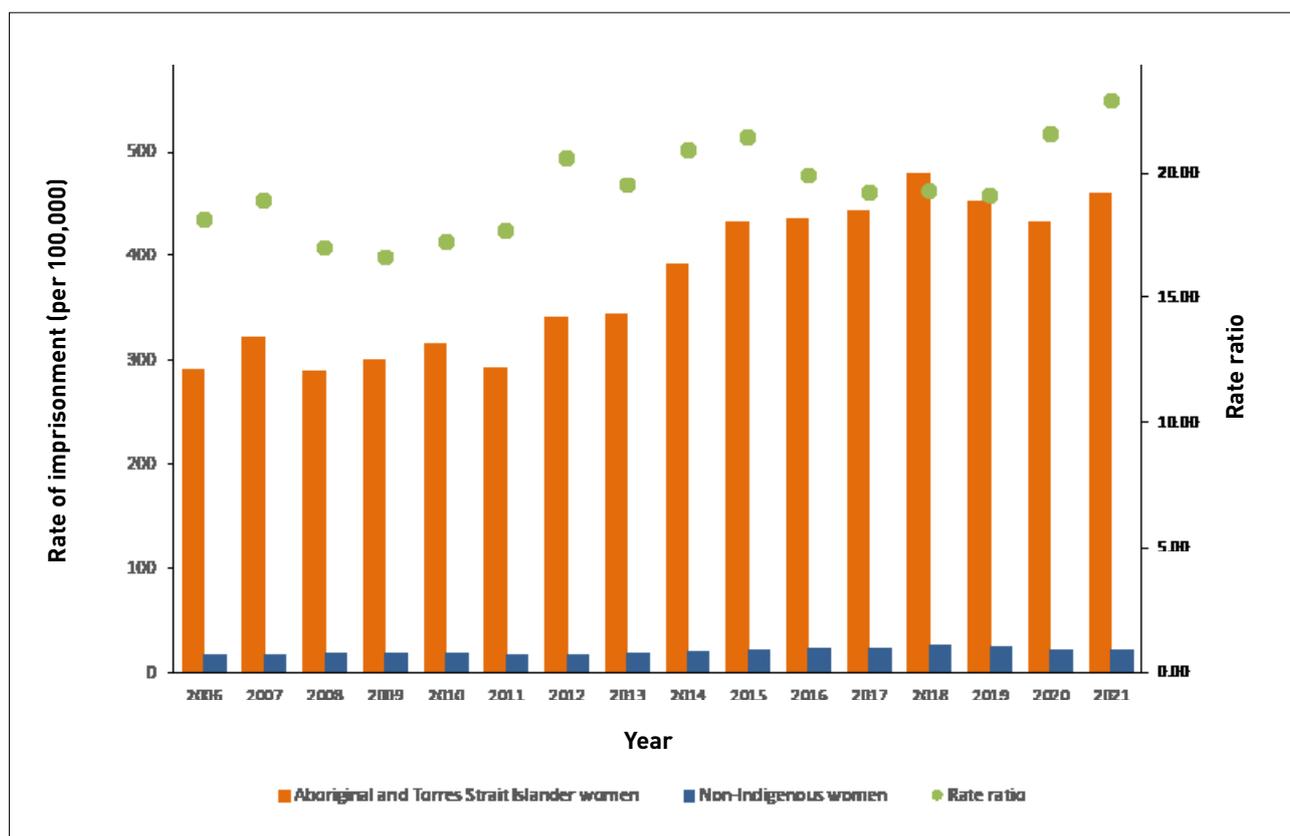
This transformation will require greater investment in community-based, alternative and tailored models of support for Aboriginal and Torres Strait Islander parents and families during the perinatal period, instead of surveillance by child protection and criminal legal systems. The perinatal period is a critical time to transform intergenerational cycles of trauma to foster healing and positive transformation for women and their families (Chamberlain et al. 2022). This opportunity for healing is particularly paramount at the intersection of child protection and criminal legal systems.

ISSUE: THE INTERSECTION OF CHILD PROTECTION, INFANT REMOVALS AND INCARCERATION

The link between criminal legal systems and child welfare systems is a pressing issue for Aboriginal and Torres Strait Islander communities, where overrepresentation in the two most coercive systems of governance is not coincidental. Like child protection and out-of-home care systems, Aboriginal and Torres Strait Islander peoples have long been disproportionately targeted by carceral systems, and continue to see injustices and abuses in state 'care' (Commonwealth of Australia 2017; Johnston 1991). Within the carceral system, the rate of female incarceration has been seen sharp increases since 2006, with incarceration rates for Aboriginal and Torres Strait Islander women consistently exceeding those of non-Indigenous women (see **Figure 17**) (Australian Bureau of Statistics (ABS), 2022). As Figure 17 highlights, Aboriginal and Torres Strait Islander women were incarcerated at almost 23 times the rate of non-Indigenous women in 2021 (ABS 2022).

National and international research shows that the majority of women in prisons are mothers (Abbott et al. 2020; Anthony et al. 2021; Baldwin et al. 2020;

FIGURE 17 Trend in incarceration rates of Aboriginal and Torres Strait Islander and non-Indigenous women in Australia, and over-representation of Aboriginal and Torres Strait Islander women (rate ratios), 2006–2021



Data source: SCRGSP (2021b), Table 13A.48

Bronson & Sufrin 2019; Sullivan et al. 2019), and that for Aboriginal and Torres Strait Islander women, their roles in Kinship (Beaufils 2022) and the concept of motherhood is wider than that of Western understandings of motherhood that stem from the nuclear family concept (Anthony et al. 2021). Significantly, a substantial proportion of women in prison are mothers of dependent children, and a smaller but not insignificant proportion will be pregnant and/or give birth during a period of incarceration (Anthony et al. 2021; Bridges 2021).

The over-criminalisation of Aboriginal and Torres Strait Islander people has long been a concern to families and communities (Walker and McDonald 1995). Once involvement within welfare and justice systems have been established, significant additional disadvantages within these environments can be experienced (McFarlane 2017). Criminalised women in Australia are at increased risk of child protection intervention by virtue of their contact with the criminal legal system. In fact, it has been argued that the child protection system is an integral part of the carceral state, where punishment, control, containment and surveillance are deployed to punish certain types of women and certain forms of mothering (see for example, Bridges 2021; Gurusami 2019). Using Donzelot's (1977) concept of surveillance, we can understand policies and legislation as a form of state power and control over families, including Aboriginal and Torres Strait Islander women, families and communities. This has been evident recently with Aboriginal and Torres Strait Islander young men (O'Brien G 2021). At the nexus of the child protection and criminal legal systems are women and families who have often experienced intergenerational disadvantage and trauma, and whose needs have either been ignored, or repositioned as evidence of supposed moral and psychological failure (Allen et al. 2010; Hannah-Moffat 2018; Segrave and Carlton 2011).

Despite the well-established link between the child protection and criminal legal systems, there is an absence of Australian research or data demonstrating the prevalence and impact of child protection intervention amongst criminalised and incarcerated women. In the largest quantitative study in Australia, Dowell et al. (2018) investigated outcomes for children whose mothers had been incarcerated during pregnancy or within the first two years of the child's birth. Data were restricted to Western Australia, but the results show Aboriginal and Torres Strait Islander children were significantly more likely to be born to mothers who had been incarcerated during pregnancy (17.4 per 1,000 and 0.5 per 1,000 respectively). Over 30% of Aboriginal and Torres Strait Islander and non-Indigenous children born to women who had been incarcerated had entered the out-of-home care system by their second birthday. To date, this is the only published Australian study investigating the intersection of child protection and incarceration. The results highlight the increased risk of child removal among

women with histories of incarceration either during pregnancy or at any time in the child's first two years (Dowell et al. 2018).

Issues with women's access to appropriate, timely and consistent health care, including antenatal and postnatal care (Kendall et al. 2020), access to mother and baby units within prisons (Walker et al., 2019), and access to support when they are unable to maintain the care of their children in prison have also been raised (Abbott et al. 2021; Anthony et al. 2021). There have also been issues raised about human rights abuses within carceral settings for women who are pregnant, including the use of shackles and restraints during transport to, and while attending, antenatal appointments; the refusal of timely antenatal care resulting in harm to the unborn baby; and, the use of shackles and restraints while women are in active labour (Kuhlik & Sufrin 2020). These issues are of deep concern to Aboriginal and Torres Strait Islander communities. Greater transparency regarding the experiences of those who are pregnant within carceral settings, and accountability when their human rights are breached, is urgently needed. In relation to infant removals by child protection systems, the lack of access to Mother and Baby Units for Aboriginal and Torres Strait Islander women is of particular concern.

