



FAMILY MATTERS

Strong communities. Strong culture.
Stronger children.



THE FAMILY MATTERS REPORT 2020

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





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The Family Matters Report is a collaborative effort of SNAICC – National Voice for our Children, the Family Matters campaign, University of Melbourne, Griffith University and Monash University.

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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 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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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
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



FOREWORD BY FAMILY MATTERS CHAIR

Since its first release in 2016, the Family Matters report has continued to expose the rising rate of Aboriginal and Torres Strait Islander children in out-of-home care when compared to non-Indigenous children. Sadly, 2020 is no exception. The trend will continue if we do not collectively act to fix a broken system based on statutory intervention that is long overdue for change.

At 30 June 2019, 20,077 Aboriginal and Torres Strait Islander children were in out-of-home care, with the majority unlikely to return to their family or kin. For Aboriginal and Torres Strait Islander children, being disconnected from family and community means a loss of cultural connection – and their human right to cultural inheritance. This loss will continue given the comparatively low rates of reunification revealed in this report. Reunifying a child with their family and kin should be the end goal, but this is not the case; and the continuation of past injustices into the present is ever more apparent.

In the past year, there has been a concerning trend in some jurisdictions towards permanent care and adoption of our children, particularly with non-Aboriginal carers. While for governments, this permanency may remove that child from statutory protection of the state and thus responsibility, it removes much more for our kids. Without meaningful relationships with family and community, there is nothing to anchor our kids to their culture. Without a clear sense of what it means to be Aboriginal or Torres Strait Islander, our children are denied a crucial part of their developing identity, connection and belonging – all things that contribute to long-term resilience and sense of self.

The answers can only come from us. We need to be empowered and we need to be heard, in order to have meaningful involvement in the design and implementation of policies that affect our kids. Upholding the commitment to the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) to autonomy and self-government is a crucial factor in moving forward with self-determination. We can already see self-determination happening through the delegation of statutory powers in states such as Victoria and Queensland. Yet merely transferring responsibility for complex issues does not solve the problem. Support mechanisms and adequate resourcing must follow for genuine partnerships and service delivery to be effective.

The year 2020 has seen a myriad of challenges. From the bushfires to the continuing impacts of the COVID-19 pandemic, and the injustice of senseless deaths of Black peoples. Yet there is hope. As the uprising of the Black Lives Matter movement proves, there is an even greater need for us to call out the systemic discrimination that continues to be normalised – socioeconomic disadvantage, poverty, poor health and intergenerational trauma are the result of two centuries of colonisation and suppression for our peoples.

This year, we have heard from Aboriginal community-controlled organisations across all states and territories in response to their governments. It is sobering to see the stark differences between jurisdictions and their approach to implementing the Aboriginal and Torres Strait Islander Child Placement Principle. But there are clear overall themes: expenditure on removing our children into out-of-home care far outweighs any investment in support services for our families. Just 15.9% of funding to the child protection system went to family support and intensive family support services during 2018-19.

These complex issues require national, holistic solutions. The new *National Agreement on Closing the Gap* priority reforms provide an opportunity to hold governments to account in providing access to locally relevant data, which, along with support of Aboriginal community control, is a true measure of meaningful self-determination. Investing and funding Aboriginal and Torres Strait Islander community-controlled services that directly understand the needs of Aboriginal and Torres Strait Islander children and their families is essential.

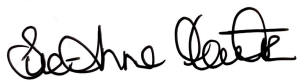
While governments are grappling with a child protection system steeped in bureaucracy and process-driven mechanisms, Aboriginal-led solutions are showing the way in providing genuine care for our kids. Aboriginal family-led decision-making in Queensland and Victoria is proven to improve decision-making processes and, in 2018-19, kept significant numbers of our children

with their families. Kinship programs, such as those in the Northern Territory and South Australia, have ensured that substantial efforts are made for our children to keep connected to family, community and culture.

Some states and territories are making commitments through dedicated strategies and adopting statewide programs to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, but unless they are adequately resourced and translated into practice and implementation, they will have little impact.

Family Matters continues to call for a **dedicated national strategy** as a blueprint for states and territories to implement national standards of practice for our children. This would be further strengthened by a **national commissioner for Aboriginal and Torres Strait Islander children and young people** with the power to enable real change and ensure accountability on policy reforms.

The Family Matters campaign continues to work towards our key campaign goals, of quality, culturally safe, and Aboriginal-led services for all our children and families; that Aboriginal and Torres Strait Islander families and communities have a voice in affecting change, and that governments and services are accountable to Aboriginal and Torres Strait Islander children and their families. The realisation of these goals will mean that our children get to grow up safe and with their families, communities and cultures.



Sue-Anne Hunter
Family Matters Chair





INTRODUCTION

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 the outcomes for 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.

The Family Matters Roadmap (published separately) proposes four inter-related building blocks, underpinned by evidence, ethics, and human rights, detailing the 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

This year’s Family Matters report is the first to be published following the new *National Agreement on Closing the Gap*, which was entered into in July 2020. The National Agreement commits governments to work

in partnership with Aboriginal and Torres Strait Islander peoples across the country; to invest in our community-controlled services; to build the cultural competence of mainstream services; and to develop data and monitor outcomes in partnership with Aboriginal and Torres Strait Islander peoples. Importantly, the National Agreement commits to achieving a target of reducing Aboriginal and Torres Strait Islander over-representation in out-of-home care by 45% by 2031, a target well-aligned to the Family Matters campaign call to eliminate over-representation by 2040.

At the inception of the National Agreement, the Family Matters report again finds limited progress 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 20,077 Aboriginal and Torres Strait Islander children in out-of-home care at 30 June 2019, which was one in every 16.6 Aboriginal and Torres Strait Islander children living in Australia (RoGS 2020, Table 16A.2). Aboriginal and Torres Strait Islander children were 9.7 times more likely to be in out-of-home care in 2019, up from 9.5 times in 2018. The numbers and rates of Aboriginal and Torres Strait Islander children in out-of-home care included in this report differ from those in government reports, because they are calculated to include children on permanent care orders who are excluded by states and territories from the definition of out-of-home care. This has been done because these children are permanently removed from their parents and are living away from home, and so should be counted as being in out-of-home care. This would rightly reflect the obligations of governments to uphold their rights and support their safety, wellbeing and ongoing connections to culture.

A genuine commitment to broad and holistic changes to systems and practice will be needed to achieve the Closing the Gap out-of-home care target. While some promising policies and initiatives have been introduced, government efforts continue to be broadly



piecemeal and ineffective in responding to the needs of Aboriginal and Torres Strait Islander children, families and communities. 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.

As detailed in this report, if the tide is not turned, we project the population of Aboriginal and Torres Strait Islander children living in out-of-home care will almost double in the next 10 years, only a slight improvement on last year's projection, and the level of over-representation will also increase.

However, the Closing the Gap target to reduce over-representation in out-of-home care is achievable. Models developed by researchers at the University of Melbourne 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 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.

The report is structured with a series of introductory chapters and three core parts:

INTRODUCTORY CHAPTERS

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.

Community voices from across Australia

At the heart of the report are the perspectives of Aboriginal and Torres Strait Islander community and sector leaders from each state and territory. These perspectives are described in this section and reflected throughout the report.

Focus on Aboriginal and Torres Strait Islander-led solutions

Profiles some of the most promising and effective approaches of Aboriginal and Torres Strait Islander people and organisations working to support children and families and end over-representation.

The impacts of COVID-19 on children and families

Addresses the ways in which the global COVID-19 pandemic and related social and economic impacts have affected families in contact with child protection services.

Focus on prevention

Highlights the importance of a systems-wide approach to supporting families and preventing child protection intervention.

Focus on reunification

Describes the need for increased supports for children to safely reunify with their parents and families, and notes the extensive gaps in related data, evidence and practice.

PART 1

Current data and trends in over-representation in out-of-home care

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. The report also 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. Part 1 includes input provided by governments on their efforts to eliminate over-representation.

PART 2

Structural drivers that contribute to Aboriginal and Torres Strait Islander children encountering the child protection system

The cultural strengths of Aboriginal and Torres Strait Islander child-rearing practices contribute to creating safe and nurturing environments for children. However, despite these strengths and the committed effort of the vast majority of Aboriginal and Torres Strait Islander people to care for children, our communities find themselves under a level of strain that is impacting negatively on children, requiring a whole of community and society response to redress the issues. This part focuses on the structural drivers that contribute to children and families encountering the child protection system. These drivers include individual and collective experiences of trauma, systemic racism, poverty and socioeconomic disadvantage, access to safe and stable housing, family violence, drug and alcohol issues, and mental health issues.

PART 3

Priorities for a better support service system

Service engagement and availability barriers must be addressed to ensure access for Aboriginal and Torres Strait Islander families to a full range of culturally safe and acceptable universal early childhood, education, health, housing, legal and other social services. Aboriginal and Torres Strait Islander families have unique needs for healing supports to address the impacts of intergenerational trauma that have resulted from experiences of colonisation,

the Stolen Generations and other discriminatory government policies. This part provides analysis of available data pertaining to priority service sectors that have been identified as the most active and critical in responding to issues impacting on a child's development, wellbeing and safety. It examines the proportion of government expenditure on prevention and early intervention focused services, and highlights priorities for workforce development and quality evaluation and monitoring of outcomes in partnership with Aboriginal and Torres Strait Islander peoples.

PART 4

Self-determination, cultural authority and connection to culture

Respect for Aboriginal and Torres Strait Islander peoples' right to self-determination and culture is essential to achieving all four building blocks of the Family Matters campaign. If we are to improve outcomes for Aboriginal and Torres Strait Islander children transformative change is needed that places Aboriginal and Torres Strait Islander people and perspectives at the heart of systems that impact children. Efforts to advance safety and wellbeing for children must be driven by the cultural authority of Aboriginal and Torres Strait Islander families and communities, who know best what is needed for their children to thrive. This part analyses the extent to which governments across Australia enable Aboriginal and Torres Strait Islander self-determination, participation and partnership in decision-making at the individual, family, community and systems levels through laws, policies and practice.

Throughout this report, we consider government efforts across all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (referred to as the Child Placement Principle), 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. The five inter-related elements of the Child Placement Principle (prevention, partnership, participation, placement and connection) are discussed, with a focus on strategies and progress to drive early intervention and prevention.

The Family Matters Report 2020 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 (Kukutai & Taylor 2016). 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.

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.

CONCLUSION and RECOMMENDATIONS

Successive Family Matters reports have shown that we have yet to turn the tide on over-representation of Aboriginal and Torres Strait Islander children in out-of-home care – in fact, overall, the data represents that the situation is getting progressively worse. The Family Matters campaign believes that the solutions lie in the strengths and cultural authority of our families and communities to lead supports and responses to advance the safety and wellbeing of our children. The crisis of child protection intervention will only be acted on at the pace required if the Commonwealth and state and territory governments commit to work together and in partnership with Aboriginal and Torres Strait Islander peoples through a dedicated strategy to achieve the Closing the Gap out-of-home care reduction target, with implementation plans at national and state and territory levels.

As *The National Framework for Protecting Australia's Children 2009 – 2020* comes to an end this year, it is clear that our nation has regressed significantly in the achievement of its goal that

“Indigenous children are supported and safe in strong, thriving families and communities to reduce the over-representation of Indigenous children in child protection systems”

(COAG 2009, p. 28).

The new commitments of the new *National Agreement on Closing the Gap* to build genuine partnership with Aboriginal and Torres Strait Islander peoples and strengthen Aboriginal and Torres Strait Islander service delivery, system design and oversight, align strongly with the Family Matters building blocks. Also, this year, federal and state and territory governments have committed to a new 10-year plan to advance child safety and wellbeing, co-designed with Aboriginal and Torres Strait Islander people. These new commitments present an opportunity that must be transformed into genuine and comprehensive action, that is fully resourced to ensure our children are safe and well with the opportunity to thrive.

Our key recommendations are provided in alignment with the Family Matters building blocks for change. Implementing these recommendations will move us closer to protecting the rights of Aboriginal and Torres Strait Islander children and empowering our families and communities to care for and protect future generations.



KEY RECOMMENDATIONS

1. Develop a comprehensive national Aboriginal and Torres Strait Islander children's strategy that is aligned to achieve the Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031, by addressing the causes of child removal. The Family Matters Roadmap, which has been developed through extensive review of the evidence and consultation with leading Aboriginal and Torres Strait Islander experts, provides a vision and clear strategies for achieving fundamental change to systems, policy and practice.

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

2. Increase investment in universal and targeted early intervention and prevention, including family support and reunification services, and fund community-controlled organisation to provide these services at a rate equivalent to the representation of Aboriginal and Torres Strait Islander children in child protection services.
3. Invest to increase the coverage and capacity of Aboriginal and Torres Strait Islander community-controlled integrated early years services through a new specific funding model and program designed to meet the needs of our children and families.

BUILDING BLOCK 2

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

4. Prioritise and increase investment in Aboriginal and Torres Strait Islander service design and delivery by community-controlled organisations in line with self-determination and the aspirations of communities.
5. Establish and support independent Aboriginal and Torres Strait Islander family-led decision-making models in every state and territory, for all families across all significant child protection decision-making points.
6. Expand the delegation of authority to Aboriginal and Torres Strait Islander organisations for statutory child protection functions across Australia.



BUILDING BLOCK 3

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

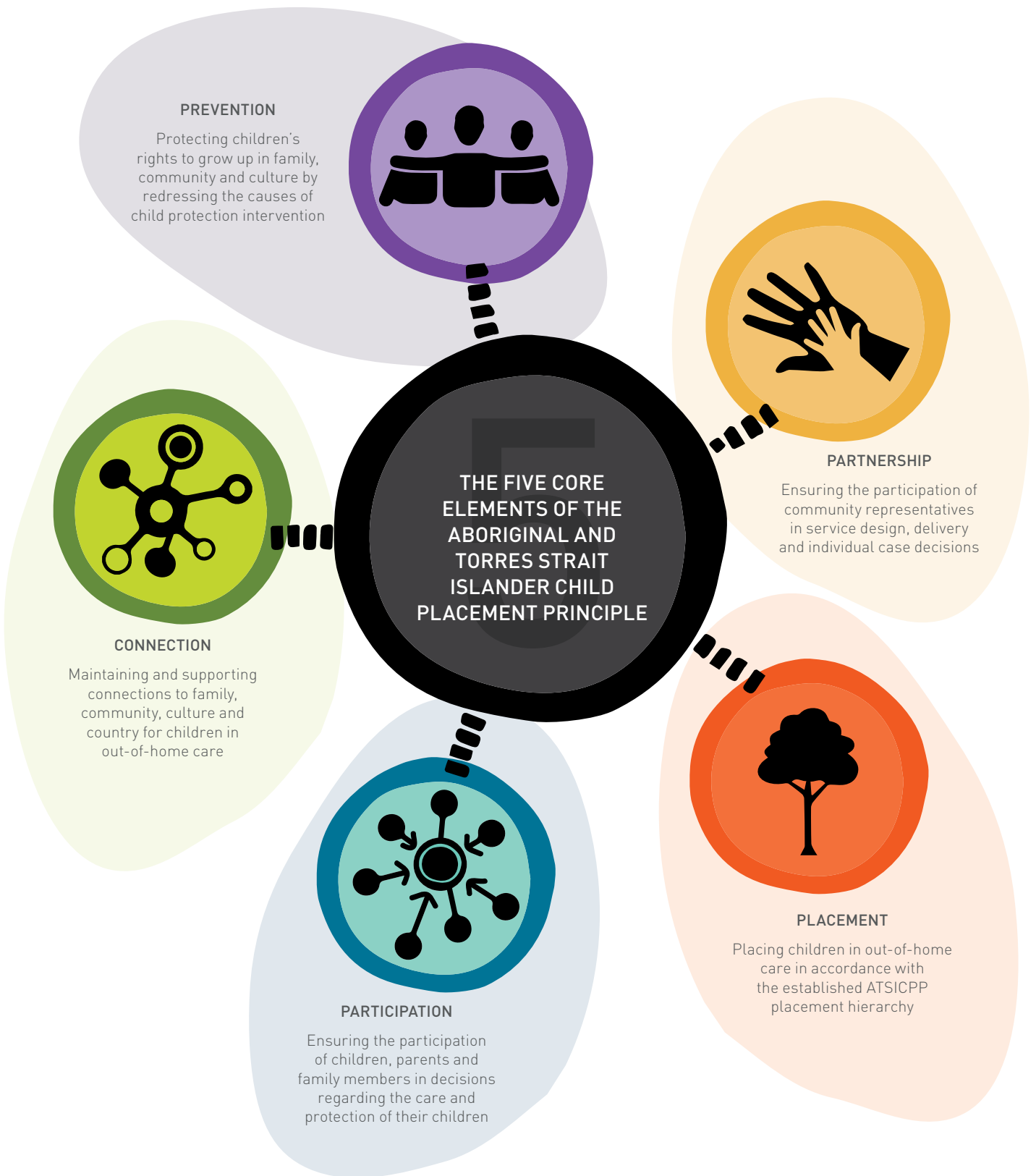
7. End the policy and practice of adopting Aboriginal and Torres Strait Islander children from out-of-home care and engage with Aboriginal and Torres Strait Islander peoples to create an alternative system of promoting stability and permanency for children, instead of using permanent legal orders. Where permanent care orders are used, legislate a requirement that an Aboriginal and Torres Strait Islander organisation must approve the making of the order.
8. 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, including:
 - a. nationally consistent standards for Aboriginal and Torres Strait Islander Child Placement Principle implementation and linked jurisdictional reporting requirements under the successor plan to the *National Framework for Protecting Australia's Children*
 - 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.

BUILDING BLOCK 4

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

9. The establishment and resourcing of peak bodies that support and enable participation of Aboriginal and Torres Strait Islander people in policy and service design and in the oversight of systems impacting children.
10. The establishment of a commissioner for Aboriginal and Torres Strait Islander children nationally and in every state and territory.
11. The establishment of 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.
12. Change the counting rules for out-of-home care to continue to include children on permanent care orders in the count.







KEY FINDINGS

PART 1. CURRENT DATA AND TRENDS IN OVER-REPRESENTATION IN OUT-OF-HOME CARE

There were a staggering 20,077 Aboriginal and Torres Strait Islander children in out-of-home care at 30 June 2019, representing one in every 16.6 Aboriginal and Torres Strait Islander children living in Australia. Aboriginal and Torres Strait Islander children were 9.7 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.

The new *National Agreement on Closing the Gap* was signed in 2020 and includes a target to “by 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.” This target provides a high level of ambition to 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.

CURRENT RATES OF OVER-REPRESENTATION

Aboriginal and Torres Strait Islander children are over-represented at virtually every point of the child protection system, from notifications, investigations and substantiations of child harm, to removal into out-of-home care and permanent removal and adoption.

Over-representation in out-of-home care has increased in every state and territory over the last 10 years. In 2019 the highest over-representation was in Western Australia (16.7), followed closely by Victoria (16.1). The lowest over-representation was in Tasmania (4.7), followed by Queensland (8.8). Nationally, 4,289 Aboriginal and Torres Strait Islander children were admitted to out-of-home care in 2018-19 at a rate of 13 per 1,000 children, which is nearly nine times the rate of entry for non-Indigenous children. Admissions to out-of-home care were at the highest rate by far in Victoria (38.4 per 1,000 children).

Aboriginal and Torres Strait Islander children were also less likely to be reunified with their families in 2018-19. Only 26% of Aboriginal and Torres Strait Islander children in out-of-home care were identified as having a possibility of reunification compared to

37% of non-Indigenous children. Of those children identified as having a possibility of reunification, only 19% of Aboriginal and Torres Strait Islander children were reunified compared with 28% of non-Indigenous children.

These deeply concerning trends in data for Aboriginal and Torres Strait Islander children highlight that current legislative and policy settings are failing to reduce the inequities children experience across all key decision-making points of Australia’s child protections systems.

Achieving the new Closing the Gap target will require a comprehensive approach to address the drivers of child protection intervention. It is essential to 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. Efforts are needed to intervene early and prevent entry to out-of-home care, and to increase exits from care by supporting families to safely reunify.

In line with the Closing the Gap Agreement, to be successful, these changes must be driven by resourcing Aboriginal and Torres Strait Islander community-controlled organisations to provide family preservation and reunification, and other prevention and early intervention supports for our families.

PERMANENT CARE AND ADOPTION

For children placed in out-of-home care, stability of relationships and identity are vitally important to their wellbeing and must be promoted. For an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and Country (SNAICC 2016).

In recent years, state and territory child protection authorities have increasingly used a range of legislation, policy and practices to promote stability through longer-term care arrangements for children in out-of-home care. Many permanency reforms have narrowly pursued legal permanency at the expense of children’s cultural rights and connections and without adequate focus on children’s social and emotional wellbeing.

Children on permanent care orders have been excluded by governments from the definition of out-of-home care, reducing transparency and the visibility of children

who have been permanently removed from their families. This has also reduced the supports, oversight and protection provided to these children, counter to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. *The Family Matters Report 2020* re-includes these children in its data and calls on governments to reverse the decision to exclude them.

In a number of states and territories the use of permanent care and adoption orders for Aboriginal and Torres Strait Islander children is extremely high and escalating. Twenty-nine Aboriginal and Torres Strait Islander children were adopted in the previous five years to June 2019, including 24 to non-Indigenous adoptive parents. Alarming, two-thirds of those adoptions occurred in the most recent year (2018-19), in just two states, Victoria and New South Wales. The Family Matters campaign is firmly of the view that no Aboriginal and Torres Strait Islander children should be adopted from out-of-home care.

At 30 June 2019, there were 16,287 Aboriginal and Torres Strait Islander children on long-term (permanent to age 18) guardianship, custody or third-party parental responsibility orders, making up 81% of all Aboriginal and Torres Strait Islander children in out-of-home care and other supported care. By far the highest number of these children in any given state or territory are in New South Wales (7,126 children or 44%), followed by Queensland (2,782 children or 17%). The rate of Aboriginal and Torres Strait Islander children on these long-term orders was highest in Victoria (75.6 per 1,000), with particularly high rates also evident in the Australian Capital Territory (67.5 per 1,000), South Australia (66 per 1,000), and New South Wales (63.5 per 1,000).

These data reflect disturbing trends to increase the use of legal permanency. Permanent care lacks safeguards for Aboriginal and Torres Strait Islander children's safety and wellbeing and carries unacceptable risks of severing cultural and family connections for children.

PROJECTED GROWTH IN OVER-REPRESENTATION

As we all set our sights on achieving the new Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, the future projection of children in care remains deeply concerning and highlights just how much needs to change. The population of Aboriginal and Torres Strait Islander children in out-of-home care is projected to double by 2029 if governments do not intervene to interrupt the current growth.

While it is troubling to see that the projection has only marginally changed from last year's report, there remains hope that with increased efforts to support families and address the drivers of child protection intervention, this trajectory can be altered. Modelling from the University of Melbourne shows 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 reduce over-representation by 45% by 2031 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.

PART 2. STRUCTURAL DRIVERS THAT CONTRIBUTE TO ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN ENCOUNTERING THE CHILD PROTECTION SYSTEM

Aboriginal and Torres Strait Islander families and communities have successfully provided love and care for their children, growing them up strong and safe in their cultural traditions for thousands of years. The cultural strengths of Aboriginal and Torres Strait Islander child-rearing practices contribute to create safe and nurturing environments for children. Despite this, Aboriginal and Torres Strait Islander families continue to face adversity and experience a range of structural drivers that lead them to encounter the child protection system. Some of the key structural drivers are mentioned below and elaborated on further in Part 2 of this report.

INTERGENERATIONAL TRAUMA

The concept of intergenerational trauma and its impact is widely acknowledged and accepted in evidence around the world. It can be defined as historical trauma and unresolved grief passed over generations through different channels, resulting in poorer physical, psychological and social outcomes (Roy 2019). There is clear evidence that if not healed, trauma negatively affects neurological development which can be passed on to future generations (Van Der Kolk 2014).

INSTITUTIONAL RACISM

Institutional racism is a clear structural driver that leads to a high rate of Aboriginal and Torres Strait Islander children and families encountering child protection and out-of-home care systems. In 2015-16 the Australian Human Rights Commission reported that Aboriginal and Torres Strait Islander people accounted for 54% of complaints received by the Commission under the Racial Discrimination Act. According to the Australian Bureau of Statistics at that time, Aboriginal and Torres Strait Islander people only accounted for approximately 3% of the Australian population.

SOCIOECONOMIC DISADVANTAGE

Low income is associated with a wide range of disadvantage, including poor health, shortened life expectancy, poor education, substance abuse, reduced social participation, crime and violence (AIHW 2017). Aboriginal and Torres Strait Islander people, on average, experience lower employment rates than

non-Indigenous Australians for a range of reasons. These include lower levels of education and training, living in areas with fewer employment opportunities, higher levels of contact with the criminal justice system, experiences of discrimination, and lower levels of job retention (Gray, Hunter & Lohar 2012).

POOR ACCESS TO SAFE, AFFORDABLE AND QUALITY HOUSING

Access to safe and healthy housing environments has a substantial impact on the capacity of families to provide safe and supportive care for children. Disparities exist between Aboriginal and Torres Strait Islander people and non-Indigenous people across a range of housing measures. Compared to non-Indigenous Australians, Aboriginal and Torres Strait Islander people are half as likely to own their own home (with or without a mortgage), 10 times more likely to live in social housing and three times as likely to live in crowded dwellings (AIHW 2019b).

EXPOSURE TO FAMILY VIOLENCE

For Aboriginal and Torres Strait Islander people, the social, cultural, spiritual, physical and economic impact of family violence is devastating. The greatest direct impact of family violence is on Aboriginal and Torres Strait Islander women, which leads our children to be especially vulnerable to the direct and indirect impacts of family violence – causing deep and lasting harm and contributing significantly to Aboriginal and Torres Strait Islander children's over-representation in Australia's child protection systems (SNAICC 2017). Available research indicates that family violence occurs at higher rates for Aboriginal and Torres Strait Islander people than for non-Indigenous people. In 2015, Aboriginal and Torres Strait Islander women were 32 times more likely to be hospitalised as a result of injuries caused by family violence and twice as likely to be killed by a current or former partner (AIHW 2018b).

PART 3. PRIORITIES FOR A BETTER SUPPORT SERVICE SYSTEM

Early investment in strengthening families provides long-term social and economic benefits by interrupting trajectories that lead to health problems, criminalisation, and child protection intervention. Providing all Aboriginal and Torres Strait Islander children with the opportunity to thrive on an equal basis with others requires progressing the holistic realisation of their rights, including rights to safety, family, housing, food, health, education, culture and participation.