CONCERN: LACK OF ACCESS TO MOTHER AND BABY UNITS FOR ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN IN PRISON

Although limited, research and inquiries have highlighted issues concerning Aboriginal and Torres Strait Islander women's access to Mother and Baby Units in prison. For example, Walker et al. (2019) investigated the policies and practices informing the use of Mother and Baby Units in five Australian jurisdictions. They found that core admission criteria across these jurisdictions included a range of factors that would seem to exclude a considerable proportion of women. For example, women need to demonstrate that they can care for their children which is assessed via the presence of mental health or physical challenges. Women also need to have legal custody of their children. Those classified as high risk/high security, on remand or serving short sentences are also commonly denied access to these programs (Walker et al., 2019). This is particularly problematic in the current context, where the impact of COVID-19 has resulted in significant backlogs and delays for court hearings. Anecdotally, it has been reported that some women have been on remand for nearly two years and that the time served on remand may be longer than the sentenced time. Thus, exclusion from Mother and Baby Units due to women being on remand can result in broken mother-baby attachments.

Importantly, Aboriginal and Torres Strait Islander women were found to be routinely excluded from these programs. As Walker et al. (2019) state:

"We found that for Aboriginal women, keeping their baby is much harder, because of the stigma arising from their disadvantage and from simply being Aboriginal, in a society that stigmatizes Aboriginal peoples. Of the five Aboriginal women in our study, three were allowed to keep their babies in prison and two were not. Despite the small overall sample size, it is worth noting that, although they were not the only participants with a history of child welfare services involvement, these were the only women in our sample who had not been allowed to keep their children." (p. 5)

Walker et al.'s findings are consistent with the findings of the Victorian Ombudsman's (2017) investigation into the preparedness of Victoria's maximum-security women's prison to implement the *Optional Protocol on the Convention Against Torture* (OPCAT). The Victorian Ombudsman's (2017) inquiry found that "no Aboriginal women have been accepted into the prison's Mothers and Children program in the past few years (p. 13). In fact, of the 12 Aboriginal and Torres Strait Islander women who applied to the Mother and Children's program between 2015 and 2017, none were accepted. Eight applications did not proceed as women were released, transferred to another prison, or withdrew their application. Four applications were denied as they were not perceived to be in the child's 'best interests'. It is not clear whether the situation has improved since the Ombudsman's report, as data on the Mother and Baby units in Victoria's prisons are not publicly available.

One case study presented in the Davis (2019) *Family is Culture* review (p. 385), outlined how arbitrary practice decisions can undermine access to these programs, and can also be misrepresented to existing oversight mechanisms (such as Courts) to make such decisions seem justified. In this example, a pregnant Aboriginal woman in prison sought access to a Mother and Baby program that would have enabled her to care for her baby while incarcerated. Despite this application, child protection authorities removed her baby soon after birth on the basis of historic concerns, and without having undertaken a safety and risk assessment prior to the baby's birth. By removing the child, the mother was no longer eligible to access the Mother and Baby program. In describing this outcome, Davis (2019 p. 385) wrote:

"In the care application, [DCJ] informed the Children's Court that [mum] had been denied access to the Mother and Baby program. [DCJ] did not inform the Court that she had been denied access because [DCJ] had assumed her child into care. This omission made it appear as though [the] baby did not have a parent available to care for her (as the baby's father was also in prison), when in fact, [mum] was willing and able to care for her newborn in a safe, supervised environment."

None of the published guidelines on Mother and Baby Units include maternal Aboriginal and Torres Strait Islander status as an explicit exclusion criterion. This leaves a very real possibility that systemic and structural racism, rather than any real 'risk' posed by Aboriginal and Torres Strait Islander women is at play in Aboriginal and Torres Strait Islander women's exclusion from Mother and Baby Unit programs.

CONCERN: A LACK OF TRANSPARENCY ABOUT THE EXTENT OF CHILD PROTECTION INVOLVEMENT AMONG INCARCERATED WOMEN

Limited literature exists about the extent of child protection involvement among incarcerated women in Australia. However, international literature demonstrates that there is a clear link between child protection involvement – and infant removals – for women who are pregnant or give birth in prison (Abbott, Scott & Thomas, 2021; Chambers 2009). For example, Chambers (2009) work concerning pregnant and incarcerated women's experiences of separation from their babies following birth showcases harrowing grief, trauma and devastating practices of infant removal. One removal is described below:

"The prison officer who (took the baby) ...she's a horrible person, so... to have to hand my son over to her, and just watch her walk away with him crying. He only stopped crying when I had him ...being ripped away from my newborn baby is the worst thing possible that could ever happen to me."
(Chambers, 2009, p. 9)

Describing incarcerated women's experiences of separation from their babies, Chambers stated that "the experience of compulsory separation from their baby was commonly described as having their newborn 'ripped' from them, symbolising a violent act." (Chambers 2009 p. 8).

In the Australian context however, despite knowing that there is significant overrepresentation of Aboriginal and Torres Strait Islander peoples in out-of-home care and carceral systems there is a lack of transparency about the intersection between child protection/out-of-home care systems and the carceral state. This is concerning from a policy perspective. The overrepresentation of Aboriginal and Torres Strait Islander infants, children and young people in out-of-home care cannot be adequately redressed until the drivers associated with child protection removal are clear. This requires all Australian governments to be transparent with data relating to child protection involvement and out-of-home care placement when a parent or caregiver is incarcerated.

A recent study undertaken by Anthony, Sentance and Behrendt (2021) – with guidance by an Aboriginal women's advisory body, *sista2sista* – in New South

Wales reported on the lived experiences of over 160 Aboriginal and Torres Strait Islander mothers in prison. It was found that Aboriginal and Torres Strait Islander women's roles as mothers were fundamental to their identity and their sense of wellbeing and connection to culture, but their roles as mothers were undermined by the carceral state. In the face of continued oppression by carceral systems, Aboriginal and Torres Strait Islander women's strengths and resilience were apparent in their stories. Yet, failings on the part of systems were evident, with stories of child protection involvement indicating that efforts to keep Aboriginal and Torres Strait Islander children with their families were lacking, and that deceptive practice by child protection authorities were felt:

"First Nations mothers in prison conveyed that imprisonment undermined their social, cultural and emotional health and well-being of themselves and their families. ... They described the system stealing parents from their kids and kids from their parents. Parents who had children in their care were taken from their children, and the department took children out of the ongoing care of the mother while they were inside prison. We were told that removal occurred even when family members could have looked after the children during the prison term." (Anthony et al., 2021, pp. 8-9).

There is a need to interrogate the harm that systems can – and do – perpetuate against Aboriginal and Torres Strait Islander peoples, including mothers and their infants, when child separation occurs. Social work professor Alan Dettlaff, one of the co-founders of the

UpEND movement in the United States, speaks about the harm incurred when various systems separate children from their families. Dettlaff (2022) links these harms to the actions of carceral and child welfare systems:

"An abundance of research shows that forcibly separating children from their parents results in significant and lifelong trauma, regardless of how long the separation lasts. This is true when parents are incarcerated... and when children are forcibly taken by state child welfare systems."

The same is true in the Australian context. Anecdotally, and in limited research publications and inquiries, there is evidence of infant removals by child protection stemming from mother's involvement in criminal legal systems, wherein trauma and harm is encountered, for both the mother (or birthing parent) and the baby. However, a lack of transparency on this issue remains.

It is concerning that neither child protection nor corrections seems to accept custodianship of data relating to children of incarcerated women. In Victoria for example, child protection simply does not record whether a child's mother is in prison, while corrections does not capture information about child protection intervention for women in custody. The fact remains however, that these systems – child protection and carceral systems – work together to punish women, yet fail to take responsibility for collecting and sharing data (let alone making it publicly available) about child protection involvement in incarcerated women's lives. This represents a lack of both accountability, and



transparency, regarding infant removals when women are pregnant or give birth in prison.

It is urgent that governments commit to increasing, and improving, the collection of data when women are subject to child protection intervention while pregnant or giving birth in prison. The maternal status of women in prison should be recorded by all Australian governments responsible for child protection data. Similarly, data should be routinely collected about child protection involvement with women who are incarcerated or facing matters before the court. This is paramount to ensure urgent transparency regarding infant removals by child protection. Arguably, the collection of this data is the responsibility of child protection systems; these systems make the decision to remove children from incarcerated women, and thus, the onus should be on child protection systems to ensure accurate data is collected about the number of children being removed, and under what circumstances. Independent, rights-based oversight is also warranted.