Under this approach, governments should take steps to ensure that quality, culturally safe services required to realise these rights are accessible and available to all Aboriginal and Torres Strait Islander families. Ensuring families and communities are equipped to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture and Country.

Part 3 of this report focuses on priorities for building a better service system. It also provides a snapshot of key services sectors including maternal and child health. While most Aboriginal and Torres Strait Islander women, infants and families do well and thrive, there remains significant proportions of poor maternal outcomes, perinatal outcomes, and infants who do not get the best start to life. Evidence indicates 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 (O'Donnell et al. 2019). The provision of early intervention supports to vulnerable families during pregnancy, including antenatal care, is a crucial opportunity to address factors that place them at risk of child protection involvement and prevent the removal of Aboriginal and Torres Strait Islander children at birth. Aboriginal and Torres Strait Islander women are less likely to access antenatal care in the first trimester of pregnancy and, overall, access fewer antenatal visits than non-Indigenous women.

Maternal health is a key driver for child mortality rates, and while health outcomes for Aboriginal mothers and children have improved, substantial differences remain between health outcomes for Aboriginal and Torres Strait Islander mothers and babies and non-Indigenous mothers and babies. Non-Indigenous child mortality has improved at a faster rate than for Aboriginal and Torres Strait Islander children, resulting in a failure to meet the Closing the Gap target to halve the gap in mortality rates for Aboriginal and Torres Strait Islander children under five within a decade (by 2018) (Australian Government 2020a).

GOVERNMENT INVESTMENT

The premise of the *National Framework for Protecting Australia's Children 2009 – 2020* 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 (ARACY 2008, p. 47). Despite this, reported data depicts that 84.1% of national expenditure is allocated to the tertiary end of the sector, compared to 15.9% in measures that seek to prevent, support and reunify families.

WORKFORCE DEVELOPMENT TO ENABLE SUSTAINABLE IMPROVEMENTS

Many Aboriginal and Torres Strait Islander children and families report experiences of systemic racism which further exacerbate underlying and deep-seated intergenerational trauma. There is an urgent need for jurisdictions to focus on well-resourced and targeted workforce development initiatives to improve the knowledge, skills, proficiency, efficacy and capacity of all key service sectors.

EARLY CHILDHOOD EDUCATION AND CARE

While all children benefit from high-quality early learning programs, evidence is clear that the highest positive impact is for children experiencing vulnerability (Pascoe & Brennan 2017). However, the current early childhood education and care (ECEC) system is geared towards working families, rather than the needs of vulnerable Aboriginal and Torres Strait Islander children. Nationally, Aboriginal and Torres Strait Islander children are 2.5 times more likely to be developmentally vulnerable in two or more domains than their non-Indigenous peers (Figure 25), and are more than twice as likely to be developmentally vulnerable than non-Indigenous children on two or more domains across each jurisdiction (Figure 26). These rates have shown no improvement, declining slightly over the past decade.

Since 2017, the national rate of Aboriginal and Torres Strait Islander children attending preschool is on par with that of non-Indigenous children. However, there

is no reliable data about the duration and intensity of children's engagement with preschool. There are still striking disparities in access to Commonwealth-funded services such as long day care, family day care and out-of-school hours care.

In 2019, Aboriginal and Torres Strait Islander children aged 0 to 5 were attending these services at 72% the rate of non-Indigenous children, up from 50% in 2018. However, the data is not comparable this year to previous years due to significant changes in data collection. Expert analysis has confirmed what Aboriginal and Torres Strait Islander early years education services are experiencing in practice – that the Child Care Subsidy introduced in 2018, with its focus on parental workforce participation and imposition of strict administrative requirements, is exacerbating inequality and intensifying the barriers to access crucial early years education services for our most vulnerable children.



PART 4. SELF-DETERMINATION, CULTURAL AUTHORITY AND CONNECTION TO CULTURE

SELF DETERMINATION

In recent years the language of self-determination has been revived in state, territory and Commonwealth initiatives. The release of the new *National Agreement on Closing the Gap* includes priority reform areas that support formal partnerships and shared decision-making and building the community-controlled sector in order to recognise the right to self-determination for Aboriginal and Torres Strait Islander communities. The extent of commitment to implement self-determination in practice remains uncertain.

DATA SOVEREIGNTY

Data sovereignty refers to the “right of Indigenous peoples to govern the collection, ownership and application of data about Indigenous communities, lands, and resources” (Bodkin-Andrews et al. 2019) and is reflected in the priorities of the *National Agreement on Closing the Gap*. State and territory child protection departments across Australia are yet to formally endorse data sovereignty and partner with Aboriginal and Torres Strait Islander communities to interpret data relating to their children and families. There are many significant initiatives in a formative stage of improving shared access to data. The Queensland Government is developing regional data profiles to improve Indigenous oversight for *Our Way*; the Victorian Government shares regional data with Aboriginal service leaders through the Aboriginal Children’s Forum supporting accountability for the implementation of the Wungurilwil Gaggapduir; and there is ongoing work between Child and Families Secretaries (CAFS), SNAICC and Australian Institute of Health and Welfare (AIHW) to develop improved data measurement and reporting aligned to the Child Placement Principle, with a new AIHW data report on the Child Placement Principle due out this year.

SUPPORTING A STRONG ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY-CONTROLLED SECTOR

Through Closing the Gap, government parties have agreed to implement measures to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations, particularly community-controlled organisations. This year, five jurisdictions provided data indicating their expenditure on Aboriginal and Torres Strait Islander community-controlled organisation (ACCO) child protection and family support services.

New South Wales leads the nation in the proportion of expenditure on ACCOs overall, while Queensland leads on ACCO expenditure on family support and intensive family support. The Northern Territory reported the

second largest percentage of expenditure on ACCOs, yet the largest gap between the percentage of expenditure on ACCOs (5.7%) and the percentage of children in care who are Aboriginal and Torres Strait Islander (90%). Victoria is known to invest very significantly in ACCOs for child protection-related services, however it does not report on its funding allocation.

TACKLING INSTITUTIONAL RACISM

Institutional racism prevents many Aboriginal and Torres Strait Islander children and families from participating in decision-making. The Australian Government has acknowledged the need for government agencies and institutions to address systemic racism, promote cultural safety and transfer power and resources to communities in the new *National Agreement on Closing the Gap*. The extent of the Australian Government’s commitment to transforming mainstream government organisations and eliminating racism will become clearer in the coming years.

ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The Aboriginal and Torres Strait Islander Child Placement Principle (Child Placement Principle) consists of five elements (prevention, partnership, placement, participation and connection) that aim to ensure children’s connections to family, community and culture are prioritised, and that Aboriginal and Torres Strait Islander peoples are self-determining, in child protection.

PARTNERSHIP

One mechanism to implement the partnership element is the delegation of statutory powers to ACCOs. This power has been exercised through Victoria’s Aboriginal Children in Aboriginal Care program, with ACCOs taking full responsibility for the care and case management of Aboriginal children in out-of-home care. Preliminary data indicates that children in these programs have remained connected to, or re-develop connections to, their families, communities and cultures (VACYP 2019b).

In Queensland, legislation amending the *Child Protection Act 1999* in 2019 enables the Chief Executive to delegate one or more of their functions or powers under the Act to the CEO of an Aboriginal and Torres Strait Islander community entity to make decisions for the child in relation to those matters. Implementation of these provisions is underway with partnerships being formed with two ACCOs.

While these initiatives fall short of enabling ACCOs to design and deliver their own systems, they are important examples of governments’ willingness to relinquish control over key decisions in the interest of promoting self-determination for Aboriginal and Torres Strait Islander people in order to achieve better outcomes for their children.

PLACEMENT

The rate of placement of Aboriginal and Torres Strait Islander children with family and kin or other Aboriginal and Torres Strait Islander carers has continued to drop from 74.8% in 2006 to 63.6% in 2019. There is also a far greater and deeply concerning drop in the rate of placement with Aboriginal and Torres Strait Islander carers (excluding non-Indigenous family and kin). The percentage of Aboriginal and Torres Strait Islander children placed with non-Indigenous kin is higher than ever before (19.8%), pointing towards increasing systemic bias against placing children with their Aboriginal and Torres Strait Islander kin.

Victoria and the Australian Capital Territory have seen a steady increase in the number of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers since 2014. Victoria's investment in ACCOs and commitment to transfer all Aboriginal children to Aboriginal case management by the end of 2021 can be clearly linked to their increase in Aboriginal children with family and kin. Concerningly, the Northern Territory has the lowest percentage of Aboriginal and Torres Strait Islander children being placed with kin or other Aboriginal and Torres Strait Islander carers. Tasmania had by far the lowest placement with Aboriginal and Torres Strait Islander carers at just 13% – a staggering 30% below the national average.

PARTICIPATION

A key barrier to child and family participation in child protection decision-making is an ongoing lack of respect, recognition and acknowledgement of cultural authority and traditional child-rearing practices. (Davis 2019; ACT Government 2019; White & Gooda 2017).

There has been some recent progress across Australia to increase implementation of family-led decision-making facilitated by independent Aboriginal and Torres Strait Islander people and agencies. The Queensland Government rolled out the Family Participation Program across the state in 2018, funding 15 ACCOs to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making. Nevertheless, there are gaps in implementation across jurisdictions, with stakeholders reporting that family-led decision-making is not offered widely or consistently.

Victoria continues its long-standing state-wide program of family-led decision-making, which has strong involvement by ACCOs. However, inconsistencies are still reported in the way it is implemented. A model of family group conferencing was trialled successfully in the Australian Capital Territory in partnership with Curijo. Preliminary data provided by the ACT Government indicates that family group conferences successfully prevented a significant number of children from entering care.

New South Wales has similarly introduced a family group conferencing model. The *Family is Culture* report

(2019) revealed, however, significant implementation issues and inconsistencies in the way the family group conferences have been conducted. Further, there were concerns raised that FACS limits the utility of the family group conference by not funding Aboriginal community-controlled organisations to facilitate the process (Davis 2019, p. 313-14). In August 2020, Western Australia announced a two-year pilot of Aboriginal family-led decision-making as part of a larger effort to address over-representation of Aboriginal children in out-of-home care. However, the failure to include family-led decision-making in the recent legislative reforms has created concerns regarding the extent of the government's commitment to reform in this area.

The extent to which the right to participation is legislated in the context of child protection decision-making varies across jurisdictions. Queensland's legislation remains the most comprehensive in the country in terms of meaningfully supporting the participation of Aboriginal and Torres Strait Islander children, families and communities, and Victorian legislation is also closely aligned to this purpose.

CONNECTION

In 2019, 78% of all Aboriginal and Torres Strait Islander children in out-of-home care, who were required to have a cultural plan, were reported as having such a plan (AIHW 2020). However, this data is limited for several reasons. Family Matters has consistently called for the development of meaningful ways to measure the development, quality and implementation of cultural plans for Aboriginal and Torres Strait Islander children in out-of-home care.

OVERSIGHT AND ACCOUNTABILITY

Community representatives in many jurisdictions have long called for dedicated commissioners to be established nationally and in each state and territory, but only Victoria, South Australia and Queensland have appointed a children's commissioner with a dedicated role for Aboriginal and Torres Strait Islander children.

The establishment of peak bodies is an important mechanism to provide advocacy, oversight and accountability for systems that impact Aboriginal and Torres Strait Islander children and their families. Aboriginal-controlled peak organisations operate in Queensland and New South Wales, with a dedicated focus on the child protection and family services sector, and at the national level through SNAICC – National Voice for our Children. Significant policy participation roles are also resourced in Victoria through the Victorian Aboriginal Child Care Agency (VACCA) and the Victorian Aboriginal Children & Young People's Alliance. While there is no state-wide peak in Western Australia, the recently established Noongar Family Safety and Wellbeing Council works to provide a strong voice for Noongar children and families and advocate on their behalf.







FAMILY MATTERS

Strong communities. Strong culture.
Stronger children.



THE FAMILY MATTERS REPORT CARD 2020

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

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



	Headline indicator Over-representation in OOHC (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	12.7	<ul style="list-style-type: none"> 4-year funding for ACCO early intervention program with positive outcomes, but proportion of expenditure on family support is low at 12% Significant 1-year drop in over-representation in OOHC (14.6 to 12.7), but above national average Second lowest rate of Aboriginal children on track against all 5 AEDC domains (26%) 	<ul style="list-style-type: none"> Only 1% of funding for child protection and family support services through one ACCO Continued funding of family group conferencing with promising results, but community concern about lack of independent Aboriginal process No funding or requirements for independent community representative participation in decisions 	<ul style="list-style-type: none"> Third highest placement with kin or Aboriginal carers (64.3%) and consistent increase over 5 years Low investment in ACCO service provision and community voices report a high level of cultural bias in family assessment and decision-making Second highest % of Aboriginal children reunified (26.4%), higher than for non-Indigenous children 	<ul style="list-style-type: none"> Aboriginal-led body oversees implementation of <i>Our Booris, Our Way</i>, but community disappointment at lack of action to implement to date Aboriginal elected body plays an important role in policy design and oversight, but no Aboriginal peak body for children and families or a commissioner Provided high level of data to inform this report
NSW	9.5	<ul style="list-style-type: none"> Commitment to invest 30% of targeted early intervention in ACCOs lacks implementation Audit Office found poor consultation on design of ill-suited foreign family support programs. Target of 50% Aboriginal places far from achieved as a result Highest rate of Aboriginal children on track against all 5 AEDC domains (42%) 	<ul style="list-style-type: none"> Highest reported proportion of expenditure on ACCOs (5.9%), with most spent on OOHC services <i>Family is Culture</i> review highlighted lack of focus on self-determination in child protection Aboriginal peak body funded for policy and sector development roles, but large funding cuts in 2020 Lack of implementation of Aboriginal-led policies 	<ul style="list-style-type: none"> Highest use of permanent care orders for Aboriginal children (18.2 per 1000) and second highest adoptions (7), including 6 to non-Indigenous people No data on reunification or whether children in permanent care are with Aboriginal carers Highest placement with Aboriginal carers (51.5%), but downward trend over 5 years 	<ul style="list-style-type: none"> Initial government response to strong <i>Family is Culture</i> recommendations is inadequate Independent Knowledge Circle established to advise Minister on <i>Family is Culture</i> response Deputy Aboriginal children's guardian announced, but lacks children's commissioner powers and role Limited data provided to inform this report
NT	12.2	<ul style="list-style-type: none"> High over-representation and continued failure of interventionist approach with lack of healing focus High proportion spent on family support (24.8%), but low spend on external services and community report limited family support visible on the ground Lowest rate of Aboriginal children on track against all 5 AEDC domains (18%) 	<ul style="list-style-type: none"> Productivity Commission review in 2020 found community input to service design for children is "often belated or superficial" Second highest investment in ACCOs (5.8%), but low compared to 90% of Aboriginal children in OOHC No Aboriginal children and families peak or model for independent family or community participation 	<ul style="list-style-type: none"> Aboriginal kinship program has funded 6 ACCOs to find, assess and support Aboriginal carers Lowest placement of Aboriginal children with kin or Aboriginal carers (36.9%) Government processes mostly in English despite high proportion of Aboriginal language speakers Comparatively low use of permanent care orders 	<ul style="list-style-type: none"> Children and Families Tripartite Forum provides high-level accountability with ACCOs represented Community voices report <i>Safe, Thriving and Connected</i> strategy commitments remain largely unimplemented with little change on the ground No dedicated commissioner or peak body for Aboriginal children and families
QLD	8.8	<ul style="list-style-type: none"> Highest expenditure on ACCOs for family support (14.7%) and intensive family support (24.7%) Second lowest rate of OOHC over-representation Lack of and need for data on prevention and early intervention service access Appointment of chief Aboriginal and Torres Strait Islander health officer 	<ul style="list-style-type: none"> Establishing systems for true participation, including planning for delegated authority and re-write to improve Family Participation Program guidelines Aboriginal and Torres Strait Islander peak roles in strategy, policy co-design and sector development New process for Aboriginal and Torres Strait Islander family-led decision-making in youth justice 	<ul style="list-style-type: none"> Second lowest placement with Aboriginal and Torres Strait Islander carers (34.2%) <i>Family Caring for Family</i> kinship model under development, led by QATSICPP No reunification data available Culturally unsafe Adoption Bill tabled despite significant opposition from community 	<ul style="list-style-type: none"> First Children and Families Board guides and oversees <i>Our Way</i> strategy and action plan External evaluation of <i>Our Way</i> strategy commenced and will validate wellbeing outcomes Data improvements underway aligned to ATSICPP Aboriginal commissioner appointed with mandate to focus on systemic issues for Aboriginal children
SA	10.8	<ul style="list-style-type: none"> Over-representation in OOHC above national average and significant 1-year increase (10 to 10.8) Second highest Aboriginal entry to OOHC rate Recommissioning intensive family services, and committed to 30% of funding to go to ACCOs Second lowest proportion of expenditure on family support services (8.7%) 	<ul style="list-style-type: none"> Community voices note positive recent work to develop Aboriginal co-design criteria and trauma responsive early intervention consulting with ACCOs Target to increase ACCO expenditure to 7% by 2022 No dedicated peak body for Aboriginal children or independent Aboriginal processes for input by representatives and families to case decisions 	<ul style="list-style-type: none"> New ACCO kinship care support program commenced with 3 ACCOs (\$3 million over 2 years) Ruled out adoption for Aboriginal children. Using ATSICPP as the guiding framework for permanency Placement of Aboriginal children with Aboriginal carers below the national average (38.9%) Low reunification of Aboriginal children (11.1%) 	<ul style="list-style-type: none"> Released <i>Safe and Well</i> framework, including focus on ATSICPP and reducing OOHC over-representation New commitment to embed commissioner for Aboriginal children role in legislation Expert Aboriginal Child Protection Advisory Committee provides external advice on child protection policies, programs and practice
TAS	4.7	<ul style="list-style-type: none"> Funding to Tasmanian Aboriginal Centre for successful intensive family support approach Lowest rate of Aboriginal OOHC over-representation Second highest rate of Aboriginal children on track against all 5 AEDC domains (37%) Proportion of expenditure on family support services below the national average (12.8%) 	<ul style="list-style-type: none"> Community voices highlight that ACCOs are overlooked in system design and implementation No Aboriginal peak, few formal and funded roles for ACCOs, and no model for family or ACCO participation in child protection case decisions No referral or consultation requirements with Tasmanian Aboriginal Centre for notifications 	<ul style="list-style-type: none"> Lack of consultation with Tasmanian Aboriginal Centre on department Beginning Practice training Reported that needs of foster carers are prioritised over reunification and cultural connection, and cultural plans are viewed as discretionary By far lowest rate of placement of Aboriginal children with Aboriginal carers (13%) 	<ul style="list-style-type: none"> <i>Strong Kids Safe Families</i> plan contains few reforms specifically targeted for Aboriginal children No dedicated commissioner or peak body for Aboriginal children or formal system leadership roles for independent Aboriginal representatives No dedicated and monitored strategy to address Aboriginal over-representation
VIC	16.1	<ul style="list-style-type: none"> Self-determination reforms are focused on children in care, but not prevention and early intervention Second highest Aboriginal over-representation in OOHC and highest by far Aboriginal entry to OOHC Highest proportion of expenditure on family support (25.2%) but lowest proportion of Aboriginal children commencing intensive family support (10.7%) 	<ul style="list-style-type: none"> Self-determination reforms driven by ACCOs have been successful and delegations are expanding (49% of Aboriginal children case managed by an ACCO) ACCOs resourced for roles to input to policy, case decisions and to facilitate family decision-making Significant investment in ACCO child protection and OOHC services but expenditure data not reported 	<ul style="list-style-type: none"> Highest placement with kin or Aboriginal carers (78.8%), but high placement with non-Indigenous kin and low placement with Aboriginal carers (43%) Highest national adoptions of Aboriginal children (12), all to non-Indigenous adoptive parents Only 44% of Aboriginal children have a cultural plan Increased reunification for cases managed by ACCOs 	<ul style="list-style-type: none"> High accountability and partnership with ACCOs through the Aboriginal Children's Forum and the <i>Wungurilwil Gagapduir Agreement</i> Commissioner for Aboriginal children and young people leads independent systemic inquiries Despite high-level partnerships, government systems are not shifting to prevent entry to care
WA	16.7	<ul style="list-style-type: none"> Community voices report that strategies focused on reducing Aboriginal children in care have stalled Highest over-representation in OOHC nationally Lowest proportion of expenditure on family support and intensive family support (5.3%) Second highest proportion of Aboriginal children commencing intensive family support (51%) 	<ul style="list-style-type: none"> Only 4% of Aboriginal children in care supported by one ACCO and sector proposals for ACCO OOHC growth remain unfunded Legislative reforms in 2020 failed to address key concerns raised by Aboriginal organisations Two-year pilot announced for Aboriginal family-led decision-making 	<ul style="list-style-type: none"> Community voices report positive implementation of new contract and practice requirements for OOHC services to address healing and trauma Lowest % of Aboriginal children in OOHC reunified (11%) and much lower than the non-Indigenous rate Placement of Aboriginal children with Aboriginal carers slightly above national average (47.6%) 	<ul style="list-style-type: none"> Co-design process with community in early 2020 to reform child protection, but lack of government action to implement outcomes No dedicated commissioner for Aboriginal children No significant progress evident on 2019 commitment to develop a 10-year roadmap to address Aboriginal over-representation in OOHC

* The methodology for development of the Report Card table is described in Appendix IV. 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 other supported care' to include children on permanent care orders (RoGS 2020, Table 16A.2).



COMMUNITY VOICES FROM ACROSS AUSTRALIA

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. This year, they were invited to comment on progress to address over-representation. Family Matters strongly advocates that peak bodies supporting Aboriginal and Torres Strait Islander children and families need to be resourced and supported in each jurisdiction to enable representative community voices to participate in policy design, sector development, and oversight of government commitments to improve outcomes for Aboriginal and Torres Strait Islander children.

AUSTRALIAN CAPITAL TERRITORY

The Australian Capital Territory has one of the highest rates of over-representation in the country. Aboriginal and Torres Strait Islander children were 12.9 times more likely to be in out-of-home care than non-Indigenous children in 2018-19. This is well above the national average of 9.6 times.

This number reflects the fact that the ACT Government has failed to address entrenched issues including systemic racism within the Community Services Directorate (Directorate), to provide self-determination to our families and communities, and to focus on prevention and reunification.

The Directorate continues to focus on complying with their policies and practice guidelines in a tokenistic way rather than engaging respectfully with our families and communities. Aboriginal and Torres Strait Islander community leaders and families have said they have lost hope, feel disempowered and that practitioners are continuing to assess families through a biased, Western lens. There needs to be more skilled and trained Aboriginal and Torres Strait Islander staff doing statutory work. Further, many of our families are unaware of their rights and not adequately supported to challenge the government's decisions, including before courts. The Directorate is not being held accountable for their decisions to remove children from their families when they have used intervention as a first, rather than a last resort.

There have been limited steps taken to embed self-determination within the child protection system. The Aboriginal and Torres Strait Islander Elected Body plays an important advocacy role. However, this body must be a statutory one with full independence to ensure its work fully benefits our communities on the ground. There remains no dedicated Aboriginal and Torres Strait Islander children's commissioner to provide systemic oversight of the child protection system.

The government has established an oversight body to oversee the implementation of the final recommendations made by the Our Booris, Our Way Steering Committee, an Aboriginal-led body that reviewed the child protection system as it relates to our

children. However, community leaders have stated that lack of action to implement the recommendations has been extremely disappointing.

In a positive step, the government has committed to funding Functional Family Therapy – Child Welfare managed by Gugan Gulwan Youth Aboriginal Corporation (Gugan Gulwan) and OzChild for the next four years. The program works specifically with Aboriginal and Torres Strait Islander families with children and young people aged from birth to 17 years who are at risk of entering the out-of-home care system. Gugan Gulwan has worked hard to develop trusting relationships with families, which has resulted in positive outcomes. However, this organisation is the only ACCO in the Australian Capital Territory that is funded to provide child protection services. Just 6% of expenditure on child protection was granted to Gugan Gulwan, despite 29% of children in the system being of Aboriginal and Torres Strait Islander descent. There has been no improvement on this funding front since the 2018-19, 2017-18 and 2016-17 reporting periods.

The government has continued to fund family group conferencing. Preliminary data provided by the government indicates that between November 2017 and May 2019, family group conferences were held in relation to 65 Aboriginal and Torres Strait Islander children – 44 of those children were successfully prevented from entering care. We are encouraged by these results but note that this is not a truly Aboriginal and Torres Strait Islander family-led process as government leads the work.

Finally, the government continues to spend the majority of child protection funding on the pointy end of the system and has taken little action to reunify children with their families. Just 12% of funding to the child protection system went to family support and intensive family support services in 2018-19, a decrease from the previous year when the rate was 13.1% and below the national average at 15.9%. The Australian Capital Territory had the lowest reunification numbers compared to other states and territories: 24 Aboriginal and Torres Strait Islander children were reunified in 2018-19. There is no evidence that reunification is being actively pursued.

The Directorate continues to look for government-led and overseas solutions to the issue of over-representation rather than investing in our solutions. The Directorate must relinquish control and funding so that we can implement the solutions that work for our children and families. The solutions to our problems are within our communities.

QUEENSLAND

In Queensland, the government progressed its long-term *Our Way Strategy (2017-2037)* commitment to co-design service system responses for Aboriginal and Torres Strait Islander children and families through the release of a second action plan, *Changing Tracks 2 (2020-2022)*.

The First Children and Families Board, with majority Aboriginal and Torres Strait Islander membership, continues to have oversight of the *Our Way Strategy*. An external evaluation of *Our Way* commenced in 2020 which will align with the Wellbeing Outcomes Framework developed in 2019. Also released in 2020 is a whole-of-government Queensland Healing Strategy developed by the Healing Foundation.

Key achievements in the past 12 months include:

- Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), in consultation with members, finalised the Family Participation Program (FPP) guidelines – a first for government-funded service guidelines to be written by a peak body. These guidelines inform the state-wide delivery of Aboriginal and Torres Strait Islander family-led decision-making and have so far resulted in improved referral processes and engagement of families.
- Collaboration agreements between the Queensland Government's Department of Child Safety, Youth and Women, QATSICPP and Aboriginal and Torres Strait Islander community-controlled organisations (ATSICCOs) were developed to progress the transfer of legislated delegations from the chief executive to an appropriate Aboriginal and Torres Strait Islander entity. Early adopter sites are soon to take up delegated functions.
- First jurisdictional use of the Family Matters Practice Reflection Tool to assist services to operate according to the Family Matters building blocks.
- QATSICPP and members leading development of a Family Caring for Family model of kinship care.
- Appointment of a chief Aboriginal and Torres Strait Islander health minister.
- Release of the *Every Aboriginal and Torres Strait Islander Student Succeeding Strategy*, in line with the Advancing Aboriginal and Torres Strait Islander education action plan.

While these initiatives embed greater self-determination and support Aboriginal and Torres Strait Islander-led solutions, Queensland faces the following challenges:

- **Continued low rates of children admitted to out-of-home care being placed with Aboriginal and Torres Strait Islander kin and carers** (30.9% compared to national average of 65%, down from 36.5% in 2018 and 55.3% in 2017). Potential reasons for this include change fatigue from frequent system reform, continued use of culturally inappropriate (structured decision-making) tools, and difficulties in kin carer households meeting Blue Card assessment levels that now include criminal history to age of 10 and non-child-related offences.
- **A decrease in proportional investment in ATSICCOs.** Although the total funds provided to ATSICCOs increased slightly, this is the third year in a row for a decrease in overall proportion of funding.
- **Provision of data on key areas such as service access and reunification.** In 2017, the Queensland Government stated a commitment to develop aligned measures, however it remains unable to provide data on key areas requested for this report.

Positive outcomes achieved in this reporting period include the funding of youth justice and domestic violence workers in ATSICCOs, as well as improved collaboration among the Department of Justice, Department of Child Safety, Youth and Women and ATSICCOs. This is grounded in Aboriginal and Torres Strait Islander family-led decision-making and fully implementing the Child Placement Principle.

However, recently legislative amendments were tabled (the *Child Protection and Other Legislation Amendment Bill 2020*) that include adoption as a permanency option (albeit the last preference) for Aboriginal and Torres Strait Islander children, despite strong opposition voiced by Aboriginal and Torres Strait Islander leaders and a wide range of non-Indigenous supporters during consultations.

Reactionary policy and legislation decisions that do not consider cultural rights, and inflict long-lasting trauma and negative impacts on social determinations of health and wellbeing, challenge the progress made in recent years.

Across the next 12 months, Queensland Family Matters hopes to see:

- evidence-based investment in prevention and early intervention services that are effective at diverting families from the child protection system, that demonstrate cultural capability and resource partnerships with Aboriginal and Torres Strait Islander communities that value cultural knowledge, expertise, leadership and solutions

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- the commitment made to improve data quality realised, with local level catchment profiles made available to provide line of sight for outcomes for Aboriginal and Torres Strait Islander children
- independent oversight on implementation of the Child Placement Principle in child protection decisions, and a dedicated Aboriginal and Torres Strait Islander children's commissioner to turn around the rates of placement with Aboriginal and Torres Strait Islander kin and carers.

NEW SOUTH WALES

Community voices from New South Wales informing *The Family Matters Report 2019* emphasised that government-led policy and practice reforms have been incapable of addressing the persistent inequity and poor outcomes experienced by Aboriginal children and families. To correct this the NSW Government, (via the Department of Communities and Justice) must be open to listening to the voices of community – at both a direct practice level and in developing systemic change to a system that is currently failing to meet the needs of Aboriginal children and families. The Department of Communities and Justice (DCJ) needs to implement the recommendations to strengthen the Family Matters principles and enable Aboriginal communities to drive their own solutions. Ongoing cycles of government-led statutory interventions are not working.

The data presented by DCJ in response to the Family Matters report reinforces the shortcomings of a system that had lost sight of its mission of safeguarding the interests of Aboriginal children and young people, as defined in the *Family is Culture* report. Data presented can be seen to misrepresent the true care statistics by failing to include children and young people in alternative permanency arrangements, such as those under a guardianship order. In addition to this, there is no breakdown of children and young people in relative kin placements with non-Aboriginal family or kin. This remains a significant concern as the *Family is Culture* report highlighted widespread non-compliance with the Aboriginal child placement principles (Davis 2019).

The independent review of Aboriginal children and young people in out-of-home care, *Family is Culture*, reported its findings in November 2019. In addition to over 3,000 recommendations about the circumstances of children and families it reviewed, the report made 126 recommendations to improve the Aboriginal child and family system, emphasising two key structural reforms – greater recognition of the right of Aboriginal communities to self-determination, and improved transparency and oversight through an empowered

independent Child Protection Commission. Other recommendations also focused on urgent legislative reforms to strengthen safeguards for Aboriginal children and families, increased investment in Aboriginal community-controlled prevention, preservation and restoration services, investment in advocacy supports for families navigating the child protection system, and an end to the forced adoption of Aboriginal children from out-of-home care. The roadmap outlined by the *Family is Culture* review is consistent with the Family Matters building blocks.

The government's response included some additional oversight in the form of a Deputy Children's Guardian, (focused on Aboriginal children and young people already in the out-of-home care system), however this role is significantly limited relative to the broad responsibilities considered necessary by the *Family is Culture* review. In particular, the role provides no additional scrutiny of DCJ systems and practice including decision-making regarding Aboriginal children entering care. Other initiatives promoted in the government's response, and echoed in their input to the Family Matters report, include the implementation of the Aboriginal Case Management Policy, the long-standing commitment to direct more targeted earlier intervention resources to Aboriginal organisations (originally a 30% target), and the Aboriginal Investment Strategy. While this ongoing commitment is welcome, it is important that this commitment is matched by action and investment. This will need to include the adequate resourcing of these initiatives through Aboriginal community-controlled organisations – supported by the peak body, AbSec. The initial response to the *Family is Culture* report was considered inadequate by community and AbSec at the time but work continues with the Minister's Office and DCJ through the establishment of an independent Knowledge Circle to advise the minister.

Other key initiatives promoted by the government's response reflected those initiatives underway as part of the Their Futures Matter reforms, including the implementation of foreign family preservation programs Multisystemic Therapy for Child Abuse and Neglect (MST-CAN) and Functional Family Therapy – Child Welfare (FFT-CW). However, the implementation of the Their Futures Matter reforms have recently been criticised by the Audit Office of NSW, noting failures of governance, including the involvement of Aboriginal stakeholders in guiding the reforms, and that the international programs were ill-suited to Aboriginal communities, which impacted on engagement with Aboriginal families. Implementation fell significantly short of achieving the NSW Government's commitment of 50% of places for Aboriginal families, and as a

result these places have been changed from 'identified' Aboriginal placements to 'targeted'. At the same time, established family support programs delivered by Aboriginal communities' experience ongoing instability due to short funding cycles and are currently not supported to reshape and continuously improve the service model based on their experience and the needs of their communities.

Family is Culture also noted the need for further development of data systems, an issue that is exemplified by the limited data made available to this report. This is also a priority reform under the new *National Agreement on Closing the Gap*. The government's response acknowledged these limitations and has committed to further work to develop these data resources in partnership with Aboriginal stakeholders. This will be an important area of work to improve transparency and support more informed decision-making by Aboriginal communities, further enabling the development of community-led solutions. However, such reforms are ultimately limited if not accompanied by greater recognition of Aboriginal self-determination and the empowered oversight of an independent commissioner to uncover the lived experiences behind the data – with communities having sovereignty of the data.

There remains considerable concern in Aboriginal communities that the opportunity presented by the comprehensive *Family is Culture* review, Closing the Gap agreement and Auditor General's report will be squandered by government given the numerous previous inquiries, reports and plans that have not addressed the ingrained disadvantage of Aboriginal people in New South Wales. Urgent action to implement a program of reform aligned to *Family is Culture* and other recommendations is needed and must be progressed in partnership with Aboriginal communities and their representative peak bodies.

The *Family is Culture* review noted that reforms aligned to self-determination and oversight and accountability would themselves significantly contribute to addressing the over-representation of Aboriginal children in out-of-home care. This is central to the any program of reform and must include a commitment to the review's key recommendation for an empowered independent Aboriginal commissioner, as has long been advocated by AbSec and the Family Matters campaign. Immediate action to strengthen legislative safeguards for Aboriginal children and young people must also be prioritised. Failing to do so will expose thousands of Aboriginal children to known issues while awaiting a further review.

The opportunity presented by the *Family is Culture* review and other reports and agreements must not be allowed to pass by unfulfilled and requires the NSW Government to work in partnership with Aboriginal communities towards long overdue systems change. The experiences of Aboriginal children and families that have informed the review, demands urgent and courageous action.

NORTHERN TERRITORY

In 2016, the Royal Commission into the Protection and Detention of Children in the Northern Territory found systemic failings in the systems dealing with Aboriginal children and their families. In response, the Northern Territory Government made promises to fundamentally shift the way that it works with Aboriginal children, families and their communities. Commitments were made in strategic plans and other documents to introduce family-led decision-making, rewrite legislation, substantially increase family support funding for ACCOs, and co-design the new system with the Aboriginal community. While the government's high-level strategic frameworks might reflect some of this, on the ground little has changed. In its first term, the government squandered an opportunity to instil fundamental change. We hope that in its next term things will be different.

ACCOs remain deeply concerned about the continued systemic flaws within the current system and the continuing increasing rate of Aboriginal and Torres Strait Islander children being placed in out-of-home care. Ninety per cent of children in out-of-home care in the Northern Territory are Aboriginal, and Aboriginal children are 12.2 times more likely to be placed in out-of-home care than a non-Indigenous child. This is an increase from last year's rate (11.5) and remains higher than the Australian average (10.6).

Aboriginal children and their families continue to face discriminatory treatment due to institutional racism that is highly prevalent in the Northern Territory. Despite approximately 60% of the Aboriginal population speaking an Aboriginal language at home, government and court processes are predominantly conducted in English, subjecting many children and families to punitive systems they do not understand. Co-design of systems with the Aboriginal community is limited, with the *Expenditure on Children in the Northern Territory: Productivity Commission Study Report* finding: "It remains that community input into service selection and design is often belated or superficial – the end result of these processes is that the system of children and family services in the Northern Territory is fragmented with government expenditure poorly targeted and failing

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to best address the needs of children and families” (Australian Government Productivity Commission 2020). Many Aboriginal children and their families continue to be subjected to a culturally unsafe system, with staff that do not have awareness of the impact of the Stolen Generations on contemporary care and protection proceedings and who fail to use interpreters when necessary.

A positive development has been the Aboriginal Carers Growing Up Aboriginal Children program, which funded six ACCOs to find, assess and support Aboriginal carers for Aboriginal children in care. While there has been some progress in placements of Aboriginal and Torres Strait Islander children with kin or other Aboriginal and Torres Strait Islander carers over the last year, increasing from 33.3% in 2018 to 36.9% in 2019, the percentage remains lower than in 2014 (42.6%) and is the lowest in the country.

The Northern Territory Government announced a number of commitments to reforming the system through the Safe, Thriving and Connected: Generational Change for Children and Families program; however, many substantive reforms and commitments have not been delivered. There is no evidence of any significant shift in resources to move towards the public health model as recommended by the Royal Commission and further supported by the Productivity Commission Inquiry into the Expenditure on Children in the Northern Territory. Most recently, the Territory Families 2019-2020 budget shows a slight decrease funding for family support, while funding for child protection and out-of-home care has increased since the 2018-2019 budget. Similarly, despite promises of implementing family group conferencing, rewriting existing legislation into a single Act for children and raising the age of criminal responsibility to 12, no progress has been made on any of these important reforms. When programs are funded there is rarely a component that allows for extra training for local Aboriginal people to step into qualified roles. Governments should prioritise training Aboriginal youth workers, social workers, health workers, and other support roles, but instead they continue the fly-in fly-out model, employing non-Indigenous people to do work that should be done by the local Aboriginal population.

Another positive development was the co-design of the *Care and Protection of Children Amendment Act 2019* with non-government experts and service providers, although the impact of this in practice is not apparent. The rollout of the Child and Family Centres also has the potential to offer families access to prevention and holistic family support.

Most recently, the harrowing evidence examined by the Coroner regarding apparent suicides and possible sexual assault of three teenage girls in the Top End again shows the systemic failures that have been known for decades. The government continues to implement knee-jerk responses to media reports without looking at evidence of what works. A fundamental paradigm shift is required to put children at the centre of decisions, implement trauma-informed and prevention practices. It’s time to move away from the traditional adversarial approaches that have done little to improve child safety and move towards a therapeutic system that supports the health, wellbeing and safety of all children.

In the future, we would like to see further investment in ACCOs and Aboriginal family-led decision-making processes, meaningful co-design of systems and policies with the Aboriginal community, and a recognition of cultural authority in decision-making. We would like to see Aboriginal children and families respected and supported by an evidence-based system that is free of racism and promotes children’s safety and wellbeing.

SOUTH AUSTRALIA

“When any system is overwhelmed, it is all too easy to prioritise the needs of the system over the needs of a single child. Robyn Layton QC recognised this reality in 2003”

(SA Government 2019).

By 2003, Aboriginal children’s needs had come second to the needs of the system, in place for 225 years. This has resulted in the critical need for systems with the capacity to heal unresolved transgenerational collective traumas of Aboriginal families and communities. This includes the profoundly disabling effects from policies and practices that led to the Stolen Generations, now confirmed to be a system driven, gross abuse and violation of human rights for Aboriginal children, their families and communities.

In 2020, the SA Child Protection system reform is having difficulty demonstrating that the reform across the spectrum of services – spanning early intervention to statutory care – is meeting the cultural needs of Aboriginal children, young people and families. Evidence shows that despite best intentions, the current child protection system reform is still struggling to change the trajectory of our most vulnerable children and their families, and is slow to improve sustained, long-term outcomes for our children. It has also been noted that the current reform process has not addressed the need

to arrest the devastating cycles and intergenerational impacts resulting from the forcible removal of Aboriginal children from their family, community and culture in the present day.

The Productivity Commission's 2020 Report on Government Services (RoGS) shows that for South Australia, the disproportionality ratio of Aboriginal children and young people in out-of-home care has risen to 7.3 in 2018/19 from 6.88 the previous year. The disproportionality ratio for Aboriginal children on care and protection orders has also risen to 7.02 from 6.76 in the previous year. This is not a trend that is confined to South Australia, however, and similar increases have been observed in other jurisdictions (Steering Committee for the Review of Government Service Provision 2020).

Aboriginal families and communities in South Australia are becoming more vocal and more organised in their advocacy efforts as another generation of our children and young people are lost to the needs of an obviously overwhelmed system that continues to see our children and young people removed from their families but placed in care environments where they are still at significant risk of harm.

The *Guardian for Children and Young People's Annual Report 2018-19* has highlighted concerns about deficiencies for Aboriginal children and young people in care, particularly those living in residential care. The report notes that as at 30 June 2019, 34.2% of children and young people on 12-month and 18-year orders were Aboriginal and/or Torres Strait Islander (Government of South Australia 2019). The Office of the Guardian for Children and Young People also noted on 13 May 2020 that "at 30 June 2019, only 62.7% of eligible children [854 of a possible 1,363] were placed in accordance with the Aboriginal Child Placement Principle" (Government of South Australia 2020).

Aboriginal families and communities in this state are calling for the SA Government to proactively engage with and consult Aboriginal community-controlled health organisations (ACCHOs). This engagement is considered crucial given the critical role ACCHOs have in the health and wellbeing of Aboriginal children, families and communities across the state. The work that the Department of Human Services (DHS) has undertaken recently to develop Aboriginal co-design criteria and a trauma-responsive early intervention system has involved discussion and consultation with South Australian ACCHOs, and it is hoped that this engagement will continue.

TASMANIA

The Tasmanian Government has made little progress over the past year to address the over-representation of Aboriginal children in out-of-home care. Aboriginal children are 4.3 times more likely to be placed in out-of-home care than non-Indigenous children. Although the government's *Strong Kids Safe Families Implementation Plan 2016- 2020* demonstrates a commitment to reforming the child protection system, it contains few reforms specifically aimed at Aboriginal children and families. Tasmanian Aboriginal organisations, communities, families and children should be at the forefront of decision-making, yet they continue to be overlooked by the department when designing and implementing systems that affect Aboriginal children.

For example, instead of engaging the Tasmanian Aboriginal Centre (TAC), the department funded two religious non-government organisations (NGOs) to appoint three Aboriginal liaison officers (ALOs) to provide culturally appropriate advice to the department regarding Aboriginal children and families. The department's lack of recognition of the TAC in this decision and preference for religious NGOs is offensive and a demonstration of the sheer disregard of the skills and expertise of the TAC to provide services for Aboriginal children. Despite being awarded the government funding, the NGOs recognise their lack of expertise and subcontracted TAC to provide two of these positions.

This lack of recognition of expertise is also evident in the development of the Beginning Practice program for new Child Youth and Families staff. While the department states the new training module embeds the element of culturally responsive practice into the learning program, it appears the package was developed without consultation from TAC. The authors of the training package and the extent of involvement of Aboriginal people in its design remain unclear.

There continues to be a significant under-investment in family support services in Tasmania, with the current level of funding inappropriate to support the work of TAC state-wide. More positively, TAC is one of only three organisations in the state to have been re-funded to deliver the Intensive Family Engagement Services program (IFES). Funding for IFES is allocated on a per family basis, allowing TAC to deliver intensive support that meets the needs of individual families. The high level of support required for these families is acknowledged in the funding arrangement, an example of a best practice funding model that would improve all family support services.

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There are no department-established programs or initiatives for Aboriginal organisations to participate in child protection decision-making, to lead in family participation through family group conferencing, or to take up case management or guardianship powers and functions. There are no formal processes that require child protection staff to inform TAC when notifications for Aboriginal children occur, with TAC involvement limited to the discretion of Child Safety Services (CSS) staff.

There is a distinct lack of department processes supporting Aboriginal children's connection to culture. The development of cultural support plans also occurs at the discretion of the child's support worker, with no standard for cultural support planning in the department. Further, only 13% of Aboriginal children who are removed from their families are placed with Aboriginal carers. Those placed with non-Indigenous carers often lose contact with their community, and thus many lose their connection to culture.

Once Aboriginal children are in care, the child protection system prioritises needs of foster carers over the needs of families. Young children are often kept with non-Indigenous carers to maintain continuity of care, without recognising the parents' right to reunification or the significance of a child's connection to culture as a protective factor.

In the future, we would like to see Aboriginal children, families and organisations as key decision-makers in the system. This can only be done through significant investment in initiatives such as Aboriginal family-led decision-making, early intervention and support and the delegation of guardianship powers and functions to the TAC. In order to achieve self-determination for Aboriginal people in Tasmania, the department must recognise the value and skills of the TAC and commit to legislative change focused on Aboriginal decision-making. This is the only way to address the over-representation of Aboriginal children in out-of-home care.

VICTORIA

Aboriginal community-controlled organisations in Victoria, including the Victorian Aboriginal Child Care Agency (VACCA) and members of the Victorian Aboriginal Children & Young People's Alliance (the Alliance) are deeply concerned that the over-representation of Aboriginal children in care in Victoria continues to escalate year after year. While the Victorian Government's commitment to advance self-determination and reduce the over-representation of Aboriginal and Torres Strait Islander children in out-

of-home care has been welcomed, there is no evidence to suggest that current legislative, policy and program settings in Victoria will see the goal of eliminating over-representations by 2040 achieved. On the contrary, the level of over-representation in 2020 is worse than when the Family Matters campaign was launched.

Of equal concern is that rather than the continued and worsening level of over-representation driving a sense of urgency, there is a reluctance to confront the deepening malaise in child protection within Victoria.

Victoria is currently developing further amendments to the *Child Youth and Families Act 2005* (Vic), which are intended to strengthen and extend self-determination reforms and embed all elements of the Child Placement Principle in legislation. Aboriginal self-determination reforms have been led and driven by ACCOs.

Earlier legislative reforms focused on Aboriginal guardianship and enabled child protection authorities to delegate the care and case management of Aboriginal children in care to Aboriginal agencies. This second stage of reforms are likely to further enable Aboriginal agencies to exercise direct control over decisions regarding the best interests of Aboriginal children.

The government's commitment to have 100% of Aboriginal children on protection orders, case managed by an ACCO (TAC), by the end of 2021 requires an updated approach. Approximately 49% of Aboriginal children in care on protection orders are currently case managed by an ACCO, with 57% in kinship care. ACCOs have remonstrated that there are considerable complexities, barriers and practical implications to the approaches of transitioning Aboriginal children to ACCOs, particularly those in foster care. In order to achieve our collective objective, the Department of Health and Human Services (DHHS) and community services organisations need to renew their commitment and act on transitioning children to ACCOs. As a sector we need to consider and address identified issues and barriers – only then can we truly align with Aboriginal self-determination and ACCO self-management.

Despite progress, unless the drivers of over-representation are addressed, Aboriginal self-determination reforms focused on the care of removed children risk being overwhelmed. A key argument from the Victorian Government in its response for *The Family Matters Report 2020* is that Victoria is tracking well; as evident through the increase in the number of Aboriginal children accessing family services.

In 2018-19, there were approximately 2,181 Aboriginal children in care and a total of 2,377 Aboriginal children accessed family services. The number of Aboriginal

children in care in the year closely mirrored the number receiving a family service response. In the same period there were 6,309 non-Aboriginal children in care and 24,248 non-Aboriginal children accessed family services.

These figures suggest non-Aboriginal children access family services on average four times per year, whereas for an Aboriginal child it is once. While there has been an increase in access for Aboriginal children this comes off a historically low base, and a major disparity between Aboriginal children and non-Aboriginal children remains.

It is important to note these family support services cannot reasonably be considered a form of early intervention and prevention. Access to these services typically occurs after Child Protection has become formally involved with a family. These services provide a form of intervention early in the formal child protection system, not early in the occurrence of issues that are undermining child and family wellbeing. We know that a child's first contact with Child Protection places them at greater risk of future involvement.

Family support services need to be re-oriented to models that respond to families escalating support needs, as early as possible, and they need to be made equally available to Aboriginal families and children.

Another matter of great concern is the failure to drive and embed the policy of Aboriginal self-determination in the family support services sector. Victoria urgently requires a self-determination reform strategy, akin to the reforms in out-of-home care, that shifts family support services and programs into Aboriginal community control.

In relation to family reunification rates, it is misleading to claim any significant improvement in family reunification across the system for Aboriginal children. According to the *Victorian Government Aboriginal Affairs Report 2019*, reunification rates over the past 10 years have ranged between 78% in 2008, to a low of 72% and sat at 74% in 2018 (State Government of Victoria 2019). Reporting on family reunification needs to go beyond reunification with a parent or parents. Ensuring that siblings removed from family are placed together in care, or that they are reunified with each other where this has not initially been possible, is an important aspect of family reunification. Data on the placement of siblings together and their reunification needs to be published and monitored.

Operating within the broader family reunification system, the Aboriginal Children in Care (ACAC) and

the Transfer of Aboriginal Children (TAC) Section 18 initiatives have made positive impacts. Aboriginal community control is leading to improved rates of family reunification with the cohort of children and families accessing those initiatives. If not for these initiatives, family reunification rates would be even lower. As of June 2020, 49% of Aboriginal children on contractible orders were case managed by ACCOs either through ACAC or TAC. Since December 2019 there has been an increase of 50 Aboriginal children authorised to an ACCO under ACAC, which is a 50% increase.

Since 2016, number of children contracted to an ACCO has grown by 250%, yet the funding has not reflected this growth. Based on the actual reunification rates from 2017-19, reunification rate of ACCOs for TAC was higher (5%) than the reunification rate for CSOs (2.2%). Based on the actual reunification rates from 2017-19, reunification rate for VACCA's Nugel program in the Hume Moreland and north east metro area of Victoria was higher (22%) than the reunification rate for the DHHS at 5%.

The development and implementation of quality cultural plans remains a challenge, despite their importance in keeping Aboriginal children and young people connected to their culture, Country and community. ACCOs have found when there is a good relationship between Child Protection and ACCOs, the completion and implementation of cultural plans is successful, and that the quality and accuracy of information in a cultural plan is better when developed by the ACCO which knows their local families and communities. There remains a state-wide lack of compliance, with only 44% of Aboriginal children and young people in care having a cultural plan. We know culture is a protective factor for our children and essential to their health, wellbeing and development, and more needs to be done to ensure they have access to high-quality cultural plans.

There has also been an alarming spike in adoptions of Aboriginal children, none of which were by an Aboriginal or Torres Strait Islander person. VACCA is a gazetted Aboriginal agency under section 50 of the Victorian 1984 Adoption Act, however the circumstances in which the State is required under the legislation to consult or seek advice are too limited. No consultations occurred with VACCA regarding these adoptions. In 2017, the Victorian Law Reform Commission recommended the modernisation of Victoria's adoption legislation, including stronger provisions in relation to Aboriginal children and self-determination. Over four years later and the Victorian Government has failed to bring forward any legislation to implement recommended changes.

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One of the targets of the new *National Agreement on Closing the Gap* is to reduce the number of Aboriginal children in out-of-home care by 45% by 2031. We know in Victoria we have a considerable task at hand to be able to achieve this target. The level of over-representation of Victorian Aboriginal children in out-of-home care is increasing and is much higher in Victoria than any other part of Australia. The removal rate for Aboriginal children in Victoria is 90 per 1,000 and has been increasing every year; for all Aboriginal children in Australia, it's 54.2 per 1,000. It would seem imperative for Victoria that there is a targeted strategy, investment and reform developed. To effectively address the issue of over representation, Victoria should be aiming to reduce by more than 45%; otherwise, relative to other jurisdictions, Victoria will still be tracking worse. To do this, VACCA recommends that Victoria, in partnership with a research institute like the University of Melbourne, undertake its own modelling, to sit alongside the modelling that SNAICC undertook recently, so that we can adequately assess and implement appropriate reform.

For the future, we want to see the Victorian Government focus its efforts on working with local Aboriginal communities to ensure culturally safe and appropriate solutions, early intervention and intensive work on reunifying Aboriginal families. ACCOs will never be able to safely care for and return children home at the same rate that children are being brought into care through the child protection system, and so the number of Aboriginal children in out-of-home care continues to grow. Victoria needs a reformed approach to child protection and reformed systems for prevention, early intervention and family support. These reforms must be based on Aboriginal self-determination and drive the transfer of resources and authority from mainstream organisations and departments to Aboriginal community control.

WESTERN AUSTRALIA

The Western Australian child protection and family support system continues to fail Aboriginal children. Our state has the highest over-representation in the country, with Aboriginal children being 16.7 times more likely than non-Indigenous children to be in out-of-home care. Aboriginal children made up 55% of all children in out-of-home care in Western Australia at 30 June 2019. Addressing these issues and being accountable to Aboriginal people should be the highest of priorities for government.