CONCLUSION

The ongoing disproportionate removal of Aboriginal and Torres Strait Islander infants remains a pressing issue for Aboriginal and Torres Strait Islander communities despite been raised throughout several Family Matters reports over recent years. The intersection between two carceral systems of control – child protection and criminal legal/(in)justice systems – is of particular concern. Identified issues at this intersection include access to essential Mums and Bubs programs that would enable babies to remain in the care of their

mothers who are incarcerated, as well as the pressing need for greater transparency and accountability regarding the extent to which child protection intervenes when women are pregnant or giving birth while incarcerated. The Family Matters Building Blocks provide a framework for action, emphasising the need for community control, investment in therapeutic, child and family supports to both keep families together and support for children to thrive, as well as robust accountability and oversight mechanisms. The essential role of transparency in data and reporting, to both promote accountability of these systems and inform the ongoing development of policy and practice, is also imperative to improve outcomes for Aboriginal and Torres Strait Islander babies, children and their families. This accountability should include public reporting on the investment made by governments to develop and implement alternate, health and wellbeing focused options for those who are pregnant, including specific, needs-based investment in Aboriginal and Torres Strait Islander-led approaches. Such actions are urgently needed at the intersection of child protection and criminal legal systems wherein a lack of transparency and accountability remains, while the harm inflicted on Aboriginal and Torres Strait Islander peoples – including infants and pregnant women – continues. Ultimately, incarceration should be used as an option of last resort while women are pregnant given the significant and long-lasting developmental implications for children, as well as the known harms associated with child protection removal and further systems cycling (see for example, Davis 2019). A more humane approach is needed.



CASE STUDY

WIRRINGA BAIYA ABORIGINAL WOMEN'S LEGAL SERVICE - LEGAL EDUCATION AND ADVICE IN PRISON (LEAP) PROGRAM

WHAT IS THE PROGRAM?

The Legal Education and Advice in Prison (LEAP) for Women program is a unique specialist, unfunded legal program provided in partnership by Wurringa Baiya Aboriginal Legal Centre (WB), Women's Legal Service (WLS NSW) and Western Sydney Community Legal Centre (WSCLC). Established in 2009, the program was created in response to the high levels of unmet needs of women in prison, with a specific focus on Aboriginal women.

"We each work with various women in each of the centres to give them advice on care and protection, family law, and civil law. Wurringa Baiya is a centre that is just for Aboriginal women and our focus is on working with women who've experienced domestic and sexual violence.

And unfortunately for women in custody, that's almost everybody that we speak to. So we do a lot of care and protection work with women in custody, around birth alerts, so women who are pregnant, women not having contact with their kids, and people who want advice about restorations when they come out."

"The reason why we went into prisons was because we found that there was a disadvantaged group, and a lot of people weren't worrying about women in prison.

"And if they were, it was around their criminal offending. So, we just wanted to be able to provide a civil law service to Aboriginal women."

"The most significant issues for these women were around child protection. Around having access to their children, understanding where their children were. The fact that they were incarcerated, it just seemed like they had no rights available to them and they weren't treated like anyone else in society, their rights to their children or having access to their children."

LEAP provides free legal advice and casework services, and some community legal education services, in relation to:

- Family law (parenting, property and divorce)
- Child protection (FaCS) matters
- Domestic and family violence and Apprehended Violence Orders (AVOs)
- Sexual assault
- Victims support claims
- Police and other complaints
- Discrimination

WHAT ARE SOME OF THE PROCESSES?

LEAP receives referrals from a range of sources including individual women, Corrective Services staff and Department of Communities and Justice (DCJ) co-located caseworkers, Women's Justice Network, Community Restorative Centre, Legal Aid, Aboriginal Legal Service and rehab services (e.g. Guthrie House and Jarrah House).

LEAP provides regular face to face legal outreach clinics for women at:

- Dillwynia Correctional Centre
- Emu Plains Correctional Centre
- Silverwater Women's Correctional Centre

"Each of our centres do our work differently.

"For women in custody, it's never one issue. It's always multiple issues and they're always completely interconnected. So, I had an advice call this morning relating to family law, wondering if her kids were at risk of DCJ removal. She's just had housing terminated and there's been 17 years of domestic violence and there's an AVO but she's not sure what it's all about. So that's sort of a very, very common makeup of what's going on for her."

"So what we'll do is the legal advice I've already done some case work assistance in terms of liaising with Tenancy Advice Service, so one of the Aboriginal Tenancy Services is getting copies of the AVOs and then we'll do more work as well. Then we'll do some representation work in terms of victim services of where our case workers will come in for her, that's going to come in in terms of getting some financial assistance.

We maybe then provide some brokerage to help her to pay for accessing tribunals. And then we'll see where we go from there, but that's a fairly common scenario of people, what's maybe a bit uncommon for her is that she knows where her children are. Often women don't know where their kids are, so if they're in the care and protection system, which normally they are from what we've found, then often women have no idea."

HOW IMPORTANT IS IT TO HAVE AN ABORIGINAL APPROACH/Framework (ABOUT CULTURAL SAFETY AND STRENGTH OF ABORIGINAL SERVICES)?

Aboriginal women in custody are amongst the most marginalised and disadvantaged people in the community. There is an enormous power imbalance between criminalised women and child protection agencies and carers, particularly for boriginal and Torres Strait Islander women who are also impacted by intergenerational trauma and systemic racism.

LEAP aims to address this power imbalance by providing early legal support, to increase opportunities for a positive outcome and to reduce disclosures against interests.

"In the New South Wales system, the orders will say that there should be contact and there's nothing to suspend that contact while a woman is in custody. And when you are working with individual case workers and because we're statewide, we work with case workers from DCJ across the whole state - it really is entirely dependent on that case worker. And often you're just hearing, we shouldn't have contact because mum is in custody, for no reason except for that. And often what we are doing is convincing that case worker that, well first of all, there's a court order that contact should be happening. And second of all, it's in the child's best interest to be having contact with mum and not just wondering where's mum gone for the last year.

So, no, they don't treat incarcerated Aboriginal women particularly well. It's an extra level of stigma I suppose."

"Most of those women have been affected by violence and whether or not it's been child sexual abuse or abuse, or violence as an adult, most of them have experienced trauma and they're still experiencing trauma whilst they're incarcerated.

So one of the impacts is whilst they are in prison or they are incarcerated, they have an opportunity, because we know that trauma and abuse often leads to substance abuse and unfortunately that is one of the reasons why a lot of the women are in there because they're experiencing those kinds of issues.

And so what they've done has led to that criminal behaviour and the criminal offending. So it's that catch 22 where everything just sort of seems to snowball and they find themselves in prison, and that's when they have an opportunity to be free of drugs, free of substances, and have an opportunity to reflect and actually think about their children.

And that's when they start looking at where they are. I want to try to change my life. I want to actually get my children back, and the first step is knowing where they are, so these are some of the things that happen to them. I think some reflect on that and a lot of them have issues under the civil law, their victims' rights, and so a lot of them get those kinds of needs met whilst they're in prison as well. So it's an opportunity for them to stop and think about things and that's why it becomes an issue when they start to think about where their children are and they want to change their lives because they've had the opportunity to do that.

So what their experience is, a whole range of different emotions and reflections on what's happened to them, where they are now and where they want to go. So part of that rehabilitation is looking at wanting to change themselves.

But also move forward and actually look at restoring the family unit if possible. But if that's not achievable, how can they have contact with their children? Or at least know that they're okay and at least know where they are."

WHAT ARE SOME OF THE BARRIERS?

As an unfunded service LEAP is continually under pressure to meet demand for services. The introduction of the DCJ co-located caseworkers has also increased referral numbers.

Funding a non-government independent legal program, like LEAP will enhance the Corrective Services NSW work with women as parents and demonstrate a genuine commitment to providing accessible, trauma informed and culturally safe programs.

"We need funding. Funds to the services to provide these services because there's no one specifically funding the program of LEAP and the demand far outweighs the resources that we have to provide all the services that we can provide.

Also funding for the services that can go around the women. Housing is essential so that you're not released into homelessness, so you can hold onto your kids, funding for drug and alcohol rehab, residential rehab, where you can keep your children with you, and funding for more early intervention work so children aren't removed in the first instance, particularly when they're coming out of prison pregnant."



CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The evidence reported in this Family Matters report continues according to the trend of previous years of a higher proportion of Aboriginal and Torres Strait Islander children in the child protection system, and increased overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care. This is despite a national commitment through the National Agreement on Closing the Gap, to reducing Aboriginal and Torres Strait Islander children's over-representation in out-of-home care by 45% by the year 2031.

The Family Matters campaign has emphasised that Aboriginal and Torres Strait Islander communities have the solutions, and that these solutions are based on the cultural authority of families and communities to support and respond to the needs and rights of children.

The new *Safe and Supported: National Framework for Protecting Australia's Children* offers an opportunity for a way forward through enacting shared decision-making with Aboriginal and Torres Strait Islander peoples. To achieve the intended aims of the Framework will require active shared decision-making for the implementation, governance, monitoring and evaluation of Safe and Supported, and the forthcoming Action Plans, at state, territory and regional levels.

Although there have been some shifts in policy, legislation and governance mechanisms in child protection over the past year, resourcing and investment continues to be directed towards crisis-driven, tertiary child protection responses. The holistic supports and solutions that the Aboriginal and Torres Strait Islander community controlled sector continues to lead are under-resourced.