However, the Western Australian Government has not taken enough action to support our families and prevent

children coming into out-of-home care. There was an investment of \$20 million in 2018 to the Wungening Moort service delivered by a consortium of Aboriginal organisations to provide in-home supports to keep Aboriginal and Torres Strait Islander children safely at home with their families. However, the program only covers the Perth metropolitan area, and Western Australia continues to have by far the lowest proportion of investment in prevention and early intervention family support services in the country at just 5.3% of total child protection and family support expenditure. A number of strategies focused on reducing the number of Aboriginal children entering care and reunifying children sooner appear to have stalled.

In September 2019, the Minister for Child Protection announced the development of a roadmap to address the over-representation of Aboriginal children in the child protection system, but there is no evidence of progress to develop, let alone implement a clear strategy for change.

Despite the long-standing government commitment to build the ACCO sector through the *Aboriginal Community Controlled Organisation Strategy to 2022*, there remains only one out-of-home care provider in Western Australia that is a recognised ACCO, Yorganop Association Incorporated. Yorganop is currently funded to provide general foster care arrangements for 124 children in the Perth Metropolitan area. This is only 4% of the 3,077 Aboriginal children in out-of-home care as at 2 June, 2020. There are no ACCOs providing out-of-home care services in the regional areas. The ACCO strategy, established by the former Department for Child Protection and Family Support, was due to be superseded by a new whole of Department of Communities ACCO strategy, but the status of this is unknown.

Yorganop has developed proposals to expand its out-of-home care services in the South-West and to support the development of new ACCOs delivering out-of-home care services in regions across the state. However, despite government commitments to build the capacity of ACCOs, the Department of Communities has not invested to support this growth.

Currently, government reports that 14% of the total child protection funding in the state is expended on ACCOs – however, this figure is said to be significantly inflated and non-comparable to other jurisdictions, as it is a proportion of funding to external agencies, rather than a proportion of total expenditure.

Investment in ACCOs is currently disproportionate to the level of engagement Aboriginal families have

in the child protection system. This constraint is driving the need to strategically support the growth of ACCOs providing out-of-home care services across the state.

A co-design process took place from January to February 2020 as part of the state's out-of-home care reform agenda and recommended by the Independent Reference Group for Out-of-home Care. The co-design process was focused on addressing the many problems with the child protection system. It reaffirmed concerns that have been left unresolved for decades and found that, "This system currently operates on the legacy of policy and practice that brought about the Stolen Generations" (Kickett & Stubbley 2020).

Despite the deeply concerning conclusions and urgent recommendations of the co-design report, the Department of Communities has not stated or demonstrated how it will respond and the status of Western Australia's out-of-home care reforms remains unclear. Sadly, there is very little in the findings of this year's Family Matters report to suggest that Western Australia is making the fundamental reforms needed to address Aboriginal over-representation in the child protection system.

The co-design process resulted in a powerful call to action:

... we must act immediately to address structural racism. As well as awareness and education, we need to see structural changes as well. These structural changes include ensuring Aboriginal leadership in all processes, Aboriginal community-controlled Organisations (ACCOs) being supported and resourced to deliver out-of-home care, and the appointment of an Aboriginal Children's Commissioner.

(Kickett & Stubbley 2020, p. 5).

Positively, the Department of Communities has responded to Aboriginal people calling for commitments to develop practice for providing culturally appropriate services to address healing and trauma for children in out-of-home care, and has included this as a requirement in community service organisation contracts and Department practice.

In 2019-20, the Western Australian Government sought to progress changes to the *Children and Community Services Act 2004* that ignored key input and concerns of Aboriginal people. While increased cultural planning requirements have been welcomed, the Noongar Family Safety and Wellbeing Council (NFSWC) and SNAICC made a submission to the Parliamentary Inquiry into the Bill in July 2020 highlighting that proposed amendments fail to recognise the rights of families and communities to self-determination and participation in decisions about the care and protection of their children (NFSWC & SNAICC 2020). The inquiry report generally supported the positions of NFSWC and SNAICC; however, key reforms were deferred for future consideration, including recognising Aboriginal family-led decision-making and the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (Standing Committee on Legislation 2020). These legislative requirements are needed to protect basic human rights for our children and should not be deferred.

In August 2020, Minister McGurk announced an investment of \$715,000 in a two-year Aboriginal family-led decision-making pilot. While this is a welcome and much needed initiative, the scale is far too small, and there is already ample evidence that Aboriginal family-led decision-making can improve outcomes for children without needing to undertake a small pilot over two years and further delay reforms.



FOCUS ON ABORIGINAL AND TORRES STRAIT ISLANDER-LED SOLUTIONS

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 (ATSICCOs or ACCOs) 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 problems facing their own communities. The evidence that supports this is detailed in Part 4 of this report.

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. These programs span areas including prevention and early intervention, out-of-home care, cultural connection, reunification and policy design. The examples of promising initiatives highlighted here are expanded on throughout this report. In these examples, some jurisdictions are more represented than others reflecting where governments have invested more in ACCOs.

YALU FAMILIES & CHILDREN SAFE TOGETHER PROGRAM – YALU ABORIGINAL ORGANISATION (NT)

Yalu Aboriginal Corporation in Galiwinku is one of six recipients of the Aboriginal Carers Growing Up Aboriginal children program. The program works with Yolngu families to keep children within their family homes or close to family. Yalu Aboriginal Corporation works specifically on a grass roots level in Galiwinku community to keep children within their family homes. The program also identifies and develops Yolngu families to qualify to become foster carers to maintain kinship connections and cultural practices.

The Yalu Families & Children Safe Together program has been successful so far with early signs of success in breaking down the stigma of welfare agencies taking children away from their families, and they have started down the path of expanding the footprint to neighbouring remote communities. The success is due to the grassroots approach and engaging through Raypirri Rom (Aboriginal Law) principles – showing where it matches child protection laws. The experience of this program demonstrates the success of and need for locally based solutions and local decision-making as Aboriginal leaders in the community know best what the community needs are.

More information can be found on page 114 of this report.

EARLY LEARNING CENTRE / PLAYGROUP PROGRAM – GUMALA ABORIGINAL CORPORATION (WA)

Gumala Aboriginal Corporation supports Aboriginal families and their children in Karratha, Warralong, South Hedland, Marble Bar, North Tom Price and Wakathuni by providing playgroup settings that utilise 3a (Abecedarian Approach Australia) – recognising families as first teachers and working together with families to support their children's development and learning.

Parents are supported through training, coaching and mentoring to be employed as learning assistance at each site and are supported to complete further education and training. Gumala Aboriginal Corporation (GAC) is one of the largest Aboriginal corporations in Western Australia, serving the Banjima, Yinhawangka and Niyaparli people of the Pilbara region. Gumala's unique and transformational approach to poverty alleviation in a socially complex environment is enabling economic, social and community developmental solutions for Traditional Owners.



NABU PROGRAM – WAMINDA (NSW)

The Nabu program is family support program that was developed by Waminda based on the professional and lived experience of Waminda staff, Elders and community members. It arose from a recognition that Aboriginal and Torres Strait Islander communities are best placed to determine their own solutions. The Nabu program embodies the characteristics identified as promising practice in the Aboriginal and Torres Strait Islander Family Restoration and Preservation Program Promising Practice Framework, commissioned to identify from existing literature a What Works criteria. The Framework reflects the key findings of the recent literature and evidence review commissioned by Their Futures Matter, which was undertaken by the Parenting Research Centre (2017) and the Nabu Thematic Scoping Review undertaken to explore What Works for Indigenous Families in Strengthening Family Wellbeing (2018).

The Nabu program aims to support individual, family and systemic change in Aboriginal family preservation and restoration by embedding cultural practice, self-determination, participation in decision-making, community empowerment and dignity as central to all aspects of the program.

The program focuses on:

1. strengthening parents/other significant carers abilities to provide a safe and enriching environment for Aboriginal children and young people
2. improving family strength and increasing the wellbeing of all family members (recognising the importance of family, kin and community relationships)
3. increasing and strengthening family self-sufficiency and resilience factors
4. strengthening and maintaining children's and family connections to culture
5. promoting and supporting service system-wide systemic change which reflects promising practice, to enable improved outcomes for Aboriginal children, young people and families.

Waminda (South Coast Women's Health and Welfare Aboriginal Corporation) is an Aboriginal community-controlled health service operating for the past 35 years. The board is made up of seven Aboriginal women representing south east coast Aboriginal communities. The Women's Elders Group plays a significant role in the direction of Waminda as does its cultural committee. Accountability to the local community is a hallmark of Waminda's way of doing things and has contributed to the building of a positive and trusted reputation, and position as a provider across the community.

DELEGATION OF STATUTORY AUTHORITY TO ABORIGINAL COMMUNITY-CONTROLLED ORGANISATIONS (QLD AND VIC)

One mechanism to support self-determination through empowering ACCOs in the child protection context is the delegation of statutory powers to ACCOs. This has been implemented to varying degrees in Victoria and Queensland. In Victoria, section 18 of the Children Youth and Families Act 2005 (Vic.) enables the Secretary of the department to delegate specified powers and functions to an ACCO in relation to a protection order in respect of an Aboriginal child. This role has been commenced through the Victorian Aboriginal Child Care Agency (VACCA) with the Nugel program, and pre-authorised with the Bendigo and District Aboriginal Cooperative with the Mutjang Bupuwingarrak Mukman program and more recently the Njernda Aboriginal corporation.

In Queensland, legislation for the *Child Protection Act 1999* was amended in 2019, enabling the chief executive to delegate one or more of their functions or powers under the Act to the CEO of an Aboriginal and Torres Strait Islander community entity to make decisions for the child in relation to those matters. Implementation of these provisions is underway with partnerships being formed with two ACCOs. These are important examples of the Queensland Government's willingness to relinquish control over key decisions in the interest of promoting self-determination for Aboriginal and Torres Strait Islander people in order to achieve better outcomes for their children.

More information can be found on page 107 of this report.

THE YARNING MAT (NT)

A central way that non-government and government family support services engage with Aboriginal and Torres Strait Islander families is through the Yarning Mat. The mat is based on an extensive understanding of Aboriginal kinship systems and family life. It enables Aboriginal families to talk about their lives and concerns for children in a safe, non-shaming, and culturally sensitive way.

It was developed by Faye Parriman, a Yamatji woman from the Nhanda clan in the wildflower country of the Western Desert area. Faye previously worked as a Parenting Research Centre implementation specialist and practice coach. Faye is also a Noongar woman from the Balladong clan in south Western Australia.

Today the Yarning Mat is delivered as a part of Aboriginal community-controlled family support services, including Anyinginyi Health Aboriginal Corporation, Central Australian Aboriginal Congress Inc., and NPY Women's Council.

More information can be found on page 118 of this report.

CHILD ADVOCACY PROGRAM – NGAANYATJARRA PITJANTJATJARA YANKUNYTJATJARA (NPY) WOMEN’S COUNCIL (NT)

Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women’s Council is led by women’s law, authority and culture to deliver health, social and cultural services for all Anangu. The Child Advocacy Program, currently delivered by NPY Women’s Council, was introduced in response to families feeling confused, overwhelmed and disempowered in their interactions with the tri-state child protection departments of Central Australia. The primary focus of the Child Advocacy Program is individual case management and advocacy. Additionally, platforms of work also include upskilling NPYWC staff, community development and systemic advocacy. Through individual case management and advocacy, the child advocacy officer (CAO) works with families to ensure that child access with family and community takes place and that where possible, reunification or kinship carers are determined.

More information can be found on page 119 of this report.

RETURN TO COUNTRY PROGRAM – VICTORIAN ABORIGINAL CHILD CARE AGENCY (VIC)

VACCA’s Return to Country programs are a celebration of Aboriginal and Torres Strait Islander cultural practice and an integral part of connecting children and young people in out-of-home care to their home and Country. Return to Country programs recognise the impact of disconnection to identity, health and wellbeing – and are about knowing who you are, where you come from and what this means. Throughout the year, VACCA supported Return to Country across several regions. This year VACCA was also awarded a major grant from Gandel Philanthropy towards their Return to Country program.

The program incorporates people, land, water, language, kinship systems, lore, knowledge, beliefs and spirituality. It is about shared history and shared memories, healing and resilience, survival and pride. Children and young people are provided the opportunity to travel to their home Country to meet Elders, visit sacred sites, share knowledge and learnings about songs, stories, art, places, plants, animals and natural resources. It helps create culturally strong and empowered children, young people and families.

ABORIGINAL AND TORRES STRAIT ISLANDER FAMILY WELLBEING SERVICES (QLD)

In late 2018, the Queensland Government committed \$150 million over five years to community-run family wellbeing services, which were introduced with an aim to better support Aboriginal and Torres Strait Islander families and communities. The program combines the functions of the following existing family support programs into one community-run Family Wellbeing Service: Aboriginal and Torres Strait Islander Family Support Service; Tertiary Family Support services; Targeted Family Support services; and Secondary Family Support Services.

Funding of \$39.9 million per annum continues to be allocated to Aboriginal and Torres Strait Islander Family and Wellbeing Services and for the reporting period, additional investment has been committed or provided to these services to enhance their capacity to offer a holistic response to the diverse needs of families. This includes the creation of 31 youth and family worker roles across the state, and the establishment of domestic and family violence (DFV) specialists in five of the services. This aims to strengthen multidisciplinary service integration and accessibility to DFV support when required by Aboriginal and Torres Strait Islander families.

The funding of 33 ATSICCOs to deliver family and wellbeing services has been widely endorsed as a positive step towards community control and better outcomes for Aboriginal and Torres Strait Islander children and families. Nevertheless, stakeholders did report that there are shortcomings in the funding of these services, and they fail to meet demand, based on the eligible number of families.



MARRAM – NGALA GANBU (VIC)

Marram-Ngala Ganbu (which means ‘we are one’ in the Woiwurrung language) was launched in August 2016 at the Broadmeadows Children’s Court in Melbourne as an innovative response to the over-representation of Aboriginal children and families in the child protection system in Victoria. The pilot program seeks to provide culturally appropriate and just responses for Koori families through a culturally appropriate court process that enables greater participation by family members and culturally informed decision-making. Since opening, the program has supported close to 400 Koori families through the court process.

Marram-Ngala Ganbu is a hearing day at the Family Division of the Children’s Court of Victoria, developed via a Koori-led process, that aims to better accommodate the needs of Koori Families. It works differently from the mainstream Children’s Court as three concepts are prioritised: Koori Centred, Child and Family Centred and Therapeutic Justice. In 2019, an independent evaluation of the performance of Marram found evidence that suggests the program is achieving its intended short and long-term outcomes.

More information can be found on page 125 of this report.

HEALING PATHWAYS – BURRUN DALAI ABORIGINAL CORPORATION (NSW)

Healing Pathways is an overarching program run by Burrun Dalai Aboriginal Corporation in New South Wales, which consists of a multidisciplinary approach that looks to understand the true impact of trauma on kids in out-of-home care and utilise strategies that will build strong foundations, enduring relationships and social success for them. Cultural connection is at the very core of the program.

The program emphasises the foundations of seven pillars: trust, respect, courage, honesty, gratitude, hope and purpose. This leads to developing the building blocks to a strong community that involves connection to others and within, with a focus on building relationships and incorporating a sense of safety and security right through to self-awareness and self-worth.

Achieving social success for each child includes the ability to think smart, exhibit self-love and care, have strong spiritual and cultural health, cooperate with others, and harness and practise empathy. This multidisciplinary approach will allow Aboriginal kids to transition into independence and grow in their communities. Every Healing Pathway is individualised for each child aiming to assist them to reach their full potential.

More information can be found on page 123 of this report.

BENDIGO AND DISTRICT ABORIGINAL CO-OPERATIVE (BDAC) – MUTJANG BUPUWINGARRAK MUKMAN ACAC PROGRAM (VIC)

A successful initiative has been Bendigo and District Aboriginal Cooperative’s (BDAC) Mutjang Bupuwingarrak Mukman ACAC program. In 2020, BDAC have assumed the care and case management of 72 Aboriginal children and achieved high rates of reunification, using a relationship-centred approach and working alongside families to build stronger connections to culture, community and Country. Through the culturally-attuned practice evident in the programs model, high-risk families have remained engaged and have been willing to work toward and for some, achieve family reunification.

To embed self-determination and Aboriginal people making decisions on behalf of children, the program has a structure in place making sure there’s an Aboriginal person at all levels of decision-making. Feedback from families is that they feel difficult conversations are done in a loving way, like family would. The program endeavours to listen to families, including them in the decision-making, building two-way respectful relationships. One of the challenges is that legislation does not yet give authority to work with families on the front end. Authorisation to the program can only occur when an Aboriginal child is on a Child Protection Order. Intensive work with a family prior to an Order would further enable us to be proactive instead of reactive to help reduce the number of Aboriginal children in care.



THE IMPACTS OF COVID-19 ON CHILDREN AND FAMILIES

COVID-19 first appeared in Australia in January 2020. The global pandemic forced the world to stop and people went into lockdown, in one of the largest public health crises we have seen in a long time. Aboriginal and Torres Strait Islander children and their families have been disproportionately impacted by COVID-19 and the social and economic ramifications of the pandemic will be felt in the years to come.

Although the data analysed in this year's *Family Matters Report* does not fall within the time frame of the pandemic, given the significance of this event, this section will provide a brief overview of the impacts on Aboriginal and Torres Strait Islander children and their families to date.

The Australian Government has recognised that Aboriginal and Torres Strait Islander people are at greater risk from COVID-19 than non-Indigenous people. These risks extend well beyond the health threat posed by the virus itself, to higher vulnerability to social and economic impacts due to pre-existing levels of disadvantage. This has had significant flow on effects for many Aboriginal and Torres Strait Islander children and families.

Since March 2020, SNAICC engaged with over 50 service providers for Aboriginal and Torres Strait Islander children and families through fortnightly teleconferences and one-on-one phone calls to gather information about the impacts of COVID-19 on children and their families, and advocate for effective policy and practice responses. Many Aboriginal community-controlled organisations (ACCOs) found innovative ways to adapt their service delivery model to support children and families in their community, despite having limited additional supports and resources provided to them. Key issues that arose from the engagement are highlighted below. An awareness of these issues is critical to immediate and long-term responses to pandemic impacts, and to planning for more effective responses to future pandemics and emergency responses.

ONLINE CULTURAL PROGRAMS DURING THE PANDEMIC – VACCA

The cultural connections working group was established at VACCA in March 2020 to support the state-wide provision of cultural programs and initiatives online. The group comprised of 25 Aboriginal staff from across the state who were sharing the same messages which included that Aboriginal children, families and Elders were feeling isolated from the physical aspect of community and cultural experiences. Community and cultural experiences often support Aboriginal community health and wellbeing and build resilience, which is particularly essential during the COVID-19 pandemic.

The project involved developing a list of Aboriginal businesses to purchase cultural resources from to provide cultural and wellbeing packs for our clients, including children and carers and establishing working groups, to build and upload content for a VACCA online hub which will initially have over 40 videos including Elders, storytelling, dance and art. The group also worked on and produced a two-hour event in what would have been the Victorian NAIDOC Week and the annual NAIDOC Children's day across six regions in Victoria. The event involved a Welcome to Country, performances of singing and dance, and arts-based activities. The event had 6,000 views of the live event and a further 6,000 views that weekend.



EARLY YEARS SERVICES

The onset of the pandemic and related restrictions in its early stages brought on the effective collapse of the early childhood education and care (ECEC) funding model across Australia that ties funding directly to children's attendance rates. Positively, the Australian Government intervened to provide a relief package for services that included suspending the operation of the Child Care Subsidy (CCS) and providing free child care to families for a limited period. Throughout this year Aboriginal and Torres Strait Islander early years services have faced great challenges including financial insecurity, variable attendance rates across the country affecting whether relief payments were adequate, workforce instability, and the enormous challenges of supporting their children and families through very uncertain times. The system's unpreparedness for the crisis resulted in high disruption and uncertainty for service providers and families that will have long-term repercussions. At the time of writing, Victorian services were continuing to raise concerns that their viability was under threat.

While free child care was in place, key barriers to access child care were removed, including administrative registration requirements, the operation of the Activity Test, and interactions with Centrelink, which resulted in some Aboriginal and Torres Strait Islander services reporting significant increases in the numbers of Aboriginal and Torres Strait Islander children attending their services, as well as increases in the attendance hours for children. Some services reported that vulnerable Aboriginal and Torres Strait Islander families who weren't previously accessing ECEC supports did so during this time. However, the suspension of the CCS was short-lived, and was reimposed in most states and territories after six weeks. Aboriginal and Torres Strait Islander early years service providers are working hard to maintain the momentum they gained with vulnerable Aboriginal and Torres Strait Islander families during that time, to ensure that those families remain engaged and accessing crucial ECEC supports for the wellbeing and developmental needs of their children, despite the reimposition of administrative and cost barriers.

SNAICC has called for fundamental changes to the early education system so that Aboriginal and Torres Strait Islander early years services are adequately and more flexibly resourced to provide culturally strong and holistic supports that enable our children to thrive in their early years. SNAICC developed a proposal on COVID-19 recovery and long-term reforms needed that is available from the SNAICC website.

MENTAL HEALTH OF CHILDREN AND CONNECTION TO CULTURE

The mental health impacts of COVID-19 on Aboriginal and Torres Strait Islander children cannot be underestimated. Aboriginal and Torres Strait Islander children and families in contact with child protection systems are commonly impacted by experiences of trauma and require high levels of therapeutic support. Disruption and stress caused by COVID-19 affected the mental health of children and parents who were already experiencing high vulnerability. Additional stress resulted from economic hardship, health issues, isolation, increased demands of home schooling, and a lack of respite for parents and carers of children with disabilities, behavioural issues and developmental delays. Protective factors, including cultural and community networks that support wellbeing for children and families, were heavily disrupted while social distancing measures have been in place.

Although a model of telehealth was rolled out across Australia to respond to mental health issues, many Aboriginal and Torres Strait Islander children and families missed out. Families encountered multiple access barriers to telehealth, including a lack of access to technology for some, restricted capacity of services to build trusting relationships through online communications, and services that are not culturally safe or designed to meet the specific needs of children and their families.

TECHNOLOGICAL UPGRADES AND CAPABILITY BUILDING

While many people are turned to technological resources to adapt, the crisis highlighted the *digital divide* that excludes many Aboriginal and Torres Strait Islander families. Lack of access to technology or Internet connection throughout the pandemic has in some cases severely impacted on children's access to education and families' access to mental health, health and other support services. SNAICC heard from many stakeholders that out-dated telecommunications infrastructure and lack of access to Internet, particularly in remote areas, severely impacted the ability of Aboriginal and Torres Strait Islander children and families to adapt to social distancing measures. Many ACCOs also struggled to adapt to working from home without the technological infrastructure in place to enable that to happen. Dedicated investment is required to improve the technological capability of ACCOs and to improve access to telecommunications for remote communities.

WORKFORCE

A consistent theme of SNAICC's consultations has been the impact of COVID-19 on the Aboriginal and Torres Strait Islander workforce, particularly in ACCOs. These organisations have been required to respond promptly to a crisis that disproportionately affects their staff and clients, with limited resources.

Government messaging around Aboriginal and Torres Strait Islander people aged 50 or over being at the same level of risk from COVID-19 as non-Indigenous people over the age of 70 has had significant impacts on people's ability to continue working. It is well established that in the child and family services sector, the Aboriginal and Torres Strait Islander workforce is vital to achieving better outcomes for children and families. Supports are required for ACCOs to sustain their workforce and be prepared for any future crisis.

KINSHIP CARERS

The response to COVID-19 is creating many additional challenges for both kinship and foster carers. The impacts are often felt more acutely by Aboriginal and Torres Strait Islander kinship carers who provide a high level of care for children in their communities, often with less support and facing higher levels of social and economic disadvantage and discrimination than other carers. Many Aboriginal and Torres Strait Islander kinship carers are grandparents, and many are in the high COVID-19 risk category above 50 years of age.

Kinship carers are under additional pressures as a result of providing additional home education support for children, unemployment and financial hardship, and changed contact arrangements for children with their parents. At times during the pandemic, there has been difficulties for carers to access essential family supplies, including basic food items and hygiene products. While these challenges are being faced by all families, the impacts on kinship carers are often greater as many are providing care for children who have high needs, including disabilities, behavioural issues and experiences of trauma. Responses must also address the needs of permanent kinship carers who may be receiving less support due to no longer being considered part of the statutory system.

FAMILY AND CULTURAL CONTACT, REUNIFICATION AND PERMANENT CARE

Restrictive measures imposed due to COVID-19 have limited access between children in out-of-home care and their parents and family members. Policy responses have been inconsistent, with some states and territories limiting contact visits, some requiring services to support visits without safety guidance, and some measures not considering the developmental needs of young children. Reduced contact can have devastating impacts on children, and particularly for babies, very young children and mothers who may still

be breastfeeding. Reduced contact can be harmful for children and parents' attachments, wellbeing and prospects of reunification. Alternative contact arrangements such as by video conferences are often not appropriate for young children and children with disabilities.

For Aboriginal and Torres Strait Islander children contact is vitally important, not only with parents but also with extended family and kin. Even where contact with parents has been maintained, COVID-19 has reduced the opportunity for children in out-of-home care to participate in the cultural life of their communities and to visit their Country.

COVID-19 measures have also prevented parents from following reunification plans due to reduced access to support services, higher levels of stress and anxiety and reduced physical contact with their children. The consequences are magnified in many states and territories that impose limited time frames for pursuing reunification before children are moved to permanent care orders. Adjournments and delays to court proceedings have also delayed decisions about child removal, family contact, placement and reunification, further hindering work towards family reunification. SNAICC has called on governments across the country to ensure that no Aboriginal and Torres Strait Islander family is penalised or disadvantaged in respect of a reunification plan because of disruptions caused by COVID-19 that were beyond their control.

CONCLUSION

COVID-19 exacerbated existing flaws within systems that impact Aboriginal and Torres Strait Islander children and their families. Despite government acknowledgement of widespread impacts, to date there has not been a systemic, comprehensive and targeted policy response to meet the unique short and long-term needs of Aboriginal and Torres Strait Islander children and their families. While some states and territories are moving into the recovery phase of the pandemic, the Australian Government should consider the lessons learnt from this crisis in any contingency and future planning. Supporting Aboriginal and Torres Strait Islander children and their families throughout the recovery process requires prioritised investments in ACCOs to provide them with the flexibility to address the specific needs of their community they identify.





FOCUS ON PREVENTION

A prevention approach to child safety and wellbeing is essential for children and families to thrive and is critical for upholding the rights of Aboriginal and Torres Strait Islander children to grow up within their own family and community. A prevention approach means that all actions are undertaken with a view of preventing harm to children and their families and promoting their holistic wellbeing.