Alongside the transformational shift in how governments do business with Aboriginal and Torres Strait Islander communities, there must be dedicated resources for implementation led by ACCOs. To date, commitments under Safe and Supported are not funded. Effective implementation will require a commitment of resources, and to commissioning processes that centre ACCOs. Resources directed to ACCOs need to be equivalent to the proportion of Aboriginal and Torres Strait Islander children in child protection systems, with a shift in investment towards holistic prevention and early intervention.

The key recommendations in this report are presented below, aligned with the Family Matters Building Blocks. To change the trajectory of child protection systems, there is an urgent need to progress these solutions in partnership with Aboriginal and Torres Strait Islander communities, families and organisations.



RECOMMENDATIONS

BUILDING BLOCK 1

All families enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive

1. Increase the availability of universal and targeted prevention and early intervention support by:
 - a. Increasing investment in prevention and early intervention support programs delivered by ACCOs.
 - b. Setting targets for the percentage of family support & intensive family support services funding directed to ACCOs in each jurisdiction and each region to be equivalent to the representation of Aboriginal and Torres Strait Islander children in child protection services.

Despite demonstrated evidence that child protection systems need to be re-oriented towards prevention and early intervention to keep children safe, proportional investment in prevention and early intervention services has decreased in the last five years. A clear strategy and target are critical to drive investment, including in evidence-based and culturally safe Aboriginal and Torres Strait Islander community-controlled early childhood education and care, maternal and child health, trauma-informed and healing services, family support services, and family violence prevention and response.

An increase in proportional investment to prevention and early intervention cannot safely be achieved by simply shifting funding from already stretched child protection and out-of-home care systems. What is needed is the foresight of governments to invest more in and recognise the long-term benefits of prevention and early intervention that are demonstrated in the evidence.

Progress since last year: Spending on family support and intensive family support services has not kept pace with total child protection spending. Nationally, proportional investment in family support and intensive family support compared to other child protection services increased slightly from 15.8% to 17%, but has decreased slightly over the last 5 years. Spending in 2020-21 has not yet reached 2016-17 levels (see Table 2, Part 1 of this report).

BUILDING BLOCK 1

2. Establish a dedicated funding model and program for Aboriginal and Torres Strait Islander community controlled integrated early years services, including new investment to expand their scope and coverage.

The Aboriginal and Torres Strait Islander early years sector offers one of the most powerful opportunities for changing trajectories for our children and families. Services like Aboriginal Child and Family Centres and Multifunctional Aboriginal Children's Services offer a unique type of support that is culturally grounded, holistic, trauma-informed and responsive to complex needs. The importance of this sector is recognised within Goal 2 of the Early Childhood Strategy which identifies the opportunity to "boost support to Aboriginal and Torres Strait Islander community-controlled integrated early years services, and develop initiatives to support their sustainability and holistic services responses to address child, family and community needs".

The current subsidy-based and market-driven models of child care designed to provide childminding for working families are ineffective to sustain our services and address the learning and developmental support needs of children. A well-resourced Aboriginal and Torres Strait Islander early childhood education and care sector, with integrated health, development and family supports, is an essential and indispensable component to preventing trajectories that lead to child protection intervention and must be better resourced, grown, and supported.

Progress since last year: The NSW Government funds nine Aboriginal Child and Family Centres (ACFCs) to provide integrated early childhood and health services to Aboriginal families and children. The 2022 NSW Budget provided an additional \$98.7 million to establish six new Aboriginal Child and Family Centres and expand the services of the existing nine centres.

However, no jurisdictions have a dedicated and specific funding model for Aboriginal and Torres Strait Islander community controlled early years services.

BUILDING BLOCK 1

3. Develop and resource a joint state and Commonwealth-funded national program for ACCO-led integrated family support services.

Large scale reform efforts and investments in healing and strengthening families are needed to turn the current rates of removal of Aboriginal and Torres Strait Islander children around and meet Target 12 under

Closing the Gap. Despite its ambitious goals, funding for *Safe and Supported: National Framework for Protecting Australia's Children* is extremely limited and unlikely to lead to the kind of prevention activity that can achieve the target.

Resources continue to be directed towards tertiary and crisis-driven child protection interventions, rather than supports for families that address the challenges they face before they are in crisis. A dedicated program needs to be developed to shift the focus to strengthen families.

A significantly bolstered ACCO-led family services sector would provide families with culturally safe and responsive intensive, non-intensive, wrap-around and step-down casework supports and referrals to address the barriers and challenges families experience in providing safe care for children. Family support providers are typically made up of a range of organisations with connected expertise across child protection, health, child development, and early education. There are significant opportunities to build on capacity already existing in these sectors, as well as to transfer resources and capacity from mainstream agencies that are ineffective in engaging and supporting Aboriginal and Torres Strait Islander families. Given the key drivers of child protection intervention sit across a broad range of federal and state responsibilities, there is a strong argument for collective state and Commonwealth investment and effort in this space.

Progress since last year: There has been no progress towards establishing a jointly-funded program for ACCO-led integrated family support services. Some initiatives such as the Improving Multidisciplinary Responses program and initiatives under the Closing the Gap Outcomes and Evidence Fund, demonstrate elements of a holistic, culturally safe approach, these initiatives do not establish a specific program for ACCO-led integrated family supports.

BUILDING BLOCK 2

Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children

- 4. Set targets for the proportion of funding for child protection and family support services directed towards ACCOs to be equivalent to the proportion of Aboriginal and Torres Strait Islander children involved in child protection systems in each jurisdiction and each region.**

In 2020 all Australian governments signed the National Agreement on Closing the Gap. The National Agreement commits all governments to building the Aboriginal and Torres Strait Islander community-controlled sectors.

But again this year, the Family Matters report shows that investment in Aboriginal and Torres Strait Islander organisations to provide family support and child protection services is minimal when compared to the representation of our children in these systems.

This report identifies the critical importance of Aboriginal and Torres Strait Islander-led service delivery to improving outcomes for children. It is essential that our organisations are strengthened and supported so that Aboriginal and Torres Strait Islander people lead the service design and delivery and the decision-making for our children.

Investment should reflect need and be proportionate to the engagement of Aboriginal and Torres Strait Islander families with child protection systems. Investment approaches must recognise the strengths of our organisations, rather than adopting competitive tendering that privilege large non-Indigenous organisations that are often ineffective to engage and support our families. Service delivery models and contract requirements must not be tightly constrained so that our agencies can design community-driven and culturally strong approaches to supporting our families. And finally, ambitious targets must be set and reported against to ensure dedicated efforts and accountability for progress.

Progress since last year: Jurisdictions that have set targets for proportions of child protection and family support services are not meeting these targets. In 2020-21 5.39% of NSW Government expenditure, 21.12% of Queensland Government expenditure, and 5.29% of South Australian Government expenditure on family support and intensive family support was directed to ACCOs. This remains well below the proportion of Aboriginal and Torres Strait Islander children in child protection services.

BUILDING BLOCK 2

- 5. Establish, resource and support independent Aboriginal and Torres Strait Islander family-led decision-making models in every state and territory, and across all regions, supported by legislation, for all families across all significant child protection decision-making points.**

Aboriginal and Torres Strait Islander families have the cultural authority, knowledge and capability to make the best decisions and improve outcomes for their children. The participation of children and their families in child protection decision-making is enhanced when formal processes such as Aboriginal and Torres Strait Islander family-led decision-making models are legislatively required as early as possible and for all significant decisions, and when Aboriginal and Torres Strait Islander organisations are resourced to facilitate family participation in culturally safe ways.

Aboriginal family-led decision-making models provide opportunities to bring Aboriginal and Torres Strait Islander cultural perspectives and worldviews to the fore in decision-making, ensuring respect for cultural values, history and unique child-rearing strengths. Studies have shown that plans generated through these processes have tended to keep children at home or with their relatives, and that the approach reinforced children's connections to their family and community. Reviews of existing programs in Victoria and Queensland have confirmed the value and success of these approaches, but uptake across the country remains very limited.

Independent facilitation and support of these processes by Aboriginal and Torres Strait Islander people and organisations is fundamental to their success. Without this, poorly designed and delivered processes can disempower and adversely affect families, reinforcing power imbalances between families and statutory agencies and subjugating their voices. These kinds of processes must be distinct from those that genuinely seek to provide families with safe spaces and opportunities to discuss issues and work collaboratively towards family-led solutions.

Progress since last year: The majority of jurisdictions have not included Aboriginal Family-Led Decision-Making (AFLDM) in child safety legislation. Recent legislative reviews in the ACT, South Australia, and Northern Territory offer opportunities to provide a legislative basis for AFLDM, to ensure its independence, cultural safety and quality.

The Western Australian Government commenced a two-year Aboriginal Family-Led Decision-Making Pilot in October 2021 in two locations: Mirrabooka and Midwest-Gascoyne, with an additional one-year of funding committed until June 2024. However, ACCOs in Western Australia such as the Noongar Family Safety and Wellbeing Council (NFSWC) have expressed concern that this is not sufficient to meet demand.

BUILDING BLOCK 2

6. Expand and appropriately fund the transfer of authority to Aboriginal and Torres Strait Islander community controlled organisations for statutory child protection functions across Australia, ensuring ACCOs are fully resourced to perform statutory roles.

Increasing self-determination for Aboriginal and Torres Strait Islander peoples in child protection requires that our communities and organisations exercise full authority over the decisions and actions taken to care for and protect our children.

Better decisions will be made, and better outcomes achieved, when responsibility is transferred to our agencies and exercised by people who have the requisite

cultural knowledge and authority to understand and advance the rights of our children.

In Victoria, the early progress and strengths of delegated authority in child protection have been recognised and celebrated, supporting increased reconnection and reunification of children in out-of-home care with their families. Transfer of authority has been described as “the opportunity to change the whole nature of the relationship between Aboriginal communities and child protection; it is the means to ensure that identity and belonging is central to any response to an Aboriginal child who needs the protection of guardianship.”

Despite the commitment under *Safe and Supported* to transfer authority for child protection to our organisations, only Queensland and Victoria have implemented transfers of decision-making authority to date. Progress across the rest of the country is relatively minimal.

Progress since last year: *Safe and Supported* includes a commitment from all governments to delegation of decision-making authority in child protection to ACCOs. This is an important development, which Family Matters looks forward to progressing as *Safe and Supported* is implemented. This will create an opportunity to learn from implementation in jurisdictions that have already progressed with transferring child protection decision-making authority to ACCOs and to improve the models of transfer. Implementation of transfers of authority in Victoria and Queensland have progressed, with additional ACCOs authorised in Victoria. The Queensland Government has partnered with QATSICPP to co-design a strategic blueprint for the state-wide implementation of transfers of authority.

BUILDING BLOCK 2

7. Develop community-based, youth-led models for participation of children and young people in matters that affect them, as part of mechanisms for partnership and shared-decision making with Aboriginal and Torres Strait Islander communities.

Children and young people with lived experience of child protection systems must be involved in decision-making about matters that affect them. Creating effective, age-appropriate and culturally safe mechanisms for children and young people to inform decision-making is essential to fulfilling the commitments under the National Agreement on Closing the Gap, and the UN Declaration on the Rights of Indigenous Peoples.

These mechanisms must be community-based and youth-led, according to the needs and circumstances of children and young people across all regions, jurisdictions, Nations, cultural and language groups.

Progress since last year: Principle 3 under *Safe and Supported* is “[l]istening and responding to the voices and views of children and young people and the voices and views of those who care for them”. The National Children’s Commissioner led consultations with children in 2021 to inform the first Action Plans for *Safe and Supported*.

BUILDING BLOCK 3

Law, policy and practice in child and family welfare are culturally safe and responsive

8. End adoption of Aboriginal and Torres Strait Islander children from out-of-home care.

Aboriginal and Torres Strait Islander children have a right to connection with family, community, culture and Country. Adoption threatens to break these connections and thereby undermine Aboriginal and Torres Strait Islander children’s rights.

Progress since last year: In 2020-21 there were five adoptions of Aboriginal and Torres Strait Islander children around the country. While this number is small, the previous ten years saw increasing numbers of Aboriginal and Torres Strait Islander children being adopted, with the majority (66.3%) adopted by non-Indigenous parents.

BUILDING BLOCK 3

9. Legislate requirements that ACCOs must approve permanent care orders for Aboriginal and Torres Strait Islander children and partner with ACCOs to create alternative, culturally safe approaches to promoting stability and permanency, including ensuring ACCOs have information and roles to support ongoing cultural connections for Aboriginal and Torres Strait Islander children on permanent orders.

Stability for Aboriginal and Torres Strait Islander children must involve supporting and sustaining connections to family, community, culture and Country.

Permanent care orders risk severing Aboriginal and Torres Strait Islander children’s ties to their kin, community and culture. Aboriginal and Torres Strait Islander people must be provided with opportunities to design alternative policies to support stability for Aboriginal and Torres Strait Islander children in connection with kin, culture and community.

Although Family Matters recommends that permanent care orders or adoption not be used for our children,

where permanent care orders are used, they must never be applied without clear evidence that the Aboriginal and Torres Strait Islander Child Placement Principle has been fully applied, and without the endorsement of an Aboriginal and Torres Strait Islander agency.

This report demonstrates that inadequate efforts are being progressed to support families to stay together, or to ensure children’s connections to culture and family are maintained. In these circumstances, the pursuit of permanent care orders, particularly within limited mandated legal time frames, presents an unacceptable level of risk to our children’s stable sense of identity and cultural connection.

Progress since last year: Aboriginal and Torres Strait Islander children continue to be severely over-represented in permanent care arrangements. 79.3% of all Aboriginal and Torres Strait Islander children in out-of-home care at 30 June 2021 are on long-term child protection orders. Some jurisdictions have mandated limited time frames for permanency, with no oversight of these outcomes by ACCOs.

BUILDING BLOCK 3

10. Establish national standards to ensure family support and child protection legislation, policy and practices adhere to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts, including:

- a. nationally consistent standards for implementation of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts, and linked jurisdictional reporting requirements under *Safe and Supported: National Framework for Protecting Australia’s Children 2021-2031*
- b. increased representation of Aboriginal and Torres Strait Islander families, children and communities at each stage of the decision-making process, including through independent Aboriginal and Torres Strait Islander family-led decision-making in every jurisdiction
- c. increased investment in reunification services to ensure children are not spending longer in out-of-home care than is necessary due to inadequate planning and support for parents; and increased investment in support services for families once children are returned
- d. comprehensive, active and dedicated efforts to connect Aboriginal and Torres Strait Islander children in out-of-home care to family and culture, through cultural support planning, family finding, return to Country, and kinship care support programs.

Progress since last year: *Safe and Supported*: commits to full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.

Queensland passed the Child Protection Reform and Other Legislation Amendment Act 2022 to include provisions for active efforts to implement the ATSICPP, including statutory requirements for decision-makers to apply the ATSICPP.

BUILDING BLOCK 3

11. Establish ongoing initiatives to improve practice, knowledge, responsiveness and accountability to Aboriginal and Torres Strait Islander people in government agencies, in accordance with Priority Reform 3 under Closing the Gap, including:

- a. **Applying the Family Matters Reflective Practice Tool on a regular basis to assess agencies' progress with regard to cultural safety, support for shared decision-making and self-determination, staff capability, and safe and effective practice with Aboriginal and Torres Strait Islander children and families**
- b. **Identifying and eliminating racism – by assessing capability to understand, apply, and promote anti-racism**
- c. **Employing Aboriginal and Torres Strait Islander people in both identified and non-identified roles at all levels**
- d. **Commitment to increasing capability and practice improvement to ensure culturally safe engagement with all Aboriginal and Torres Strait Islander stakeholders including service users, partner agencies, and staff**
- e. **Partnering with Aboriginal and Torres Strait Islander Community Controlled Organisations to engage with Aboriginal and Torres Strait Islander communities, deliver services, promote truth-telling and ongoing healing, and to improve service delivery by government and non-Indigenous agencies**
- f. **Improving engagement with Aboriginal and Torres Strait Islander people with transparent feedback processes, and Aboriginal and Torres Strait Islander leadership of these processes.**

Many Aboriginal and Torres Strait Islander communities and organisations have had negative experiences of tokenistic collaborations with government and non-Indigenous organisations. Tokenistic involvement does not lead to better services for Aboriginal and Torres Strait Islander families. Tokenism can, in fact, hold up progress as organisations that appear to be culturally

responsive but fail to adjust their service delivery create deeper levels of mistrust, maintain power imbalances and fail to promote reconciliation. Priority Reform 3 under the National Agreement on Closing the Gap commits all governments to transforming their institutions, practice, approach and relationships with Aboriginal and Torres Strait Islander peoples to address the underlying systemic and institutional inequality and discrimination that has been perpetrated by government and non-Indigenous institutions.

To work effectively with Aboriginal and Torres Strait Islander people, communities and organisations, government agencies must transform their policies, practices and ways of working to be culturally safe and responsive.

The Family Matters Reflective Practice Tool provides a child and family specific agencies with a framework to assess their organisation and a pathway to improvement. The tool can assist government agencies with meeting their obligations under the Closing the Gap Agreement.