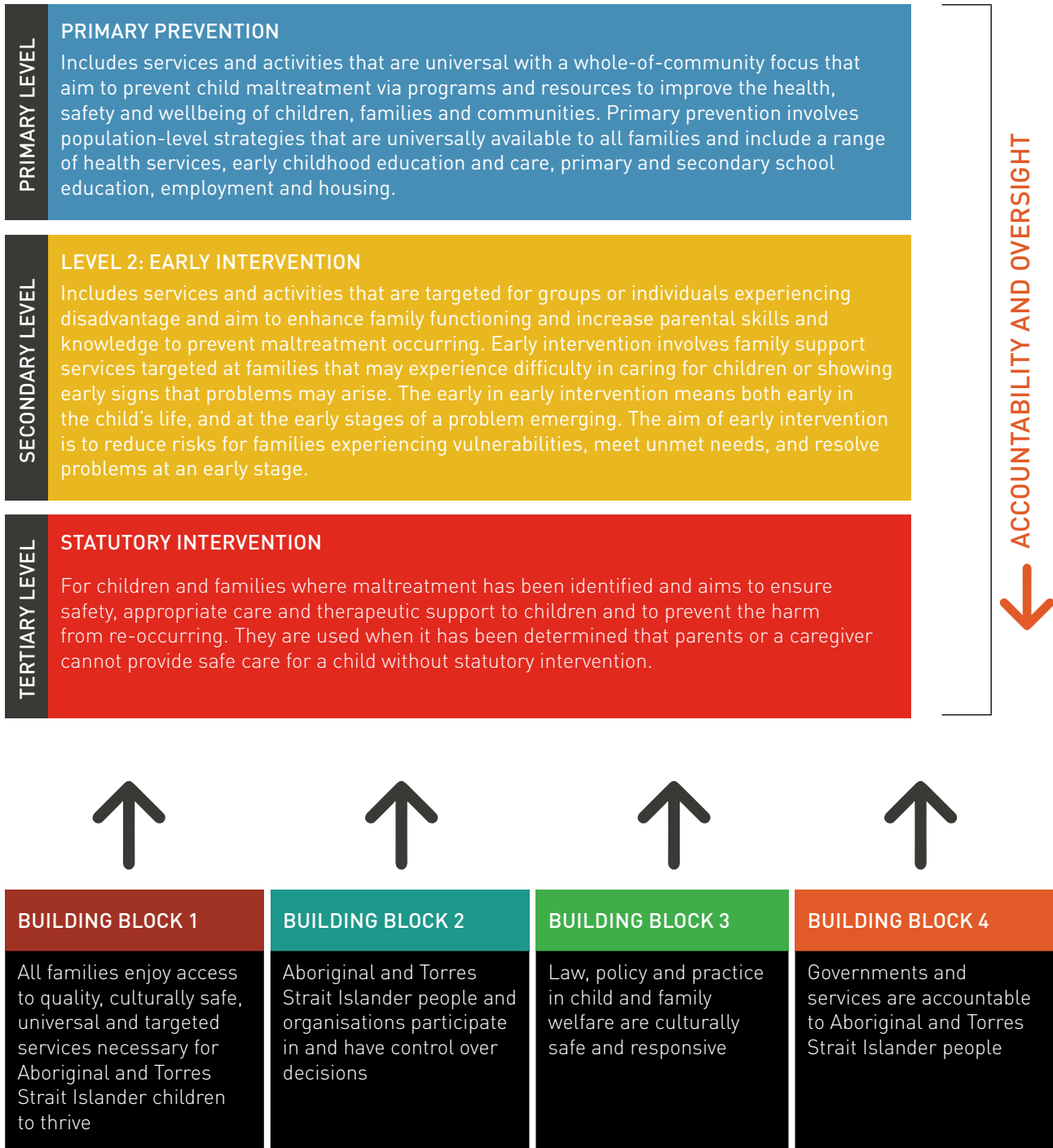
Elements of prevention can include improving broader social determinants of health (that is, the conditions under which Aboriginal and Torres Strait Islander children are born and grow) addressing institutional racism and intergenerational trauma and embedding self-determination within systems. Prevention means empowering communities to make decisions, enabling high quality life outcomes and opportunities and servicing community needs.

A prevention, or public health approach, is about designing a system that prevents vulnerability from occurring in the first place by targeting policies and intervention at the known causes of harm, quickly identifying them and responding appropriately, in order to minimise long-term effects (World Health Organisation 2006). This involves ensuring that services are available to children along a continuum, with primary prevention population-level strategies targeted at all families to more intensive support services for children and families in need. Families and communities impacted by intergenerational trauma and disadvantage often have complex needs from early on. Targeted responses to support family functioning, and that address the need for community and individual healing, are essential to a prevention-focused system.

The higher the level of intervention on the part of government, the higher the level of accountability to Aboriginal and Torres Strait Islander people that is required. This recognises the legacies of past interventionist policies and the abuses of power that have taken place where there has been limited oversight. For Aboriginal and Torres Strait Islander children and their families, it is essential that all services are culturally safe and that upholding the right to self-determination for Aboriginal and Torres Strait Islander people is a core feature of the system. This must involve a commitment to supporting a strong Aboriginal and Torres Strait Islander community-controlled sector, meaningful partnerships between the Australian Government and Aboriginal and Torres Strait Islander people and communities, and a commitment to sharing relevant data in order to empower Aboriginal and Torres Strait Islander people and communities to make informed decisions.



ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES HAVE CONTROL OVER THE DESIGN, DELIVERY AND OVERSIGHT OF EARLY INTERVENTION, PREVENTION, AND CHILD PROTECTION SERVICES THAT RESPOND TO THE NEEDS OF AND REFLECT THE ASPIRATIONS OF OUR COMMUNITIES





FOCUS ON REUNIFICATION

MORE QUESTIONS THAN ANSWERS: A FOCUS ON REUNIFICATION FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT-OF-HOME CARE

By Jacyntha Krakouer, The University of Melbourne

INTRODUCTION

The disproportionate rate of entry into out-of-home care (OOHC) is well documented for Aboriginal and Torres Strait Islander children and youth throughout Australia (Australian Institute of Health and Welfare (AIHW) 2020a; Lewis et al 2019). However, less is known about children and youth who exit out-of-home care by returning to the care of their parents or former carers. This special report reviews the literature, and the publicly available data for 2018-19, about reunification for Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care systems. It was found that in 2018-19, Aboriginal and Torres Strait Islander children were less likely to have case plans that included reunification as a possibility compared to non-Indigenous children, and Aboriginal and Torres Strait Islander children were also less likely to be reunified with family compared to non-Indigenous children. Reunification rates for Aboriginal and Torres Strait Islander children were highest in Victoria, however, entry to care rates were also highest in Victoria compared to other states and territories. Except for the Australian Capital Territory and South Australia, once reunified, there was no marked difference between rates of re-entry to care for Aboriginal and Torres Strait Islander children compared to non-Indigenous children. Examination of differences in reunification patterns across states and territories were also limited by the low numbers of children reunified in some states and territories (such as the Northern Territory), as well as absent data from New South Wales and Queensland. Ultimately, questions concerning reunification casework practices across the nation remain, while reunification data from 2018-19 has generated more questions than answers.

DEFINING REUNIFICATION

Reunification (also known as restoration) forms part of permanency planning – to achieve stability – for all children who enter out-of-home care. While permanency planning is more often associated with permanent care, rather than reunification, reunification is the first priority, and best outcome, for all children. Safely reunifying children to the care of their family is particularly important for Aboriginal and Torres Strait Islander children who are at increased risk of disconnection from culture, family and community in child protection and out-of-home care systems. When children first enter out-of-home care, a permanency plan is put in place to achieve stability. This plan typically involves considering the possibility of (and working towards) reunifying the child to the home that they were removed from. Ideally, reunification is worked towards for a period of no less than two years after entry into out-of-home care (AIHW 2020a). However, whether this occurs in practice is unknown since data concerning reunification practices for Aboriginal and Torres Strait Islander children are limited.

The goal of reunification is to return children and young people to the care of their former guardians. Children are typically reunified with their parents, however differing definitions of reunification also include other family members or guardians, particularly if the child was living with these adults prior to entry into care, as highlighted by the AIHW:

“Reunification (also known as restoration) means a return to the parent/guardian and environment from which the child was removed through the child protection process. As such, reunification is mainly with birth parents. Due to a lack of a nationally agreed definition of reunifications, current reporting by jurisdictions is based on local definitions”

(AIHW 2020a, p. 66).

A lack of consensus on the definition of reunification itself adds to the complexity of reunification case planning and reporting. There are differing practices around reunification throughout states and territories, with legislative differences impacting reunification efforts. Case planning, and decisions regarding the

appropriateness of reunification, are typically coordinated by statutory, government out-of-home care authorities, such as the Department of Health and Human Services (DHHS) in Victoria. Differences in state and territory legislation however (particularly regarding the length of time in which reunification should be pursued), impact reunification case planning. Despite the jurisdictional differences, reunification is still a primary goal, and “policy priority”, for all children who enter out-of-home care (AIHW 2020a, p. 72):

“Once a child is placed in out-of-home care, efforts are focused on maintaining the stability of their placement (permanency) and/or reuniting the child with their family if appropriate (reunification). Regardless of whether a child remains in out-of-home care on a long-term basis or reunites with their family, the goal is to provide a stable, safe environment for the child to grow up in”

(AIHW 2020a, p. 4).

As this report highlights however, there are differences in reunification outcomes for Aboriginal and Torres Strait Islander children compared to non-Indigenous children.

NATIONAL DATA ON REUNIFICATION FOR 2018-19

Nationally, at 30 June 2019, there were 44,906 children living in out-of-home care in 2018-19. Of these children, there were 17,979 Indigenous children, 26,864 non-Indigenous children, and a further 63 children for whom Indigenous status was unknown, living in out-of-home care (AIHW 2020a). The Australian Institute of Health and Welfare (AIHW) reported on a range of data about reunification for Aboriginal and Torres Strait Islander and non-Indigenous children and young people in out-of-home care in 2018-19. The data presented in this report are from the AIHW (2020a) *Child Protection Australia* series. This data excludes New South Wales and Queensland, for whom reunification data were unavailable.

Note: The numbers of children in out-of-home care reported in this section differ from other parts of the Family Matters report as they do not include children on permanent care orders.

REUNIFICATION NOT IDENTIFIED AS A POSSIBILITY

It is important to note that not all children in out-of-home care have case plans where reunification is actively worked towards in any given year. When reunification is a current goal for a child’s case plan, it is listed as a possibility. Conversely, when reunification is not considered as a possibility, another permanency objective (such as exit via permanent care) is listed on the child’s case plan.

Reunification was not identified as a possibility for most children (67%, n=30,306) living in out-of-home

care in 2018-19. Reunification was less likely to be considered a possibility for Aboriginal and Torres Strait Islander children compared to non-Indigenous children, with reunification not identified as possible for 74% (n=13,279) of all Aboriginal and Torres Strait Islander children living in out-of-home care (n=17,979) in 2018-19. Comparatively, reunification was not identified as possible for 63% (n=17,006) of all non-Indigenous children living in out-of-home care (n=26,864) in 2018-19.

REUNIFICATION AS A POSSIBILITY

Reunification was identified as a possibility for 33% (n=14,600) of all children living in out-of-home care in 2018-19. Of these children, there were 4,700 (26%) Aboriginal and Torres Strait Islander children (of the 17,979 Aboriginal and Torres Strait Islander children in out-of-home care) for whom reunification was identified as a possibility.

Comparatively, of the 26,906 non-Indigenous children in out-of-home care at 30 June 2019, reunification was identified as a possibility for 9,900 (37%) non-Indigenous children in out-of-home care during 2018-19.

Figure 1 (below) displays the number, and percentage, of children and young people, nationally, for whom reunification was identified – and not identified – as a possibility, by Indigenous status, in 2018-19.

Figure 1 highlights that the majority of Aboriginal and Torres Strait Islander (74%) and non-Indigenous (63%) children in out-of-home care do not have reunification listed as a possibility on their case plan. That said, there is likely to be considerable variation across states and territories.

Unfortunately, the reasons as to why reunification is not listed as a possibility for Aboriginal and Torres Strait Islander and non-Indigenous children living in out-of-home care in 2018-19 are not reported. Similarly, limited data is available about why reunification was identified as a possibility for fewer Aboriginal and Torres Strait Islander children compared to non-Indigenous children.

In addition to Indigenous status, future data should report on children’s age, length of time in care, and previous reunification attempts, when noting whether reunification from out-of-home care is considered a possibility.

CHILDREN NOT REUNIFIED WITH FAMILY IN 2018-19

Most children (75%) in out-of-home care in 2018-19 were not reunified with family when reunification was identified as a possibility. Table 1 (below) shows the number of Aboriginal and Torres Strait Islander and non-Indigenous children who were not reunified from out-of-home care (when reunification was identified as a possibility) across each state or territory in 2018-19 (excluding New South Wales and Queensland).

FIGURE 1 Reunification identified, and not identified, as a possibility, by Indigenous status, for children/young people in out-of-home care, nationally, by number and percentage 2018-19

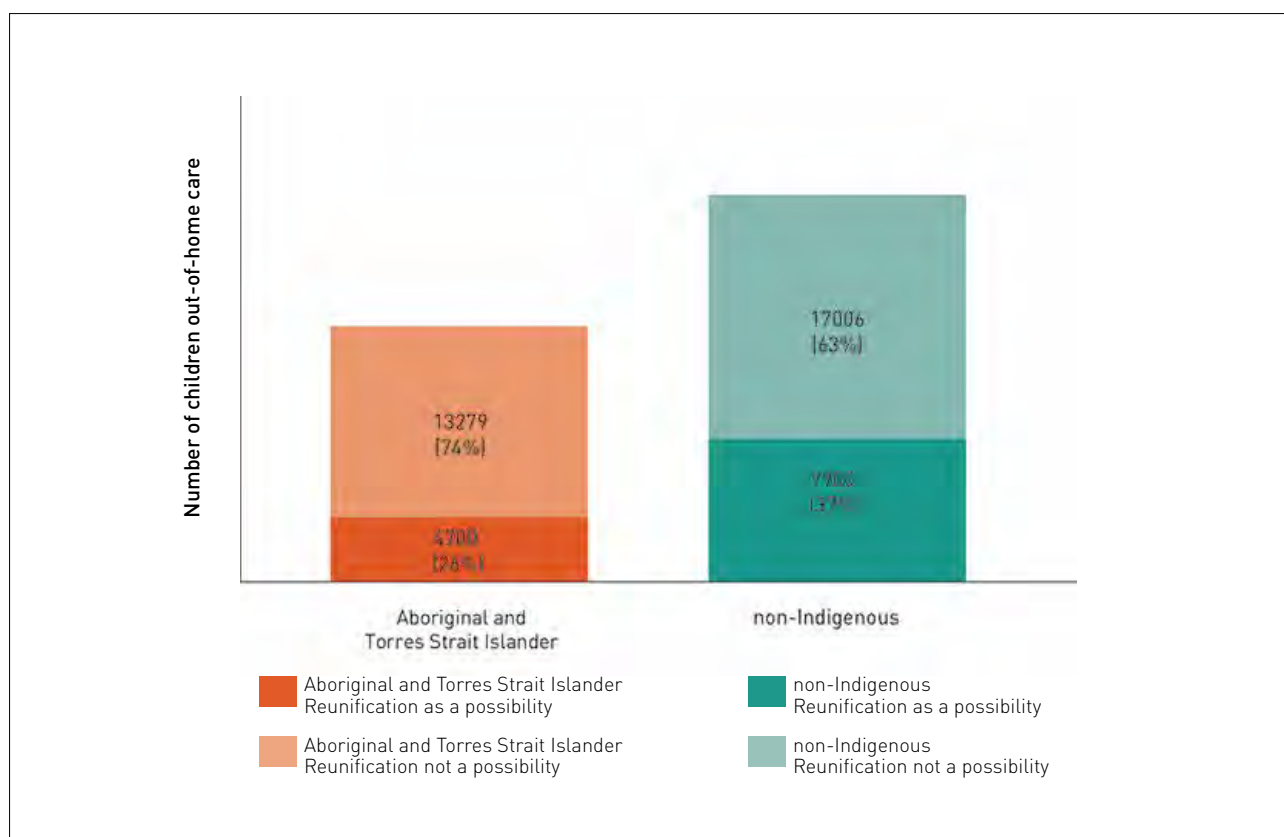


TABLE 1 Children not reunified from out-of-home care, by Indigenous status, and state and territory 2018-19

PEOPLE		VIC	WA	SA	TAS	ACT	NT	TOTAL
Not reunified in 2018-19	Aboriginal and Torres Strait Islander	1,239	1,290	482	231	67	480	3,789
	Non-Indigenous	4,448	1,205	847	365	163	63	7,091
	Not stated	0	1	15	19	0	0	35
TOTAL		5,687	2,495	1,344	615	230	543	10,915

EXIT FROM CARE VIA REUNIFICATION

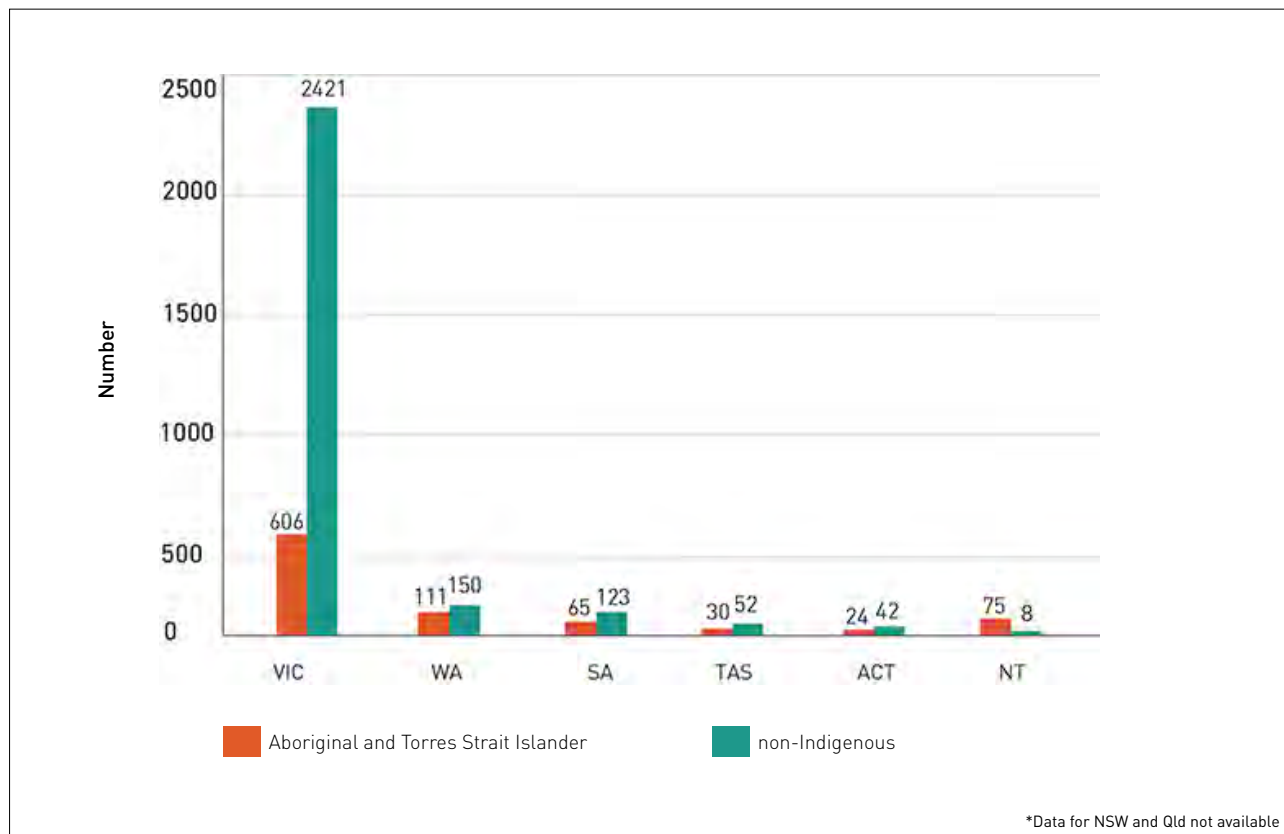
A total of 3,724 children were reunified with family from out-of-home care in 2018-19. This included 911 (19%) Aboriginal and Torres Strait Islander children from the 4,700 Indigenous children for whom reunification was a possibility in 2018-19. Comparatively, of the 9,900 non-Indigenous children for whom reunification was a possibility in 2018-19, 2,796 (28%) were reunified.

By jurisdiction, Victoria had the highest numbers of Aboriginal and Torres Strait Islander and non-Indigenous children reunified in 2018-19, reunifying 606 and 2,421 Indigenous and non-Indigenous children, respectively. Western Australia had the second highest numbers of reunifications: 111 Aboriginal and Torres Strait Islander children and 150 non-Indigenous children were reunified in Western Australia in 2018-19. The Australian Capital Territory had the lowest reunification numbers compared to other states and territories: 24 Aboriginal and Torres Strait Islander and 42 non-Indigenous children were reunified in the Australian Capital Territory in 2018-19. The number of Aboriginal and Torres Strait Islander and non-Indigenous children reunified with family from out-of-home care, by state and territory, in 2018-19 is displayed below in Figure 2.

As highlighted in Figure 2, nearly four times the number of non-Indigenous children were reunified compared to Aboriginal and Torres Strait Islander children in Victoria. With the exception of the Northern Territory, where over nine times the number of Aboriginal and Torres Strait Islander children (n=75) were reunified compared to non-Indigenous children (n=8), all states and territories reunified more non-Indigenous children compared to Aboriginal and Torres Strait Islander children.

However, the number of Aboriginal and Torres Strait Islander and non-Indigenous children residing in out-of-home care, in the relevant state or territory, impacts the percentage reunification rate. While the Northern Territory had more Aboriginal and Torres Strait Islander children reunified (n=75) compared to non-Indigenous children (n=8) in 2018-19, the Northern Territory also had more Aboriginal and Torres Strait Islander children in out-of-home care (n=555) compared to non-Indigenous children (n=71) in 2018-19. The percentage difference is less stark: the percentage of Aboriginal and Torres Strait Islander children who were reunified from out-of-home care in 2018-19 in the Northern Territory was 14%, while the percentage of non-Indigenous children who were reunified from out-of-home care in 2018-19 in the Northern Territory was 11%.

FIGURE 2 Children reunified with family from out-of-home care, by Indigenous status, and state and territory, by number* 2018-19



Similarly, in Victoria, while the numerical difference appears stark, it must be compared to the total number of Aboriginal and Torres Strait Islander (n=1,845) and non-Indigenous (n=6,869) children living in out-of-home care in 2018-19. The percentage of Aboriginal and Torres Strait Islander children who were reunified from out-of-home care in 2018-19 was 33%, compared to 35% for non-Indigenous children. Figure 3 (below) shows the percentage of Aboriginal and Torres Strait Islander and non-Indigenous children who were reunified from out-of-home care in 2018-19, by state and territory.

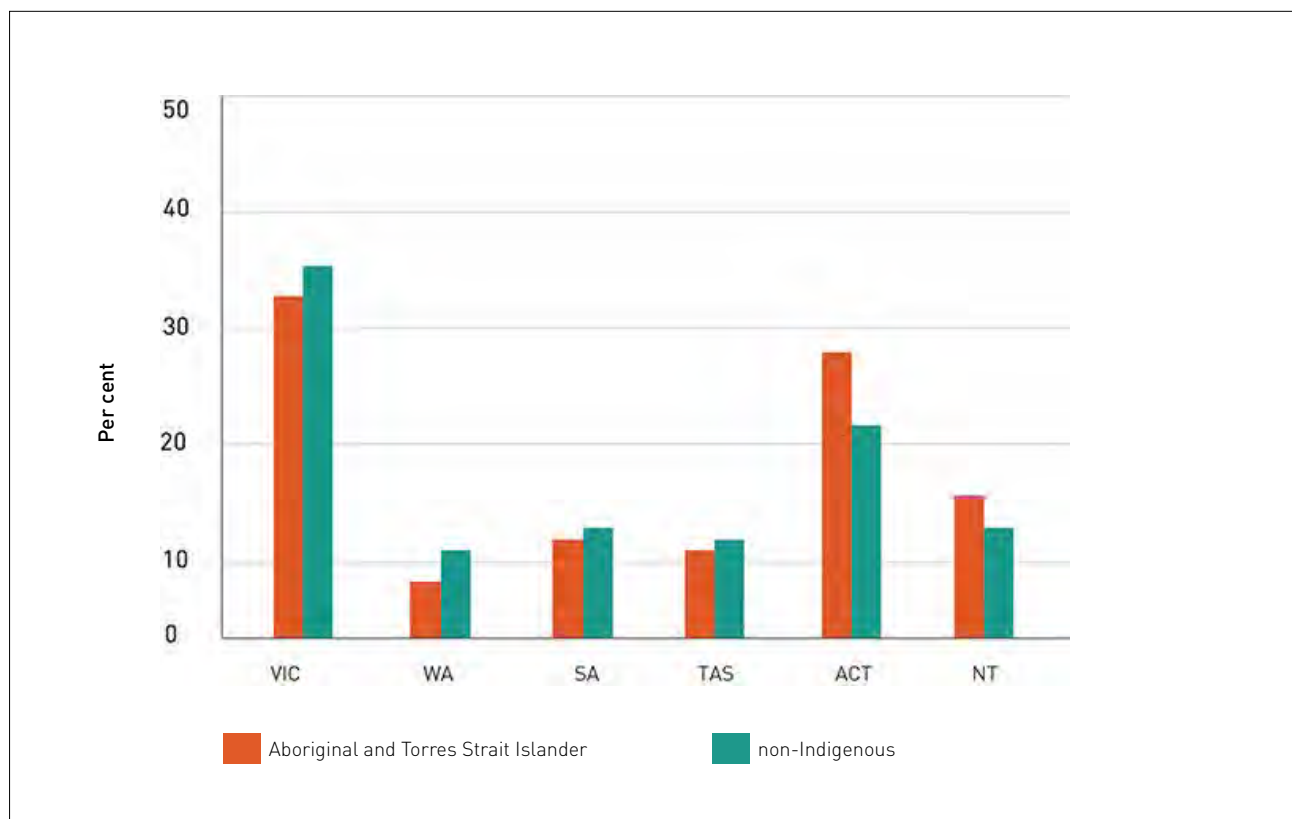
Figure 3 shows that reunification rates for all children were highest in Victoria, with the Australian Capital Territory having higher reunification rates for Aboriginal and Torres Strait Islander children compared to non-Indigenous children. Nationally, reunification rates for Aboriginal and Torres Strait Islander children ranged from 8% in Western Australia to 33% in Victoria. Comparatively, for non-Indigenous children, reunification rates ranged from 11% in Western Australia to 35% in Victoria.