Progress since last year: Several jurisdictions have progressed practice and policy changes with an aim to improving cultural responsiveness and engagement with Aboriginal and Torres Strait Islander people, including:

- The South Australian Government worked with ACCOs to develop and deliver the Yaitya Mingkamingka Purruapiinthi practice development program to upskill its workforce in culturally responsive and trauma-informed practice
- The NSW Government worked with AbSec, Grandmothers Against Removals, and Stolen Generations organisations to review its Caseworker Development Program for new child protection workers
- The Queensland Government is reviewing its Structured Decision-Making Tool and is developing practice guidance with input from QATSICPP
- Senior Aboriginal leadership roles were created in the NSW Department of Communities and Justice, and Victorian Department of Families, Fairness and Housing

However, the implementation and outcomes of these initiatives is inconsistently reported, and it is unclear if they align with evidence and best practice as according to the National Agreement on Closing the Gap.



BUILDING BLOCK 4

Governments and services are accountable to Aboriginal and Torres Strait Islander people

12. Establish and resource peak bodies that support and enable equal participation of Aboriginal and Torres Strait Islander people in shared decision-making and partnership for policy and service design and in the oversight of systems impacting children, in accordance with Closing the Gap Priority Reform 1.

For genuine self-determination, partnerships and shared decision-making between Aboriginal and Torres Strait Islander people and governments, formal roles must be established for Aboriginal and Torres Strait Islander people to lead policy and service design, drive implementation, and provide oversight of child protection systems. To hold governments and services accountable to protecting the rights of Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander peak bodies are needed in each jurisdiction to enable a community-controlled sector representative voice that can direct the response to child protection concerns based on Aboriginal and Torres Strait Islander perspectives. Peaks have critical roles to play in legislation and policy development and in the support and establishment of quality and effective community-controlled service systems. Peaks must be designed and driven from the ground up by Aboriginal and Torres Strait Islander communities.

However, governments have responsibility to provide resources and opportunities for peaks to develop and operate.

Progress since last year: The SA Government engaged SNAICC to develop a model for a peak body for Aboriginal children and families. The SA Government has committed to implementation of the model in 2023.

BUILDING BLOCK 4

13. Establish Commissioners for Aboriginal and Torres Strait Islander children nationally and in every state and territory, in accordance with the UN Principles relating to the Status of National Institutions, empowered and resourced by legislation.

The scale of the issues impacting Aboriginal and Torres Strait Islander children calls for dedicated commissioners nationally and, in each state and territory. Their role is pivotal in providing Aboriginal and Torres Strait Islander leadership to advocate for

the rights of children and to create accountability for necessary systems and practice transformation.

They should be responsible for investigating and shining a light on key child rights issues, monitoring progress of reforms and brokering solutions to persistent failures to protect our children's rights. Commissioner roles should be established in conformity with the United Nations benchmark guidelines for national human rights institutions (the Paris Principles). To achieve this, roles must:

- be established by legislation to ensure independence and autonomy from government
- be filled by an identified Aboriginal and Torres Strait Islander person with appropriate qualifications, knowledge and experience and appointed through a transparent process
- be mandated with a clear scope and purpose for the role
- be granted appropriate functions and powers to promote systemic change and accountability, including powers of inquiry and investigation
- be adequately resourced to perform its role effectively.

Progress since last year: In 2022 NSW is undertaking a legislative review of the *Children's Guardian Act 2019*. However, this review does not include consideration of implementing the recommendation from the *Family Is Culture* Review Report to establish an independent Child Protection Commission, with an identified Aboriginal and Torres Strait Islander Commissioner. The ACT is progressing with legislation to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

BUILDING BLOCK 4

14. Establish partnerships between Aboriginal and Torres Strait Islander communities and governments to guide the design, collection, interpretation and use of data relevant to Aboriginal and Torres Strait Islander children. As a priority, we call on all jurisdictions to address data gaps identified throughout this report.

Governments should collect and report data in an accessible and timely way to empower Aboriginal and Torres Strait Islander communities to access, use and interpret data for local decision-making. The National Agreement on Closing the Gap commits to shared access to location-specific data and information to inform decision-making.

Currently there are limited structures and supports at local and regional levels that enable communities to access and use data relating to outcomes for Aboriginal and Torres Strait Islander people. Initiatives are needed

to support local communities' ownership of their own data and capacity to guide policy and program responses based on administrative, evaluation and outcomes data. This is critical to shifting power in how data is used and responded to from its traditional place as the exclusive domain of government to an approach based on self-determination.

Current data sets do not track progress against the things that matter most for improving safety and wellbeing for Aboriginal and Torres Strait Islander children. What is required is a much broader set of data that can meaningfully indicate whether the needs of Aboriginal and Torres Strait Islander children and their rights to healthy development and connection with community, family and culture are being met in their interactions with child protection systems. Future data development should take account of identified gaps throughout this report.

Progress since last year: *Safe and Supported*: includes 'Improved information sharing, data development and analysis' as a focus area. Some jurisdictions have partnered with ACCOs for monitoring and evaluation, such as the evaluation of the Queensland *Our Way Strategy Changing Tracks* action plan. There were no other data sharing or data improvement initiatives reported by governments for this report.

BUILDING BLOCK 4

15. Change the definition and counting rules for out-of-home care to include children on permanent care orders.

The exclusion of children who have been permanently removed from their families from the definition and count of children in out-of-home care makes large numbers of our children, who are at risk of losing their family and cultural connections, invisible in the system. This change to the definition and counting rules in recent years reduces government transparency and accountability for protecting the rights of our children. It also provides a potential perverse pathway to achieving the Closing the Gap target to reduce overrepresentation in out-of-home care, by prioritising permanent removal rather than preventing children coming into the system and reunifying them with their families.

The permanent removal of children from their families presents echoes of the Stolen Generations for Aboriginal and Torres Strait Islander peoples and raises deep concern that governments will continue to repeat the devastating mistakes of history by severing children's cultural identity and connections. In these circumstances, accountability and transparency are even more important, and governments must count all our children who have been removed and fully acknowledge their enduring responsibility for protecting our children's rights.

Progress since last year: There has been no progress since last year. Children on permanent care orders continue to be excluded from the definition and count of Aboriginal and Torres Strait Islander children in out-of-home care. New data tables reported by the Australian Institute of Health and Welfare (AIHW) in the Child Protection Australia report make it possible to identify the total number of children removed from their parents when children on third-party parental responsibility orders are combined with children in out-of-home care. However, increased visibility does not address the core concern that governments are reducing and renouncing their responsibility for children on permanent care order by excluding them from the definition of out-of-home care.





APPENDICES

APPENDIX I: INPUTS TO THE PROJECTION MODELLING FOR OVER-REPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT-OF-HOME CARE (NATIONAL TRENDS)

DISPROPORTIONALITY BY STATE/TERRITORY

Figure A1 shows the percentage increase/decrease in the out-of-home care population (including children on third-party parental responsibilities, or TPPROs) across all states and territories from 30 June 2017 to 30 June 2021, with the red bars representing the population of Aboriginal and Torres Strait Islander children in care, and the blue bars representing the non-Indigenous population of children in out-of-home care.

Unlike Family Matters Reports prior to 2021, growth scenarios for this Report are based only on data from 2016/17 to 2020/21. This decision has been informed by the AIHW's introduction of a standardised measure in the *Child Protection Australia* data tables, which reflects the Family Matters Campaign's preferred definition for out-of-home care by including both children in 'standard' care and children on TPPROs. This measure has been retrospectively applied to all state, territory and national counts of children in out-of-home care from 2016/17 to 2020/21. As a result, estimates of growth (as per **Figure A1**) and the projected growth scenarios to 2031 (as per Figure 13) cannot be compared to previous years' Family Matters Reports, apart from the 2021 Report.

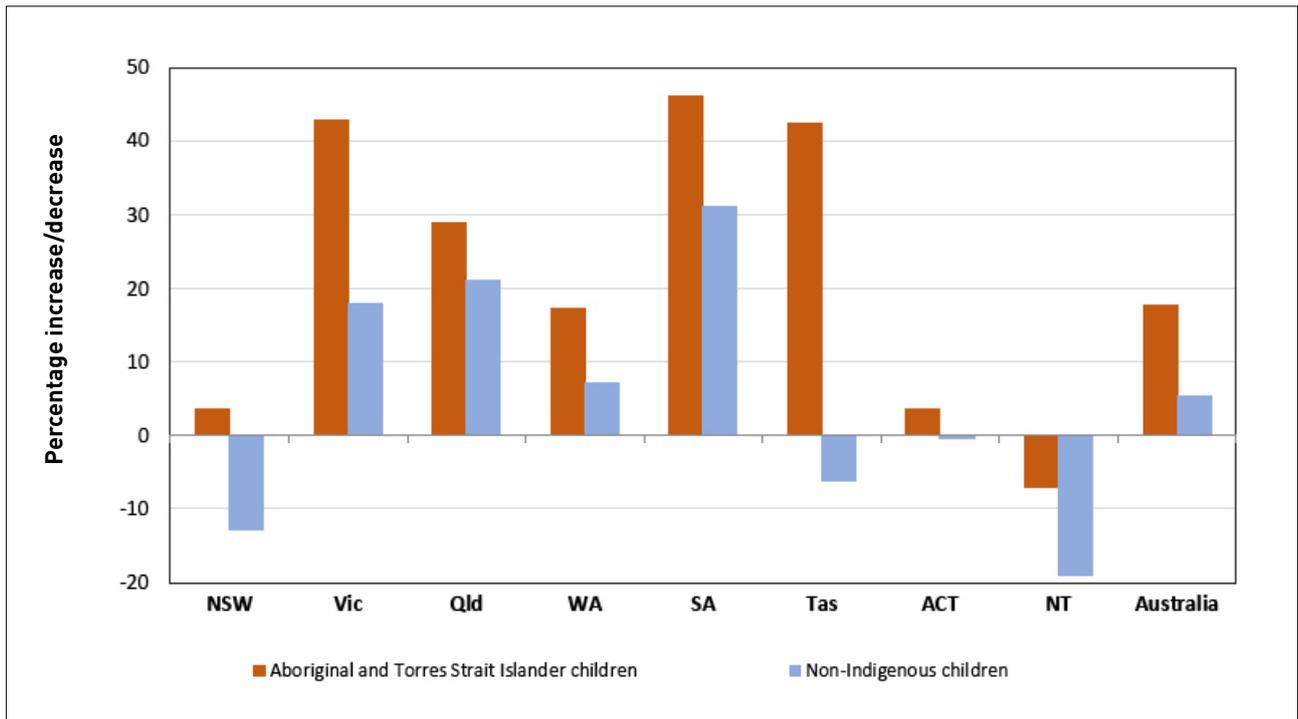
Based on this measure, between 30 June 2017 and 30 June 2021, the number of Aboriginal and Torres Strait Islander children in out-of-home care grew most rapidly in South Australia (a 46.1% increase), Victoria (a 42.7% increase) and Tasmania (a 42.3% increase). Increases were much smaller in New South Wales and the Australian Capital Territory (both seeing a 3.5% increase), but these contrast with a *reduction* in the number of non-Indigenous children in out-of-home care. This reduction was also observed in Tasmania (6.3%) and sits in stark contrast to the upsurge in Aboriginal and Torres Strait Islander children in care.

The only jurisdiction in which the number of Aboriginal and Torres Strait Islander children in out-of-home care decreased (by 7.2%) – the Northern Territory – also saw a much larger decrease in the number of non-Indigenous children in care (18.9%). This means that in every jurisdiction, without exception, the discrepancy between the proportions of Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care increased over the period from 2017 to 2021.

It is also important to disaggregate this effect into 'standard' out-of-home care and TPPROs, as shown in **Figure A2**. New South Wales is of particular interest, in that while the number of Aboriginal and Torres Strait Islander children in 'standard' out-of-home care was essentially flat over the time period, there was a significant increase in the number of children on TPPROs (represented by the orange bars). A higher proportion of Aboriginal and Torres Strait Islander children have been placed on these orders compared to non-Indigenous children, while the population of non-Indigenous children placed in 'standard' out-of-home care simultaneously shrunk, with both factors contributing to Aboriginal and Torres Strait Islander children's increased over-representation. The same phenomenon can be observed in the Australian Capital Territory.

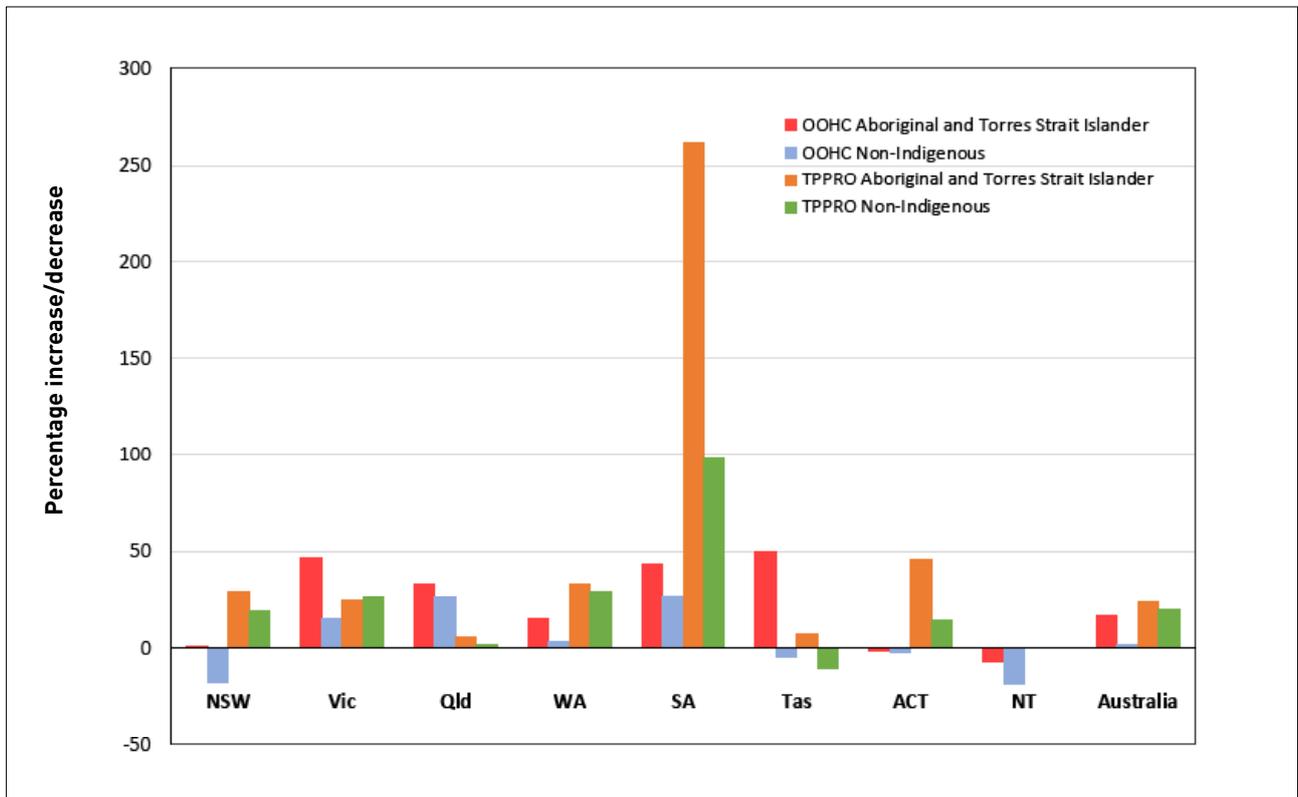
Despite significant jurisdictional variability in the growth of the out-of-home care populations, the percentage increase in Aboriginal and Torres Strait Islander children on TPPROs exceeded that of non-Indigenous children across all states and territories except Victoria (where the number of Aboriginal and Torres Strait Islander children on TPPROs grew by 24.1%, marginally less than the 25.8% growth in the number of non-Indigenous children on TPPROs). The Northern Territory is also an exception as it does not issue TPPROs. The discrepancy in TPPRO growth rates was most pronounced in South Australia, which also saw by far the largest increase in the number of Aboriginal and Torres Strait Islander children on these orders – growing by 261.5% between 2017 and 2021, compared to a still-extreme increase of 98.3% for non-Indigenous children.

FIGURE A1 Change in numbers of Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care, 30 June 2017 to 30 June 2021



Data sources: AIHW (2022), Table T3; SCRGSP (2022), Table 16A.41.

FIGURE A2 Change in numbers of Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care and third-party parental responsibility orders, 30 June 2017 to 30 June 2021



Data sources: AIHW (2022), Table T3; SCRGSP (2022), Table 16A.41.

Figure A2 also shows that (with the above-noted exception of the Northern Territory) the number of Aboriginal and Torres Strait Islander children on TPPROs increased in all jurisdictions, though the scale of these increases varied widely – from 261.5% in South Australia to 32.9% in Western Australia to only 5.1% in Queensland. Most jurisdictions, except Tasmania, also saw an increase in the number of non-Indigenous children placed on TPPROs (represented by the green bars), with the most rapid growth again occurring in South Australia.

CHANGES IN THE OUT-OF-HOME CARE POPULATION RELATIVE TO CHANGES IN THE GENERAL POPULATION OF CHILDREN, BY STATE AND TERRITORY

Nationally, the population of Aboriginal and Torres Strait Islander children aged 0–17 years old grew by 3.4% between June 2017 and June 2021, with increases ranging from 0.9% in Tasmania to 7.1% in the Australian Capital Territory (and the Northern Territory’s population of Aboriginal and Torres Strait Islander children shrinking by 3.0%). Given the small overall increase in the population of Aboriginal and Torres Strait Islander children aged 0–17 years old across all jurisdictions, the aggregate national increase in the Aboriginal and Torres Strait Islander out-of-home care population (including children on TPPROs) remains extremely disproportionate.