However, as highlighted in Figure 2, the number of Aboriginal and Torres Strait Islander and non-

Indigenous children reunified in all states and territories is small compared to Victoria: while there were 606 Aboriginal and Torres Strait Islander children reunified in Victoria, in the remaining states and territories combined, there were a total of 680 Aboriginal and Torres Strait Islander and non-Indigenous children reunified. It is also important to note that while reunification rates are highest in Victoria, Aboriginal and Torres Strait Islander children also enter care at a much higher rate in Victoria than anywhere else in the country. Consequently, we must be cautious in drawing conclusions about reunification outcomes in Victoria, as despite the high reunification rate, over-representation of Aboriginal and Torres Strait Islander children continues to rise in Victoria.

It is also interesting to note that the Indigenous status of the family (with whom Aboriginal and Torres Strait Islander children were reunified to) was not reported. Future data should report the Indigenous status of the family member that Aboriginal and Torres Strait Islander children are reunified with to enable insight on whether Aboriginal and Torres Strait Islander children are reunified with Aboriginal and Torres Strait Islander or non-Indigenous family.

FIGURE 3 Percentage 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 2018-19



REUNIFICATION, LENGTH OF TIME IN CARE, AND AGE

Length of time in out-of-home care has an impact on the likelihood of reunification being achieved. More than half (58%) of all children who were reunified from out-of-home care in 2018-19 had been living in care for under six months. Most children (89%) who were reunified with family from out-of-home care in 2018-19 had been living in out-of-home care for under two years. The Indigenous status of these children is not reported.

The rate of reunification for children from out-of-home care by age were similar for Aboriginal and Torres Strait Islander and non-Indigenous children. Most children (77%) who were reunified with family from out-of-home care in 2018-19 were between the ages of 1-14. Children aged under one, and over 15 years old, were less likely to be reunified across all states and territories, with 7% of Aboriginal and Torres Strait Islander children aged under one reunified in 2018-19 and 1% of Aboriginal and Torres Strait Islander children aged over 15 reunified in 2018-19. These rates were similar for non-Indigenous children, with 8% of non-Indigenous children aged under one reunified in 2018-19, and 16% of non-Indigenous children aged over 15 reunified in 2018-19. Figure 4 (below) shows the percentage of children who exited care via reunification in 2018-19 by state and territory, age, and Indigenous status.

Figure 4 shows the differences in reunification, by age group, across states and territories. The Northern Territory appears to have displayed a different reunification pattern than the other states by reunifying more young people aged between 15-17 compared to other age groups, with 27% of Aboriginal and Torres Strait Islander young people and 38% of non-Indigenous young people reunified between the ages of 15-17 in the Northern Territory.

However, these percentages must be treated with caution. In the Northern Territory, there were only two young people aged 15-17, and two young people aged 10-14, who were reunified with family from out-of-home care. For Aboriginal and Torres Strait Islander young people, 20 young people aged 15-17, and 15 aged 10-14, were reunified with family from out-of-home care.

The age-related pattern of reunification, for Aboriginal and Torres Strait Islander and non-Indigenous children and young people, should be compared across state and territories due the smaller numbers of reunifications in some states and territories. For example, while Victoria reunified 3,027 children with family from out-of-home care in 2018-19, Northern Territory (n=83), Tasmania (n=82), and the Australian Capital Territory (n=66) reunified under 100 children in their respective jurisdiction, while Western Australia (n=261) and South Australia (SA) (n=188) each reunified under 300 and 200 children in their jurisdictions respectively.

FIGURE 4 Children/young people who exited care via reunification, by state and territory, age, and Indigenous status 2018-19



REUNIFICATION AND RETURN TO CARE

Nationally, most children (82%, n=2,813) who were reunified with their family in 2017-18 (n=3,400) did not return to care within the next 12 months. In Tasmania, the Indigenous status of children who did not, and did, return to care within 12 months following reunification is not reported.

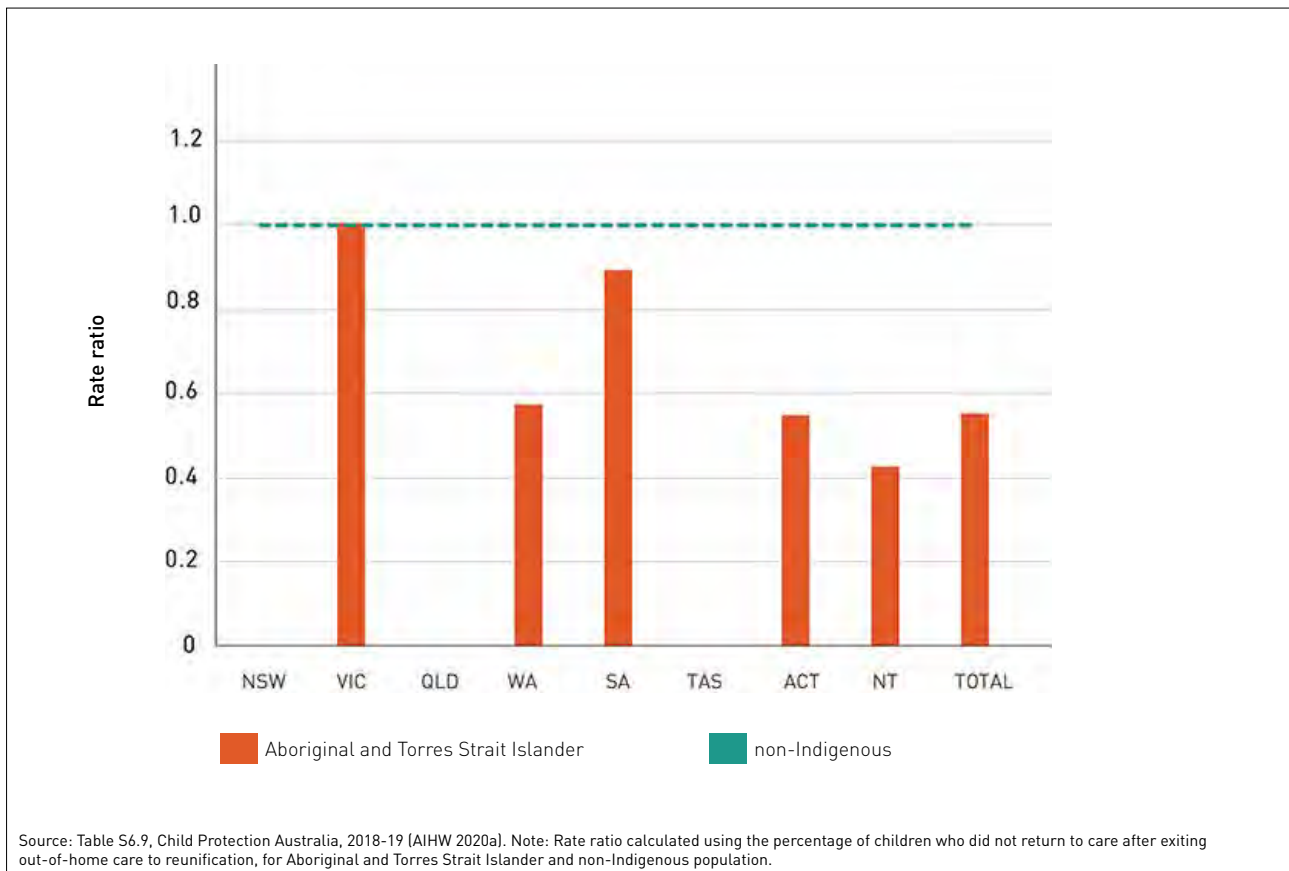
Except for the Australian Capital Territory and South Australia, there was no marked difference in the rates of Aboriginal and Torres Strait Islander and non-Indigenous children who did not return to care within 12 months following reunification the previous year (in 2017-18). The rates for children who did not return to out-of-home care within 12 months following reunification ranged from:

- 64% in the Australian Capital Territory to 98% in Western Australia for Aboriginal and Torres Strait Islander children
- 81% in Victoria to 94% in Western Australia for non-Indigenous children.

In Western Australia, Aboriginal and Torres Strait Islander children were slightly more likely not to return to care following reunification in the previous 12 months. Figure 5 (below) shows the rate ratio of Aboriginal and Torres Strait Islander children who did not return to care within 12 months following reunification in 2017-18, by state and territory.

In the Australian Capital Territory and South Australia, the question remains as to why their return to out-of-home care rates are high compared to other states and territories.

FIGURE 5 Rate ratio of Aboriginal and Torres Strait Islander children who did not return to care within 12 months following reunification by state and territory 2017-18





RETURN TO CARE WITHIN 12 MONTHS OF REUNIFICATION

Children who are reunified with their families from out-of-home care do, at times, return to out-of-home care. In 2018-19, a total of 606 children returned to out-of-home care in 2018-19 after having been exited from out-of-home care to reunification the previous year (2017-18). Of these children who returned to out-of-home care after reunification, 25% (n=149) were Indigenous, while 74% (n=448) were non-Indigenous. (The Indigenous status of a further 1% (n=9) who returned to care following reunification in 2018-19 was unknown).

Nationally, the rates for children who returned to out-of-home care within 12 months following reunification ranged from:

- 2% in Western Australia to 36% in the Australian Capital Territory for Aboriginal and Torres Strait Islander children
- 6% in Western Australia to 19% in Victoria for non-Indigenous children.

In the Australian Capital Territory, Aboriginal and Torres Strait Islander children were more likely to return to care compared to non-Indigenous children, with the re-entry to care rate being 36% for Aboriginal and Torres Strait Islander children and 8% for non-Indigenous children. Across all other states and territories, the return to out-of-home care rates following reunification did not differ markedly based on Indigenous status. However, Aboriginal and Torres Strait Islander children aged under one were slightly more likely (27%) to return to out-of-home care following reunification than non-Indigenous children aged under one (23%). The rates for Aboriginal and Torres Strait Islander and non-Indigenous across other age groups are not markedly different.

The reasons why, both Aboriginal and Torres Strait Islander and non-Indigenous children, returned to care within 12 months following reunification are unknown. While age of the children is reported, other factors – such as previous placements in out-of-home care or family breakdown – are unknown.

DISCUSSION

All children living in out-of-home care have the right to experience stability in their lives. However, it is equally important that stability for Aboriginal and Torres Strait Islander children includes stability, and permanency, in their culture, which is inclusive of connections to family and community (Krakouer, Wise & Connolly 2018). Reunification, with Aboriginal and Torres Strait Islander family, enables Indigenous children to experience enduring connections to their families, communities, and cultures, however, little is known about reunification practices Australia-wide. While data is reported about the numbers of Aboriginal and Torres Strait Islander children for whom reunification was identified as a possibility, as well as the numbers

who exited care via reunification with family, aside from age and length of time in care, other factors that enabled successful reunifications are unknown. This is concerning considering that increased reunification is paramount to achieving the new Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

Previous research has highlighted that reunification is most likely to be achieved within months following entry into care (Fernandez & Lee 2013; Fernandez et al 2019). Indeed, within the 2018-19 data published by the AIHW (2020a), most reunifications for Aboriginal and Torres Strait Islander children (and non-Indigenous children) did occur within the first two years. However, limited data exists as to why reunification is less likely to occur after two years post-entry into care.

There is also limited contextual information about why only 19% of all possible reunifications for Aboriginal and Torres Strait Islander children were successful in 2018-19. The barriers to enabling reunification for Aboriginal and Torres Strait Islander children, aside from length of time in care, are unclear. This is compounded by a lack of research on this area, since past research (Fernandez et al 2019; Delfabbro et al 2015; Fernandez & Lee 2013) concerning reunification barriers in Australia has not focused specifically on Aboriginal and Torres Strait Islander children and their families.

Research concerning reunification in the Australian context has highlighted a range of challenges to family reunification, including poverty and length of time in care (Delfabbro et al 2015; Fernandez et al 2019). Numerous studies have found that reunification is most likely to occur within a short time frame (within six months) following initial entry into care, and that the likelihood of reunification occurring after one year in care decreases rapidly (Delfabbro et al 2015; Fernandez et al 2019; Barber & Delfabbro 2004; Courtney 1994; Delfabbro et al 2003; Fanshel & Shinn 1978; Farmer et al 2009; Fernandez 1999; Fernandez & Lee 2011; Goerge 1990; Wells & Guo 1999). Structural barriers, such as poverty and homelessness, impede the likelihood of reunification occurring within a short time frame (under one year) however (Fernandez et al 2019). Indeed, Aboriginal and Torres Strait Islander families experience poverty at higher rates compared to non-Indigenous families (Australian Bureau of Statistics (ABS) 2018).

While reunification data were not available from New South Wales in 2018-19, the *Family is Culture* review evidenced numerous problematic reunification practices with Aboriginal and Torres Strait Islander families across New South Wales. Evidence within the report noted structural barriers for parents who sought to have their children reunified to their care, including poverty, homelessness, difficulties securing affordable housing, as well as limited case work support from child protection caseworkers (Davis 2019). For example, some parents were expected to secure new housing within a short time frame, despite extensive waitlists

for public housing, with limited support. In some cases, reunification goals were entirely inappropriate for the parent's circumstances (such as being asked to provide urine for alcohol and other drug analysis, with no evidence of problematic parental substance use). Other parents articulated that they felt that the *goal posts* were constantly being moved by the New South Wales Government Department of Communities and Justice, with limited clarity provided around how to get their children back from out-of-home care (Davis 2019). Within the inquiry, it was also noted that once children were removed from their families and placed in out-of-home care, case work support for parents was withdrawn (Davis 2019).

In Victoria, the 2017 *Safe and Wanted* inquiry by the Commission for Children and Young People (CCYP) highlighted several concerns about reunification practices that were not specific to Aboriginal and Torres Strait Islander children. Many of the barriers related to casework issues, such as limited contact with caseworkers, children not having allocated caseworkers or case plans, and long wait times for support services, such as eight-month waiting lists to access men's behaviour change programs (Commission for Children and Young People 2017, p. 18). In submissions by VACCA and SNAICC to the *Safe and Wanted* inquiry, concerns were raised about the degree to which "realistic attempts" at reunification have been made for Aboriginal and Torres Strait Islander children. However, there is a dearth of research, or data, which speaks to these issues in reunification casework for Aboriginal and Torres Strait Islander children.

Australian child protection and out-of-home care systems do operate around the notion of the child as the primary client, with the best interests of the child upheld in casework decision-making (see for example, the *Children, Youth & Families Act 2005*, Vic., Aus.). While the best interests of the child need to be paramount, limited research has focused on the degree to which statutory and non-statutory agencies, and their workers, work holistically with Aboriginal and Torres Strait Islander families to enable reunification. It is also concerning that the Indigenous status of the family member, with whom Aboriginal and Torres Strait Islander children were reunified to in 2018-19, is not reported. To understand the degree to which Aboriginal and Torres Strait Islander children experience connection to their Aboriginal and Torres Strait Islander families, communities, and cultures, the Indigeneity of family members should be reported by all Australian governments in reunification data. This data may be able to illuminate further practice considerations, or impediments, to reunification for Aboriginal and Torres Strait Islander children living in out-of-home care.

As highlighted in the 2018-19 AIHW (2020a) data, the reality is that, compared to non-Indigenous children, Aboriginal and Torres Strait Islander children come into out-of-home care earlier, remain in out-of-home care longer, and are less likely to be subject to court

orders that specify plans for permanency. In this context, connection – and disconnection – to culture for Aboriginal and Torres Strait Islander children is a real concern. From a collective, Aboriginal and Torres Strait Islander standpoint, when culture is disrupted (as was the case for thousands of survivors of the Stolen Generations) both individual wellbeing, and the survival of Indigenous cultures, are threatened. More research and data are needed to better understand current reunification practices with Aboriginal and Torres Strait Islander children in out-of-home care, and how they may subsequently be improved. The impact of COVID-19 on reunification practices in 2020 is another important consideration, since restrictions imposed due to public health responses to COVID-19 have limited contact between Aboriginal and Torres Strait Islander children, their families, and caseworkers (SNAICC, 2020).

CONCLUSION

In 2018-19, Aboriginal and Torres Strait Islander children were less likely to have case plans that include reunification as a possibility compared to non-Indigenous children. Aboriginal and Torres Strait Islander children were also less likely to be reunified with family compared to non-Indigenous children in 2018-19. With the exception of the Australian Capital Territory and South Australia, once reunified, there is no marked difference in the rate of re-entry to care within 12 months for Aboriginal and Torres Strait Islander children compared to non-Indigenous children. However, a lack of data and research raises more questions than answers. What are the circumstances that enable successful reunifications for Aboriginal and Torres Strait Islander children? Are Aboriginal and Torres Strait Islander children reunified with their Indigenous or non-Indigenous sides of the family? What conditions are parents expected to meet to have their children reunified? And, what are the experiences of children, parents, and caseworkers around reunification across all Australian states and territories? Future research needs to focus on reunification practices with Aboriginal and Torres Strait Islander children and families to better understand how reunification policy is being implemented for Aboriginal and Torres Strait Islander children in out-of-home care. It will be paramount that more information is documented, and made available for 2021, particularly concerning the impact of COVID-19 on reunification success for Aboriginal and Torres Strait Islander children in out-of-home care.



PART 1

CURRENT DATA AND TRENDS IN OVER-REPRESENTATION IN OUT-OF-HOME CARE

1.1 OVERVIEW

In 2020, addressing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (out-of-home care) has been recognised as a headline target for the new *National Agreement on Closing the Gap* (Coalition of Peaks and Australian Governments 2020). The new target is to “by 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.” This target provides a high level of ambition to 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.

Achieving the new Closing the Gap target will require a comprehensive approach to address the drivers of child protection intervention (see Part 2 of this report) 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 (see Part 3 and 4 of this report). This part of the report analyses the systems data that reflects the engagement of Aboriginal and Torres Strait Islander children and families with child protection and is critical to understanding what it will take to bring about substantial change.

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 some for 17 years. This gives a **point-in-time** count of the **prevalence** of out-of-home care and is reported nationally as at 30 June in *Child Protection Australia and the Report on Government Services* (RoGS).

2. Children entering out-of-home care

This is a count of all 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 contact, but all commenced a placement in a given year. This is known as the **incidence** of out-of-home 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**. Most children exit care because they turn 18 years (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 the government is 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 children enter care, they stay for very short to long periods of time (that is, until they turn 18 years). 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.

When considered this way, over-representation and under-representation could occur in any or all of these processes. Focusing only on those children in out-of-home care or those exiting out-of-home care leads to poor policy decisions. Reducing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care requires legislative, policy and program attention to 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 enables them to provide the best possible environment for their children.

WHY DO THE OVER-REPRESENTATION FIGURES LOOK LOWER IN THIS YEAR'S REPORT EVEN THOUGH OVER-REPRESENTATION IN OUT-OF-HOME CARE HAS INCREASED?

Since the previous Family Matters Report was released in 2019, the Australian Bureau of Statistics has revised its estimates of Aboriginal and Torres Strait Islander and non-Indigenous populations based on the 2016 Census data. Estimates of the number of Aboriginal and Torres Strait Islander children in the population have gone up, meaning that their representation in the system is slightly lower than previously thought. Unfortunately, this does not change the numbers of Aboriginal and Torres Strait Islander children in out-of-home care and does not mean that the situation has improved. To enable comparisons across multiple years, the updated population estimates have been applied for previous years.

1.2 HOW OVER-REPRESENTATION OCCURS

Over-representation of Aboriginal and Torres Strait Islander children in out-of-home care is reflective of systemic racism and a lack of action to protect and promote the human rights of Aboriginal and Torres Strait Islander children. Past and present discriminatory government policies and practices, and their continuing impact on children, families and communities, drive ongoing contact with child protection systems. The lack of culturally safe and responsive service systems results in under-representation in universal prevention and early intervention services, which contributes to over-representation in statutory service systems. The likelihood of an Aboriginal or Torres Strait Islander child coming to the attention of authorities, being notified, investigated, substantiated and placed in out-of-home care is far greater compared with non-Indigenous children. At the same time, over-representation reflects the reduced likelihood of an Aboriginal or Torres Strait Islander child, once placed, being returned to the care of their parents (rate of reunification or restoration) and the longer time that this process takes (length of stay).

For all children and families, the further into the system, the more intrusive the intervention. Each decision-making point (for example, whether to refer to a support service or report to the statutory agency, the type of support service to which the family is referred, whether to investigate, the assistance needed if statutory intervention is not warranted, whether out-of-home care is needed, the type of order, whether

to return a child to parental care) requires different strategies for bringing the system to parity.

1.3 CURRENT SITUATION AND TRENDS IN CHILD PROTECTION OVER-REPRESENTATION

In 2019, Aboriginal and Torres Strait Islander children were 5.3 times more likely to be reported to child protection authorities, 9.4 times more likely to be subject to a child protection order, and 9.7 times more likely to be living in out-of-home care than non-Indigenous children (see Figure 6). The rate ratios indicate that the over-representation of Aboriginal and Torres Strait Islander children across key decision-making points within the child protection system continues to increase year on year. Rate ratios use the non-Indigenous rate as the baseline and show how many times greater the Aboriginal and Torres Strait Islander rate is.

The number of Aboriginal and Torres Strait Islander children in out-of-home care also continues to increase, reaching 20,077 at June 2019, when children in other supported care, including children on permanent care orders, who are excluded from the definition of out-of-home care, are re-included in the count (Steering Committee for the Review of Government Service Provision 2020, Table 16A.2).

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 linked to factors including the higher rates of removal of Aboriginal and Torres Strait Islander children following substantiation of child harm, the lower rates at which they are reunified with parents and family members, and the longer periods they spend in care.

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 7 and Figure 8), 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 over-representation was in Western Australia (16.7), followed closely by Victoria (16.1). The lowest over-representation was in Tasmania (4.7), followed by Queensland (8.8). Only the Australian Capital Territory had a significant downward trend over one year, though this follows a significant increase in the preceding two years. Last year Tasmania's data was excluded due to high rates of children with unknown Indigenous status. This has improved significantly in the data reported, though Tasmanian community stakeholders continue to report that identification of Indigenous status remains poor in practice, with limited input from Aboriginal and Torres Strait Islander people and organisations.

FIGURE 6 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children involved with child protection systems in Australia from 2010 to 2019

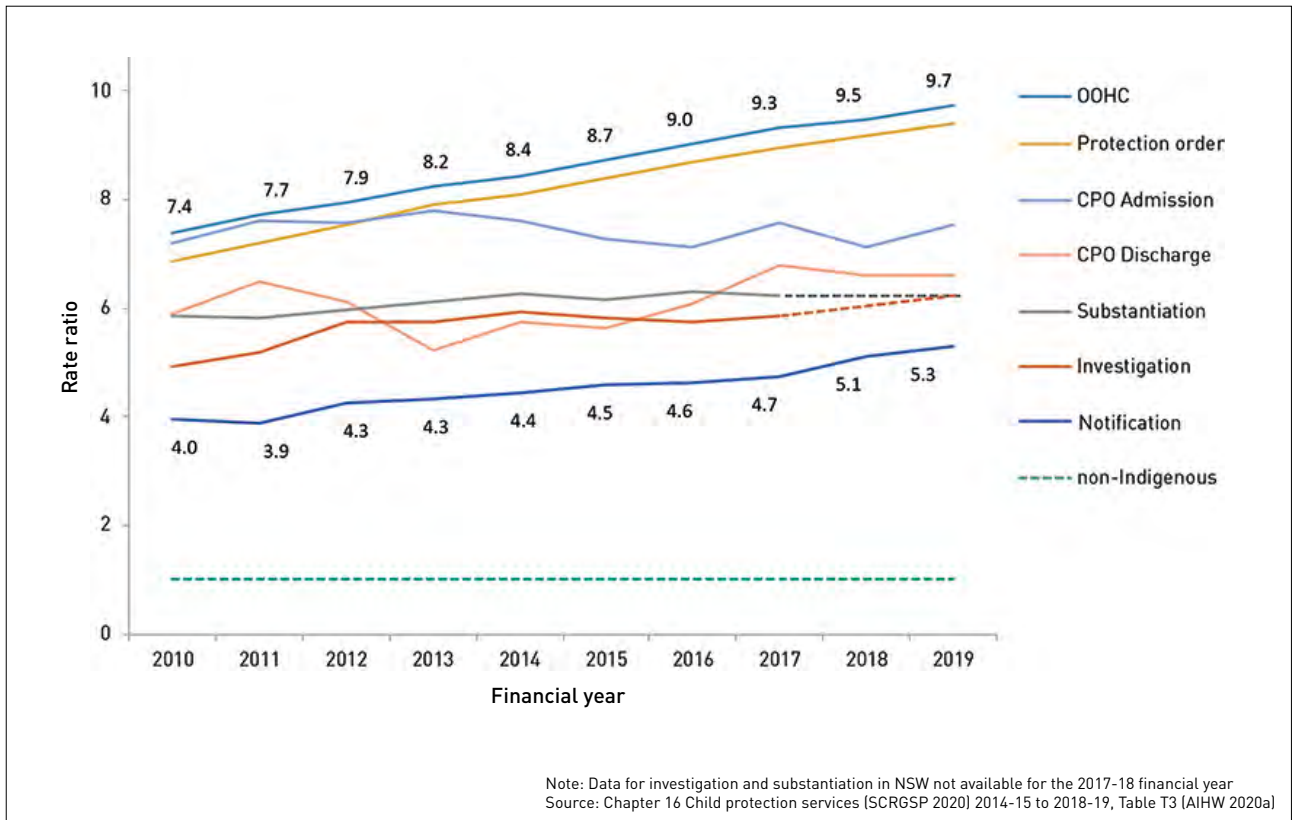
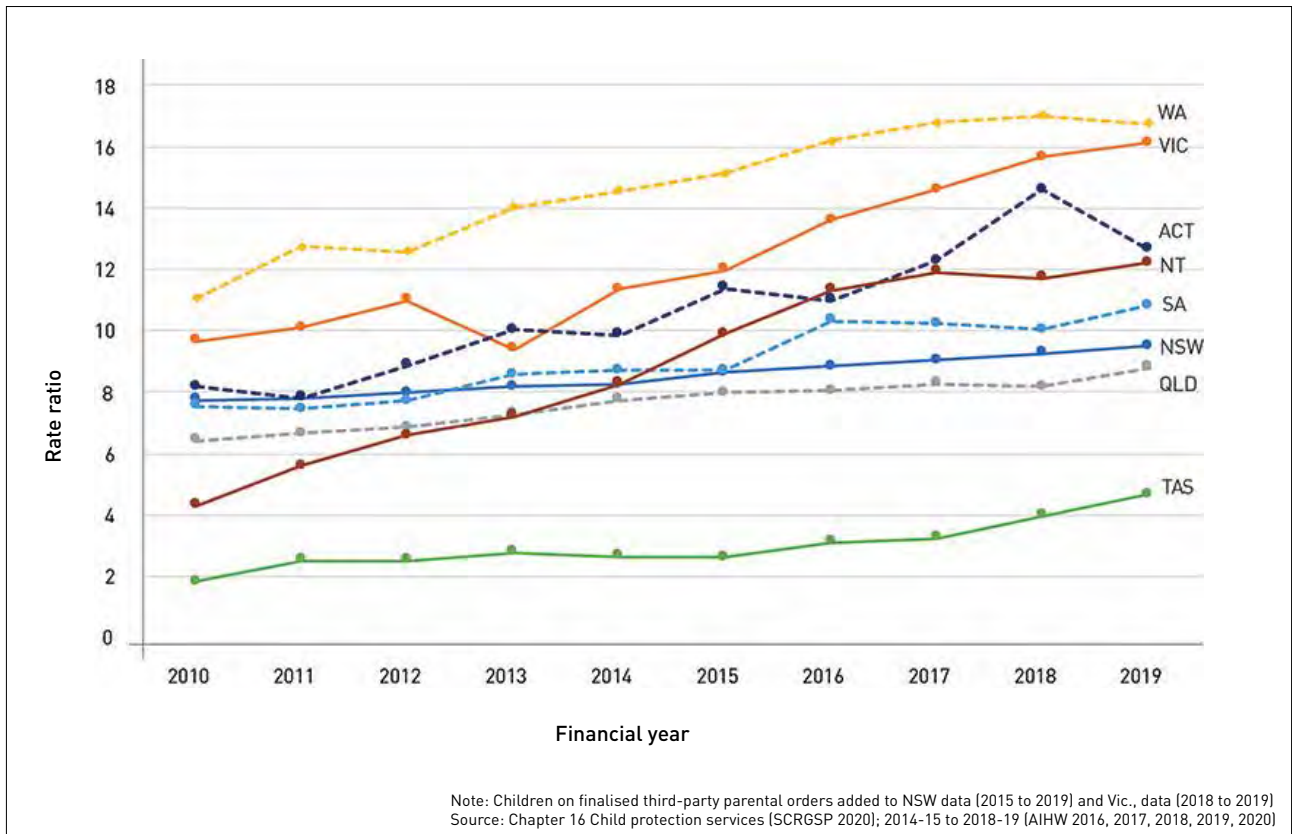


FIGURE 7 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children in out-of-home care by state and territory from 2010 to 2019



EXCLUSION OF CHILDREN ON PERMANENT CARE ORDERS

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 (permanent care orders) from the count of children in out-of-home care. The Family Matters campaign believes that this change seriously undermines transparency and accountability, making these children who have been removed from their families effectively invisible in the system. Our governments must remain accountable for protecting the rights of all children removed from parental care into statutory care. The new Closing the Gap target which aims to reduce statutory intervention in Aboriginal and Torres Strait Islander family life will be frustrated if states and territories seek to achieve it by permanently removing children from their families, and excluding them from the count of children in out-of-home care.