However, there was no evidence of disproportionality in New South Wales, the Australian Capital Territory or the Northern Territory. In New South Wales, for example, the percentage increase in the Aboriginal and Torres Strait Islander out-of-home care population was slightly lower than the increase in the general Aboriginal and Torres Strait Islander population of children aged 0–17 years old (3.5% and 4.1%, respectively). The Northern Territory saw a reduction in both the Aboriginal and Torres Strait Islander general and out-of-home care populations, with the reduction in the Aboriginal and Torres Strait Islander out-of-home care population being 2.4 times larger than the reduction in the general Aboriginal and Torres Strait Islander population of children.

Disproportionate growth was most pronounced in Tasmania, where the percentage increase in the Aboriginal and Torres Strait Islander out-of-home care population was a staggering 49.1 times larger than the percentage increase in the general population of Aboriginal and Torres Strait Islander children (42.3% and 0.9%, respectively). Similarly, the Aboriginal and Torres Strait Islander out-of-home care population in South Australia grew 10.0 times faster than the general population of Aboriginal and Torres Strait Islander children (46.1% and 4.6%, respectively), though the disproportionality was even higher for non-Indigenous children (31.0% growth in the out-of-home care population compared to 0.8% growth in the general population of children).

NATIONAL GROWTH SCENARIO

Figure 13 (in Part 1 of this Report) shows the projected growth in the national OOHC population for Aboriginal and Torres Strait Islander children and non-Indigenous children. The growth scenario reflects the broader definition of OOHC, which includes TPPROs. Based on average annual population growth rates (APGR) and a standardised population (see Appendix II below), it is estimated that by 2032 the number of Aboriginal and Torres Strait Islander children in OOHC across Australia will increase by 50% while the number of non-Indigenous children in care will increase by 13.5%. This means that, without significant and meaningful change, the disparity between the number of Aboriginal and Torres Strait Islander and non-Indigenous children in OOHC will only increase over time.

APPENDIX II: METHODOLOGY FOR THE PROJECTION SCENARIO

The projections of OOHC population shown in Figure A3 were calculated using the average annual population growth rates (APGR). Theoretically, a more complex model that is dynamical (is a function of time and space) and state-dependent (i.e., the population in each year depends on the population in previous periods) may be constructed and used in projecting future populations. However, due to the limitation of the available data and the lack of well-verified population dynamics models, only the APGR is used for projections.

The aim is to show one possible path of population growth for Aboriginal and Torres Strait Islander and non-Indigenous children in OOHC, assuming that each population continues to grow at the APGR. Unlike previous Family Matters Reports, these growth scenarios are only based on four years of data, from 2017 to 2020. Lower and upper limits for the projected populations were estimated using the minimum and maximum APGR of the populations from the same period. This provides a good perspective on what to expect if the APGR is different from the mean APGR.

For ease of interpretation, all numbers in the model have been scaled to a base population of 1000 (there are far more non-Indigenous children in the Australian population, so growth rates were standardised to a base population of 1000 in order to facilitate the comparison of growth rates within each population). There are also several important caveats that are listed in Appendix III. These caveats highlight that the figures presented in the scenario need to be interpreted with caution. Moreover, the growth scenario represents a simplified approximation of what may happen. The scenario is not predictive and should not be interpreted as such.

APPENDIX III: CAVEATS FOR THE PROJECTION SCENARIO

CAVEATS AS A RESULT OF THE MODEL RESTRICTIONS:

- The growth scenario for the 2022 Family Matters Report is based on different data to that used in the years prior to 2021. Due to the introduction of a standardised definition for OOHC applied by the AIHW, the decision was made to truncate the range of data used for the 2021 and 2022 growth scenarios. This decision was based on the provision of updated data by the AIHW on the number of children in OOHC and on TPROs for all states and territories. These data have been retroactively updated from 2017 and have therefore been used to estimate the national growth scenario presented in this Report.
 - The use of a truncated data set has implications for the interpretability and comparability of this scenario to previous years. First, estimates prior to 2021 were based on calculations that attempted to approximate the total number of children in OOHC by including third party parental responsibility orders and other supported placements. Given the significant jurisdictional variability in how these children were counted in OOHC statistics, previous calculations may have included additional 'noise' that inflated the projected growth in the Aboriginal and Torres Strait Islander OOHC population.
 - Using the updated AIHW data means that there are fewer data points on which to base calculations of future growth. This means that the estimates in this year's Report may over or under-estimate the rate at which the Aboriginal and Torres Strait Islander OOHC population will grow. As more data becomes available, the margin of error in the growth scenario will decrease.
 - However, given the standardisation of counting rules for all states and territories, the updated data provide a much stronger foundation from which to estimate growth in the Aboriginal and Torres Strait Islander OOHC population. Drawing on more recent data (from 2017 onwards) also provides a more accurate representation of the OOHC population, as these data are more closely aligned with recent policy and legislative changes across various jurisdictions, particularly pertaining to TPROs. Therefore, we anticipate that over time, and in the absence of further changes to counting rules, the growth scenarios will provide a more accurate representation of potential future trends.
- Unlike more complex models, the scenarios presented in the projections do not explicitly incorporate the re-enforcing feedback from exits to notifications via re-reports. This shortcoming is due to the fact that we have no data on the nature and timing of re-entry to out-of-home care.
 - Restricted by the availability of data, the current model does not account for any system capacity constraints. In other words, the model allows the population of children in out-of-home care to grow without limit. As this assumption is unlikely to hold in reality, the trajectories in the model must be interpreted with this shortcoming in mind. This is particularly relevant for figures that are projected further into the future.



APPENDIX IV: METHODOLOGY FOR THE REPORT CARD TABLE

The Report Card table at the front of this Report makes a subjective assessment of highlights and lowlights and a corresponding *traffic light* designation in relation to state and territory progress on aligning legislation, policy and practice with each of the four building blocks of the Family Matters Campaign.

Assessments are led by the Aboriginal and Torres Strait Islander community-controlled sector (and community members) and have been developed with the review and input of state Family Matters jurisdictional representatives and peak Aboriginal and Torres Strait Islander agencies in the child and family sectors. The methodology interrogates specific data points in the report that align most accurately to each of the building blocks when considering the framework detailed in the *Family Matters Roadmap*. A number of data points in the Family Matters Report were not provided by jurisdictions and, as a result, these are excluded from the Report Card assessment. In line with the Campaign's commitment to self-determination for Aboriginal and Torres Strait Islander peoples, the views provided in the Community Voices section of this report (Part 2) have been given significant weight in making assessments. The specific data points considered in identifying highlights and lowlights and making assessments are:

BUILDING BLOCK 1

Prevention and early intervention investment and service access data, including universal and targeted services, particularly in family support and early childhood education and care; child protection system over-representation; investment in community-controlled prevention and early intervention; and early developmental outcomes reflected in the Australian Early Development Census.

BUILDING BLOCK 2

Resourcing of Aboriginal and Torres Strait Islander representative organisations to participate in child protection processes and decision-making; processes and resources for Aboriginal and Torres Strait Islander family-led decision-making; Aboriginal and Torres Strait Islander peak body roles in policy and service system design; delegation of statutory functions to ACCOs; and investment in ACCO service delivery.

BUILDING BLOCK 3

Placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander carers and kin; rates of reunification; permanent care and adoption for Aboriginal and Torres Strait Islander children; programs for cultural support planning and implementation; kinship carer identification, assessment and support programs; ACCO roles to delivery culturally safe and strong services.

BUILDING BLOCK 4

Aboriginal and Torres Strait Islander system reform oversight and monitoring bodies, including Aboriginal and Torres Strait Islander representative bodies and children's commissioners; development of strategies to address over-representation and monitoring and evaluation of implementation and impact; provision of additional data requested to inform the Family Matters report.

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ABBREVIATIONS

AbSec	NSW Child Family and Community Peak Aboriginal Corporation
ATSICCO	Aboriginal and Torres Strait Islander community-controlled organisations
ACCO	Aboriginal community-controlled organisations
ACCHO	Aboriginal community-controlled health organisations
ACFC	Aboriginal Child and Family Centres
AIHW	Australian Institute of Health and Welfare
ANC	antenatal care
APGR	annual population growth rate
ATSICPP	Aboriginal and Torres Strait Islander Child Placement Principle (referred to as the Child Placement Principle)
BBF	Budget Based Funding
CCS	Child Care Subsidy (as of July 2018)
COAG	Council of Australian Governments
CSO	community services organisation



DFV	domestic and family violence
ECEC	early childhood education and care
FLDM	family-led decision-making
IFSS	intensive family support service
MACS	Multifunctional Aboriginal Children's Service
OOHC	out-of-home care
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
RoGS	Report on Government Services
SEIFA	Socio-Economic Indexes for Areas
VACCA	Victorian Aboriginal Child Care Agency







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