As a result of these concerns, the data presented in Figures 6, 7 and 8 re-includes children on third party parental responsibility orders in the count.

Recommendation: The decision to exclude children on permanent care orders from the count of children in out-of-home care must be reversed so that children permanently removed from their families are not invisible in the system, and governments are transparent and accountable for protecting their rights.

ENTRY TO AND EXIT FROM OUT-OF-HOME CARE

Achieving the Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care 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 support to families and broader efforts to address the 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 lack context without considering the extent to which safety and wellbeing concerns are being addressed for children in driving changes in entry to out-of-home care. Understanding the extent to which Aboriginal and Torres Strait Islander families are accessing quality support services, as discussed in Part 3 of this report, is an important consideration in interpreting entry data.

Nationally, 4,289 Aboriginal and Torres Strait Islander children were admitted to out-of-home care in 2018-19 at a rate of 13 per 1,000 children, which is nearly nine times the rate of entry for non-Indigenous children. In 2018-19, there were 3,582 Aboriginal and Torres Strait Islander children who exited care at a rate of 10.8 per

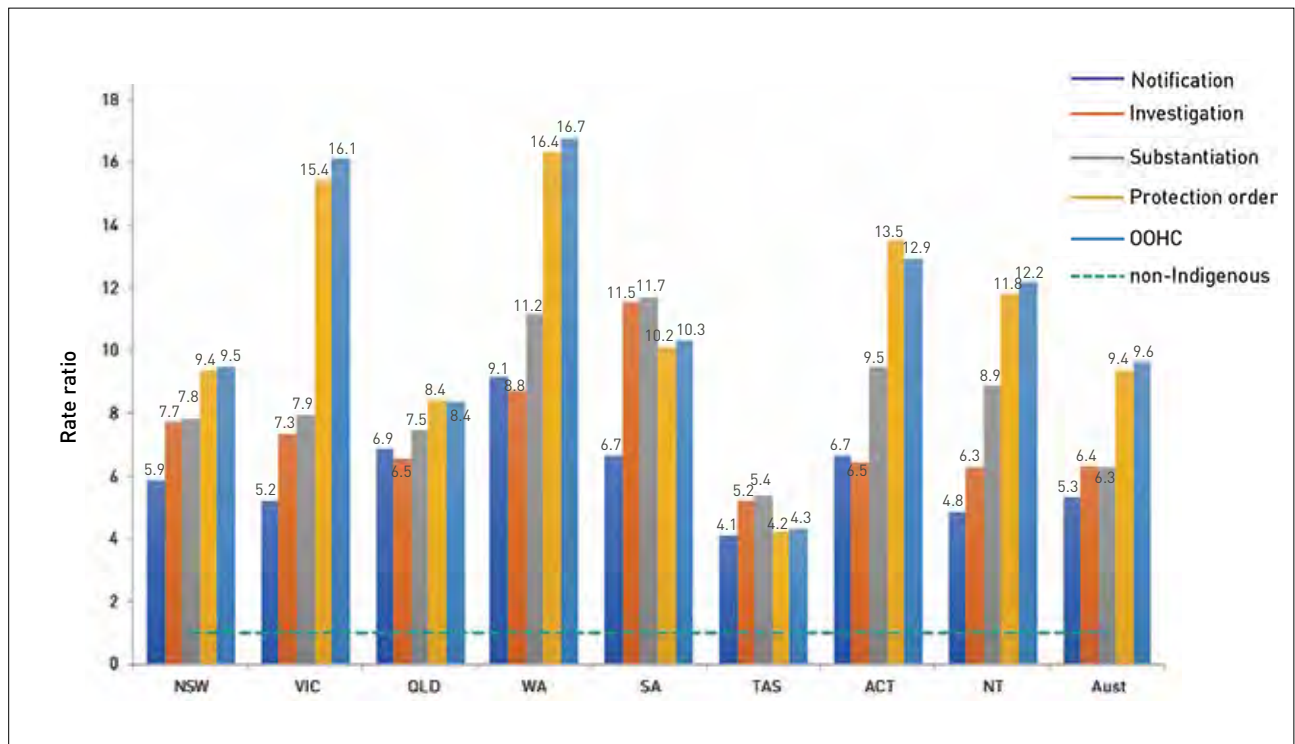
1,000, which was 8.3 times the rate for non-Indigenous children (AIHW 2020a, Tables s5.1, s5.2). Exits from out-of-home care may occur because children reach the age of 18 or are reunified with their parent/s. However, due to changes to the out-of-home care definition, exits may also be to permanent care for children who remain separated from their families.

Figure 9 shows that while rates of admission have remained consistently high, there has been relatively low variability in admission rates across a number of states and territories, such as Western Australia, Queensland and the Northern Territory. Victoria clearly stands out as having by far the highest rate of entry for Aboriginal and Torres Strait Islander children to out-of-home care (38.4 per 1,000), and a concerning level of increase in admissions over the past five years. The Australian Capital Territory has had a very significant decrease in admission rates for Aboriginal and Torres Strait Islander children in the last two years (from 20.7 to 8.7 per 1,000). The rate of children admitted to out-of-home care in New South Wales increased slightly in 2018-19 but has decreased significantly over the last three years (from 12.1 to 8.3 per 1,000).

Despite the admission data depicted in Figure 9, there has been a continued rise in over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. For example, in New South Wales, over-representation continues to rise steadily despite reductions in admission rates in recent years. In New South Wales, this is driven in part by the fact that reductions in entry rates for non-Indigenous children have been greater over the same period. There are many other factors that may contribute to this across the country, 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. In this year's report, the priority for and data on reunification is addressed in the feature chapter by Jacynta Krakouer of the University of Melbourne (see page 40).

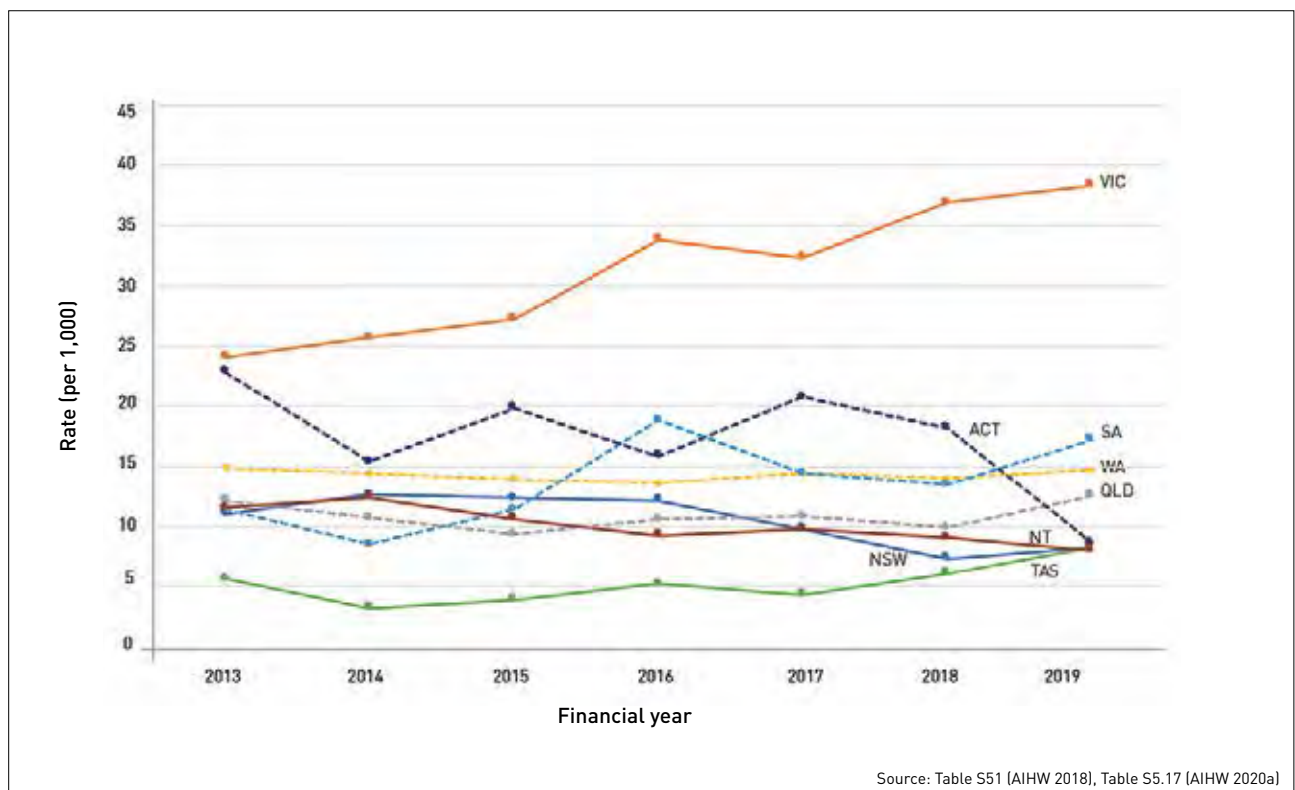
The deeply concerning trends in child protection systems data for Aboriginal and Torres Strait Islander children highlight that current legislative and policy settings are failing to reduce the inequities children experience across all key decision-making points of Australia's child protections systems. The Family Matters campaign has long advocated for the development of a national comprehensive Aboriginal and Torres Strait Islander Children's Strategy with a generational target 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 Closing the Gap Agreement, it will be critical that when the *National Framework for Protecting Australia's Children 2009-2020* (Department of Social Services 2018b) expires this year, a dedicated framework and strategy is adopted for Aboriginal and Torres Strait Islander children, designed and led by Aboriginal and Torres Strait Islander people.

FIGURE 8 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children involved with child protection in Australia by state and territory 2018-19



Source: Tables 16A.1 and 16A.2 from Chapter 16 Child protection services (SCR6SP 2020); Table S4.10 from Child Protection Australia 2018-19 (AIHW 2020a)
 Notes:
 a. Notification, investigation and substantiation rates were calculated as the number of children aged 0–17 years (including those whose age was not stated) in at least one out of home care placement during the year, divided by the estimated population aged 0–17 at 31 December, multiplied by 1,000. For Aboriginal and Torres Strait Islander children, the June projections for two years were averaged to obtain a population figure for December of the relevant year.
 b. Protection order and OOHC rates measured at June 30 each financial year.
 c. OOHC figures include children on other supported placements.

FIGURE 9 Rate of admission to out-of-home care for Aboriginal and Torres Strait Islander children 2013 – 2019



Source: Table S51 (AIHW 2018), Table S5.17 (AIHW 2020a)

DATA GAP

IDENTIFICATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

Without correct and early identification of Aboriginal and Torres Strait Islander children at all stages of child protection involvement, children are at risk of being deprived of culturally safe support, case planning and placement, and data will not accurately describe their interactions with the child and family service system. Family Matters campaign members continue to report poor and inconsistent practice in identifying children. The *Family is Culture* review in New South Wales also identified concerning examples of Aboriginal children being *de-identified* by the statutory agency without consultation with Aboriginal people, and for reasons including that the agency was not satisfied that they had 'proved' their Aboriginality (Davis 2019).

Recommendation: That policy and legislation in each state and territory require that children and families be asked at the earliest possible point of their engagement with the service system about their Aboriginal and Torres Strait Islander identity; that this question is revisited regularly; and that the Aboriginal and Torres Strait Islander status of the child is recorded as early as possible. Implementation measures must include training and advice to practitioners on culturally safe ways to discuss and explore cultural identity with children and families. There must also be protections put in place against the de-identification of children without consultation with the Aboriginal and Torres Strait Islander community.



DATA GAP

REPEAT ENGAGEMENT WITH CHILD PROTECTION SERVICES BY INDIGENOUS STATUS

Child protection involvement is not just more likely for Aboriginal and Torres Strait Islander families, it 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 understand not just how many children have contact with the system, but how often they experience this. While some data are available nationally on children who are repeat clients of child protection services at different points of contact, these data are not reported by Indigenous status.

Recommendation: That data be collected and reported on new and repeat contact with child protection services, by Indigenous status, at each stage of contact, including notification, investigation, substantiation, entry to orders, entry to care, reunification, and entry to and exit from permanent care and adoption.

1.4 THE IMPACTS OF PERMANENCY PLANNING AND ADOPTION

For children placed in out-of-home care, stability of relationships and identity are vitally important to their wellbeing and must be promoted. For an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity, in connection with family, kin, culture, and country (SNAICC 2016).

In recent years, state and territory child protection authorities have increasingly used a range of legislation, policy and practices to promote stability through longer-term care arrangements for children in out-of-home care. These vary in detail in each jurisdiction but are often broadly described as *permanency planning*. In a number of states and territories, the primary focus has been to expedite time frames for the use of long-term, permanency-focused orders by child protection authorities and the courts, including long-term finalised guardianship and custody orders, third-party parental responsibility orders, and adoption orders.

Nationally, community services ministers have agreed to adopt *Guiding Principles for Permanency Best Practice* to guide these reforms. The second principle is "compliance with all five domains of the Child Placement Principle ... is supported and measured" (Department of Social Services 2018a). However, as documented throughout this report, legislation, policy and practice across the country is largely not aligned with the intent of the Child Placement Principle, creating high risks of severing children's cultural and

family connection, and resulting negative impacts on their social and emotional wellbeing, through the pursuit of permanent out-of-home care placements.

The entrenchment of permanency planning objectives within legislation reflects a focus on *legal permanency* and is tied to the notion that a legal arrangement can generate a sense of safety and belonging for children in out-of-home care (Parkinson 2003). However, research from the care and protection sector recognises that a broader definition of permanency encompasses “relational permanency (positive, caring, stable relationships), physical permanency (stable living arrangements, and ... legal arrangements” (Tilbury & Osmond 2006, p. 4). Aboriginal and Torres Strait Islander people commonly question permanency decisions based on a narrow construct of “attachment theory” that pursues a singular attachment for a child to their carer and that does not recognise the importance of cultural identity development to achieving wellbeing, permanence, and belonging for children (SNAICC 2016).

A 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 are required – such as cultural support plans – minimal compliance with these directives means that a child’s cultural rights are inadequately protected (Commission for Children and Young People 2017). A further deeply concerning aspect of permanent care is the lack of safeguards for children against neglect and abuse in care, as states and territories have moved to exclude these placements from the definition of out-of-home care and remove associated supports and oversight. The Royal Commission into Institutional Responses to Child Sexual Abuse made a raft of critical recommendations related to these matters including annual review of carers, interviews with children in care, support for carers and child safe accreditation of out-of-home care agencies (McClellan et al. 2017). The exclusion of an increasing number of children in permanent care from these safeguards threatens to undermine these vital measures to prevent child sexual abuse.

Many permanency reforms have narrowly pursued legal permanency at the expense of children’s cultural rights and connections and without adequate focus on children’s social and emotional wellbeing. Governments have prioritised timeliness of permanency decision-making (Department of Social Services 2018b), but this has not brought a concurrent focus on the timeliness and adequacy of prevention and reunification supports provided to keep families together and restore children to the safe care of their parents.

Legislated time frames for achieving reunification and restoration before children are moved to long-term out-of-home care orders have been of particularly high concern. The *Family is Culture* review in New South Wales concluded that rigid time frames 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, pp. 364-5). In its review of Victoria’s permanency reforms, the Victorian Commission for Children and Young People (2017) found that systemic pressures – including high caseloads for child protection case management practitioners, and inadequate support services to meet the complex needs of families – prevented many parents from resuming care of the children within the legislated time frame of two years.

The data presented in this section of the report shows that in a number of states and territories the use of permanent care orders for Aboriginal and Torres Strait Islander children is extremely high and escalating, while Part 4 of this report identifies that the percentage of Aboriginal and Torres Strait Islander children placed with Aboriginal and Torres Strait Islander carers is consistently dropping, and now sits at only 43.8% nationally. For Aboriginal and Torres Strait Islander people the rising permanent removal of Aboriginal and Torres Strait Islander children from their families and cultures presents deeply distressing parallels to the Stolen Generations. Further, the exclusion of children on permanent care orders from the data on children in out-of-home care undermines transparency and further exacerbates distrust of Aboriginal and Torres Strait Islander peoples in the systems driving permanent removals.

ADOPTION – AN ALARMING AND RECENT INCREASE

The number of Aboriginal and Torres Strait Islander children adopted, and the percentage adopted to non-Indigenous adoptive parents is increasing, with 29 Aboriginal and Torres Strait Islander children adopted in the previous five years to June 2019, including 24 to non-Indigenous adoptive parents (AIHW 2020b). Data provided by states and territories, detailed below, indicates that two-thirds of these adoptions from the past five years (19 adoptions) occurred in the most recent year (2018-19) in just two jurisdictions, Victoria and New South Wales. This data suggests a rapid and alarming increase in the adoption rate for Aboriginal and Torres Strait Islander children, and a predominance of non-Indigenous people who are adopting Aboriginal and Torres Strait Islander children. The Family Matters campaign is firmly of the view that no Aboriginal and Torres Strait Islander children should be adopted from out-of-home care.

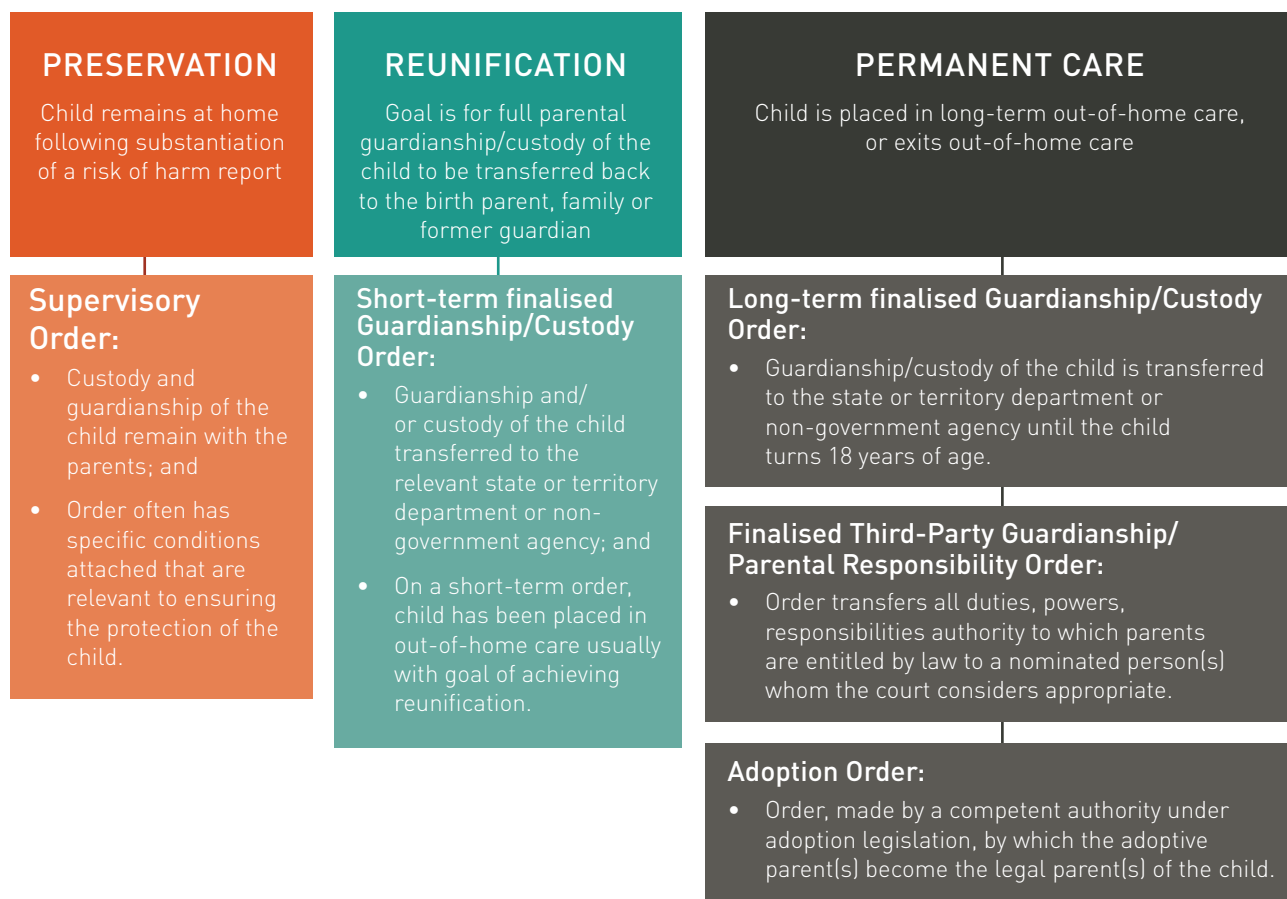
Of deep concern have been moves to increase the focus on adoption of children from out-of-home care in child protection legislation and policy in some states and territories. Most recently, a Bill was introduced to Parliament in Queensland in 2020 that sought to introduce adoption as a permanency option, albeit the last option, for Aboriginal and Torres Strait Islander children, within the *Child Protection Act 1999 (Qld)*, despite the clearly stated opposition of Aboriginal and

Torres Strait Islander representatives. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) provided a submission to the Parliamentary Inquiry into the Bill, recognising “the poor national and international evidence that exists into the ability of adoption to create stability for children in the long term without substantive costs for children’s social and emotional wellbeing” and concluding, “In our view, Aboriginal and Torres Strait Islander children should not be adopted out under the Child Protection Act 1999 at all.” This followed similar legislative reforms in New South Wales to provide for adoption from out-of-home care in 2018-19 that were passed despite the very clear and broad objections of the Aboriginal community.

States and territories were asked to provide data on the adoption of Aboriginal and Torres Strait Islander

children by relationship of the adoptive parent to the child in 2018-19, with seven states and territories providing complete or partial data. In 2018-19, in Victoria alone there were 12 adoptions of Aboriginal and Torres Strait Islander children, all to non-Indigenous adoptive parents. The Victorian Aboriginal Child Care Agency (VACCA) has reported that it was not consulted in relation to these adoptions. In New South Wales, seven Aboriginal and Torres Strait Islander children were adopted in 2018-19, with only one adopted by an Aboriginal and/or Torres Strait Islander adoptive parent. No Aboriginal and Torres Strait Islander children were adopted in the Australian Capital Territory, South Australia or the Northern Territory in 2018-19, and no Aboriginal and Torres Strait Islander children were adopted from out-of-home care in Queensland in 2018-19.

PERMANENCY PLANNING OPTIONS



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

Broadly, across all jurisdictions, the hierarchy of permanency objectives prioritises preservation or reunification with birth parent(s), followed by a permanent care arrangement either with relatives/kin or another long-term carer. The figure below sets out the three permanency objectives and the associated care and protection orders, based upon the Australian Institute of Health and Welfare’s national mapping of local order types (AIHW 2016).

The two order types reflecting long-term and permanent care that are examined in this part of the report are *long-term finalised guardianship and custody orders and long-term third-party parental responsibility orders*. The former transfers guardianship of the child to the state until age 18, while the latter permanently transfers guardianship of the child to a nominated person (ordinarily a kinship or foster carer) until age 18.

Across Australia at 30 June 2019, there were 16,287 Aboriginal and Torres Strait Islander children on long-term guardianship, custody or third-party parental responsibility orders, making up 81% of all Aboriginal and Torres Strait Islander children in out-of-home care and other supported care (AIHW 2020b). By far

the largest number of these children in any given state or territory are in New South Wales (7,126 children or 44%), followed by Queensland (2,782 children or 17%).

Figure 10 below shows that the rate of Aboriginal and Torres Strait Islander children on these long-term orders was highest in Victoria (75.6 per 1,000), with particularly high rates also evident in the Australian Capital Territory (67.5 per 1,000), South Australia (66 per 1,000), and New South Wales (63.5 per 1,000). Western Australia has the highest over-representation of Aboriginal and Torres Strait Islander children on these orders at 17.9 times more likely than non-Indigenous children. Notably, comparatively low rates of long-term and permanent orders are applied for Aboriginal and Torres Strait Islander children in Tasmania (23.4 per 1,000), the Northern Territory (24.4 per 1,000) and Queensland (28.8 per 1,000).

The following two charts separate this data into the two different order types, presenting the data on long-term care to the State (custody/guardianship orders), and long-term care to a nominated person (third-party orders) separately. Figure 11 shows that South Australia applies the highest rate of long-term guardianship and custody orders to Aboriginal and Torres Strait Islander children (64.5 per 1,000), followed by Victoria (59.5 per

FIGURE 10 Aboriginal and Torres Strait Islander children on long-term third-party parental responsibility and long-term finalised guardianship or custody orders, rate and rate ratio compared to non-Indigenous children at 30 June 2019



Source: AIHW 2020

1,000) which also has a very high over-representation of Aboriginal and Torres Strait Islander children on these orders (24.2 times more likely than non-Indigenous children).

Figure 12 is particularly significant when considering the implications of permanent care for Aboriginal and Torres Strait Islander children because it reflects the circumstances where states and territories have transferred parental responsibility for the child to a kinship or foster carer. 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. These orders are used at standout high rates for Aboriginal and Torres Strait Islander children in New South Wales (18.2 per 1,000), and Victoria (16.1 per 1,000). These orders do not exist in the Northern Territory and are seldom

used for Aboriginal and Torres Strait Islander children in South Australia (1.5 per 1,000).

These data reflect disturbing trends to increase the use of legal permanency. Permanent care lacks safeguards for Aboriginal and Torres Strait Islander children's safety and wellbeing and carries unacceptable risks of severing cultural and family connections for children. As a result, the Family Matters campaign is calling for governments across the country to end legal permanency and adoption for Aboriginal and Torres Strait Islander children, and work with us to establish a new system to achieve relational and cultural stability for Aboriginal and Torres Strait Islander children. This system must be led and administered by our communities and organisations and establish genuine partnerships that pursue the full implementation of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

"Permanent care lacks safeguards for Aboriginal and Torres Strait Islander children's safety and wellbeing ... and risks severing cultural and family connections for children"



FIGURE 11 Aboriginal and Torres Strait Islander children on long-term finalised guardianship or custody orders, rate and rate ratio compared to non-Indigenous children at 30 June 2019

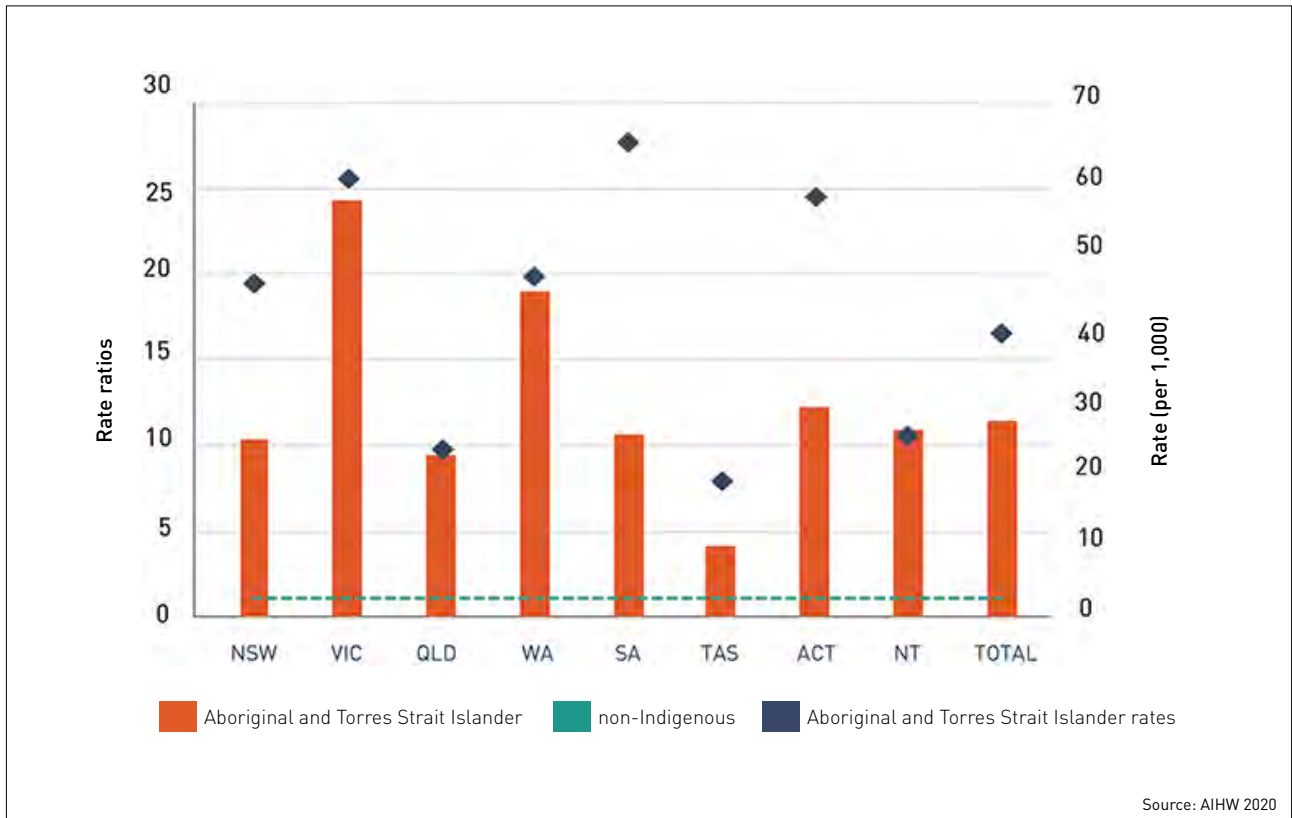
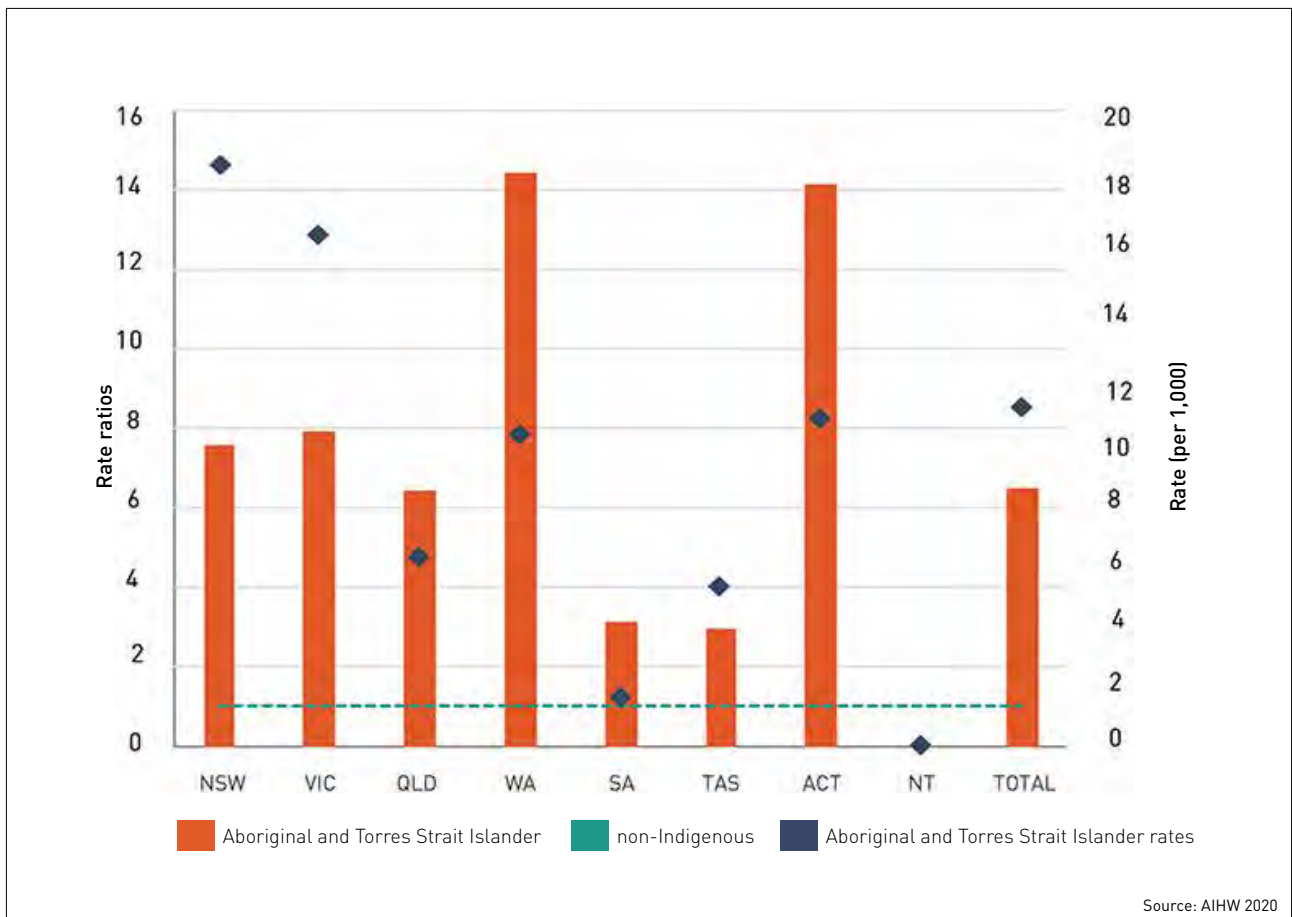


FIGURE 12 Aboriginal and Torres Strait Islander children on long-term third-party parental responsibility orders, rate and rate ratio compared to non-Indigenous children at 30 June 2019



1.5 CHILDREN IN OUT-OF-HOME CARE BY 2029: AN ALARMING PROJECTION OF GROWING OVER-REPRESENTATION

As we all set our sights on achieving the new Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, the future projection of children in care remains deeply concerning and highlights just how much needs to change. The population of Aboriginal and Torres Strait Islander children in out-of-home care is projected to double by 2029 if we don't intervene to interrupt the current trajectory. This is only a minimal improvement from last year's report which projected that the population would double by 2028.

The projection shown in Figure 8 was calculated based on a simple model of population growth. Methods and caveats for the projection scenario are described in Appendix 2 and 3. The dark blue curve represents the 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 projected growth of non-Indigenous children in out-of-home care.

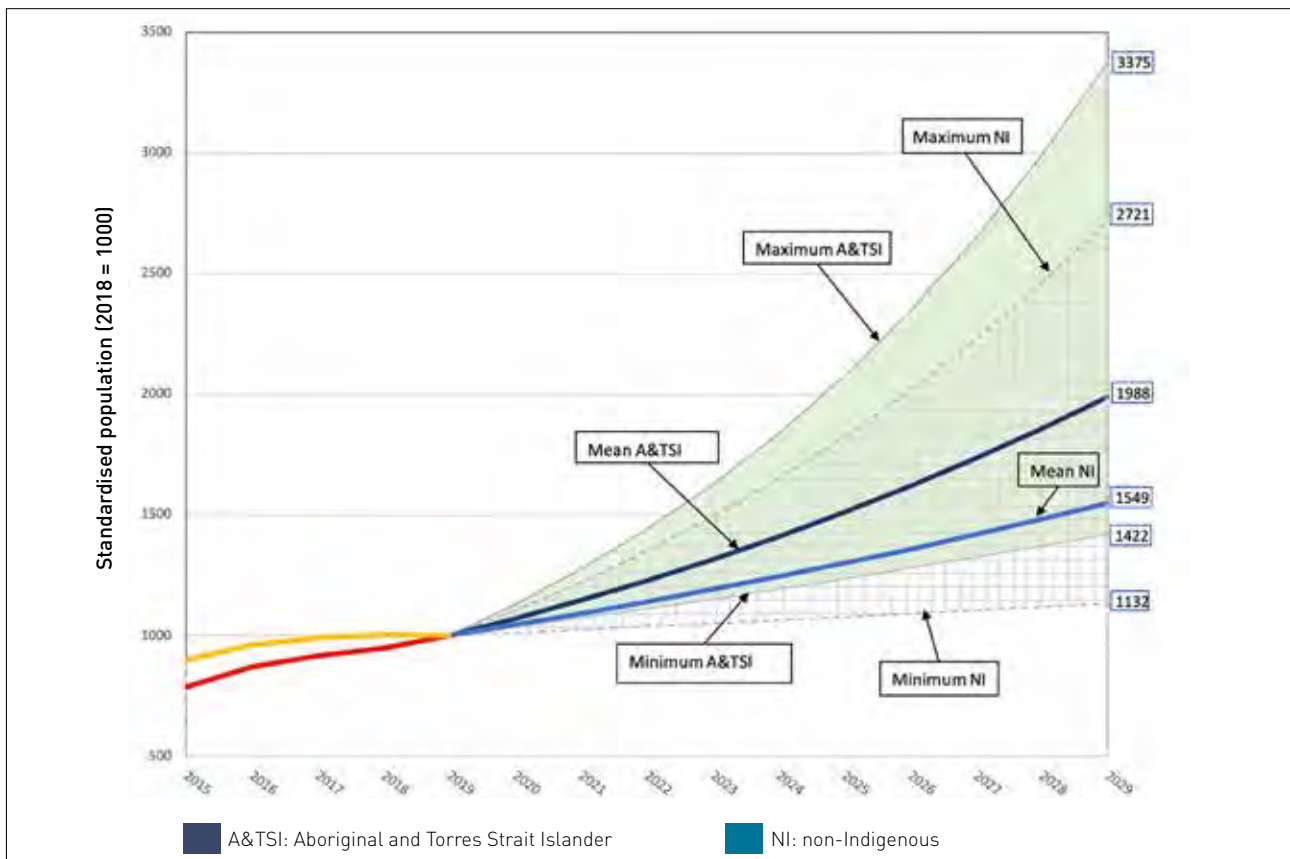
While it is troubling to see that the projection has only marginally changed from last year's report, there remains hope that with increased efforts to support families and address the drivers of child protection intervention, this trajectory can be altered. By applying

a more advanced model of population dynamics, which is currently being refined, researchers at the University of Melbourne 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 reduce over-representation by 45% by 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 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 and cultures, does not play out.

In line with the Closing the Gap Agreement, to be successful, these changes must be driven by resourcing Aboriginal and Torres Strait Islander community-controlled organisations to provide family preservation and reunification, and other prevention and early intervention supports for our families.

FIGURE 13 Population growth trajectories of Aboriginal and Torres Strait Islander and non-Indigenous children in out-of-home care in Australia 2019-29



1.6 GOVERNMENT RESPONSES ON EFFORTS TO ADDRESS THE OVER-REPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN IN OUT-OF-HOME CARE

States, territories and the Commonwealth 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 for and outcomes for Aboriginal and Torres Strait Islander children. Input and relevant data were provided by all governments.

Data provided is addressed throughout this report, and the responses from governments on their efforts to address over-representation are provided below. Family Matters working groups and Aboriginal and Torres Strait Islander organisations were provided with an opportunity to reflect on government responses when providing their input to the Community Voices section earlier in this report.

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.

AUSTRALIAN CAPITAL TERRITORY

Provided by the Community Services Directorate

The ACT Government is committed to reducing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care and is implementing a series of initiatives to keep families strong and together.

The *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028* sets out the commitment of the ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body to work together to recognise and respond to the needs of Aboriginal and Torres Strait Islander peoples living in the Australian Capital Territory. The Agreement includes a commitment to community leadership and self-determination for Aboriginal and Torres Strait Islander peoples.

On 17 December 2019, the final report of the *Our Booris, Our Way* review was released. A number of initiatives are being progressed against 28 recommendations, including the ongoing engagement of SNAICC to train Child and Youth Protection Services staff on the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, and funding Family Group Conferencing to divert families away from Children's Court processes and to prioritise family-led decision-making to keep children safe, strong and connected to family and culture. A designated Aboriginal and Torres Strait Islander practice leader, senior policy officer, training and workforce development officer and principal practitioner have been appointed.

From November 2017 to July 2020, 41 families have been involved in a Family Group Conference, involving 89 children. Fifty-four children have subsequently not entered care. For the remaining 35 children, decisions about the best care arrangements were made by the extended family.

The ACT Government also funds a partnership between Gugan Gulwan Youth Aboriginal Corporation and OzChild to deliver Functional Family Therapy. This program works specifically with Aboriginal and Torres Strait Islander families to keep children and young people at home safely, reducing or eliminating the need for involvement of the child protection system and creating positive family experiences. Since November 2018, 112 children and young people have been supported to stay with the 31 families involved in the program.

Of significance has been the decrease in the number of Aboriginal and Torres Strait Islander children coming into out-of-home care. In 2016-17, 59 Aboriginal and Torres Strait Islander children were brought into care; this decreased to 52 children in 2017-18, and to 25 children in the 2018-19.

Policies focused on increased support for families to maintain children safely at home, embedding some of the Child Placement Principle into practice, and improving engagement with Aboriginal and Torres Strait Islander fathers, have been developed through consultation with the Aboriginal Cultural Services Team, Ngura Naraganabang (Safety in the Pouch) Advisory Group and Aboriginal and Torres Strait Islander Co-Design Network – a core component of the Early Support: Changing Systems, Changing Lives initiative.

A Step Up for Our Kids (2015-2020) is the ACT Government's out-of-home care reform and has delivered a significant investment in early intervention and prevention services. The Post-Strategy Evaluation Plan includes a commitment to partner with the Aboriginal and Torres Strait Islander community so lived experiences of out-of-home care provide context for the data in the report.

QUEENSLAND

Provided by the Department of Child Safety, Youth and Women

Our Way Strategy

- In May 2020, the Queensland Government and Family Matters Queensland released *Changing Tracks 2020-2022*. Changing Tracks reasserts the partnership articulated in the *Our Way Strategy 2017-2037* between Family Matters Queensland and the Queensland Government to work together to eliminate the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system by 2037.
- Based on the Family Matters building blocks, *Changing Tracks* focuses on the changes needed to deliver the systems and policy settings required for change across the child protection system to ensure Aboriginal and Torres Strait Islander children and young people grow up safe, loved and cared for in family, community and culture.

Queensland's Framework for Action – Reshaping our approach to Aboriginal and Torres Strait Islander domestic and family violence

- The Queensland Government has committed to a new way of working with Aboriginal and Torres Strait Islander people, families and communities in the spirit of reconciliation to address the causes, prevalence and impacts of domestic and family violence.

Aboriginal and Torres Strait Islander Family Support

- The Queensland Government celebrates the improved outcomes for children and families accessing the community-controlled Aboriginal and Torres Strait Islander Family Wellbeing Services. Enhancement to these services in 2019-20 has delivered initiatives with a specific focus on young people at risk of offending and domestic and family violence.
- The Family Participation Program provides a culturally safe way for Aboriginal and Torres Strait Islander parents, families and children to participate in child protection decisions. The program facilitates Aboriginal and Torres Strait Islander family-led decision-making and supports the embedding of the Aboriginal and Torres Strait Islander Child Placement Principle throughout the child protection process.

Kinship care

- In close collaboration with the Queensland Aboriginal Torres Strait Islander Child Protection Peak (QATSICPP), a transformational approach to Aboriginal and Torres Strait Islander Kinship Care is planned that acknowledges the need to reduce the numbers of Aboriginal and Torres Strait Islander children entering and remaining in statutory care and the limitations of the current system and existing practices and processes for support of various kinship care arrangements, both formal and informal.
- QATSICPP have developed a draft Family Caring for Family Model and recommendations to realise a new approach to Kinship Care of Aboriginal and Torres Strait Islander children and young people in Queensland; with further discussion to occur with the department and other key stakeholders on the next steps.
- Two projects are underway in South East Queensland (Sunshine Coast Safe Care and Connection project and the Brisbane Aboriginal and Torres Strait Islander Models of Care Trial) aimed at reducing the number of Aboriginal and Torres Strait Islander children entering and/or remaining in foster care, and ensuring the support they receive when they are in care keeps them connected to family, community and culture.
- A key focus area for DCSYW is Finding Kin to support children and young people requiring out-of-home care. In line with this, DCSYW is using an outcomes-based payment system to reimburse family-based care services who find suitable kin. Nine participating agencies will receive a one-off payment for the identification and successful placement of children and young people in accordance with approved terms and conditions. A second payment is then made once the placement is stabilised. All placements are subject to the full safeguarding conditions as any other approved Kin Carer placement.

NEW SOUTH WALES

Provided by the Department of Communities and Justice

There has been a 35% reduction in Aboriginal children entering out-of-home care in New South Wales since 2015-16. A significant amount of additional information has been provided about the wide range and large number of legislative, policy, program, process and practice responses at the Department of Communities and Justice (DCJ) that are focused on delivering better outcomes for Aboriginal children and families. These are identified under the five core elements of the Child Placement Principle (prevention, partnership, placement, participation and connection). The Department of Communities and Justice initiatives are responding in each of these areas.

Legislation

Changes to the NSW Children and Young People (Care and) Protection Act 1998 incorporated enhancements to Alternative Dispute resolution, restoration, Guardianship and contact order provisions.

Aboriginal Cultural Capability Framework and Connecting with Aboriginal Communities training

The Aboriginal Cultural Capability Framework was developed in partnership with over 100 stakeholders covering ACCOs, Aboriginal service providers and advocacy services, community elders, peak bodies, other jurisdictions and Aboriginal staff in FACS across the districts. The principle of engaging Aboriginal stakeholders as partners in genuine co-design meant developing solutions offered by Aboriginal people themselves.

Family is Culture

The NSW Government has carefully considered the recommendations made in the *Family is Culture* report and in responding has reaffirmed the commitment to building a child protection system that is more responsive to the needs of Aboriginal children, families and communities. In responding, DCJ is:

- providing evidence-based supports to help keep families together, with more than 5,000 Aboriginal children and young people supported last year. Half of all places in the newest of these programs are available for Aboriginal families
- implementing the Aboriginal Case Management Policy developed by AbSec in consultation with local Aboriginal communities. The policy guides DCJ caseworkers to use Aboriginal community-controlled mechanisms and Aboriginal family-led decision-making and to work with Aboriginal advocates and facilitators
- redesigning training for new child protection caseworkers including how to work better with Aboriginal families, a module developed in partnership with AbSec

- funding nine Aboriginal Child and Family Centres to provide quality wrap-around services for Aboriginal children, families and communities
- supporting Aboriginal-led, evidence-based programs that are embedded in local communities such as the Nabu Demonstration Project and ID Know Yourself which provides mentoring and intensive support to Aboriginal children, young people and families.

Aboriginal Outcomes Strategy

An overarching strategy intended to assist DCJ to focus on issues including over-representation. The Aboriginal Outcomes Strategy is being reviewed (at the mid-point of its proposed lifespan).

Aboriginal Impact Statement

A formal requirement where reforms, policies, plans and programs are going to have an impact on Aboriginal children, families and communities. It requires teams to consult with Aboriginal outcomes teams to apply an Aboriginal cultural lens to their design.

NSW Practice Framework

Five evidence-informed principles: The principles – culture, language, relationships, critique, ethics and values – are at the heart of the Framework. They connect practitioners to their work with families and invite them to attend to power, social justice, culture and privilege in all interactions. The culture principle specifically supports practitioners in understanding that culture is ever-present.

Caseworker Development Program Review

The OSP has redeveloped the content for the Casework Development Course. As part of this re-write the OSP consulted and worked with a number of internal and external Aboriginal stakeholders. This includes AbSec, the Stolen Generations and GMAR NSW. A major contribution to this process, including commentary and change in all modules has been provided by Aboriginal Outcome Child and Family in DCJ.

The Department of Communities and Justice also provided information regarding the following initiatives, which is available from the Family Matters website: Caseworker Practice Mandate Review; Targeted Early Interventions Initiatives; Aboriginal Case Management Program; Workforce Development Strategy; Nabu; MST-CAN and FFT-CW; Permanency Support Program; Family Preservation and Prevention Services; Housing and Homelessness Programs; Partnership with AbSec; Office of the Senior Practitioner – Practice; Family Group Conferencing; and Aboriginal Mentoring Program.

"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% each year, the Closing the Gap target to reduce over-representation by 45% by 2031 can be met"



NORTHERN TERRITORY

Provided by Territory Families

Safe, Thriving and Connected: Generational Change for Children and Families 2018–2023 drives whole-of-government action to improve outcomes for vulnerable children and families in the Northern Territory. Through a series of inter linked reforms to improve the child protection and youth justice systems, and provide early support for children and families, the NT Government has been shifting to a more participatory approach with Aboriginal families, communities and organisations. Addressing the over-representation of Aboriginal children in both systems is a commitment embedded in the reforms of recent years.

Building Block 1: Universal and targeted services

Aboriginal Community Controlled Child and Family Centres are a key government strategy to improve service coordination and access to targeted support in communities across the Northern Territory. New centres have opened in Katherine and Tennant Creek, with community-led plans underway in Kalkarindji, Wadeye, East Arnhem, Alice Springs and Darwin's northern suburbs. Parallel to the establishment of the new centres, the NT Government has been working with communities to identify and fund local priority initiatives for families through a Child and Family Community Fund linked to the centres. The Fund meets the needs and aspirations of the local community who determine how best to target investment for families.

Territory Families continues to expand its remote service delivery footprint and respond to the place-based needs of communities. Regional offices have moved to form teams based on location catchments to promote consistency, trust and cultural knowledge, and build stronger ties with particular communities. In early 2020, Territory Families secured \$19.08 million of Commonwealth funding to support the continued delivery of Remote Family Support Services and Women's Safe Houses to support families before, during and after a crisis. These place-based services provide an integrated domestic, family and sexual violence, child protection and family support response that is predominantly provided by local Aboriginal teams.

[The full response also provides information on the Safe, Protected and Free from Violence Prevention Grants]

Building Block 2: Participation, control and self-determination

Local Decision Making (LDM) is an NT Government commitment to transfer government service delivery to Aboriginal territorians and organisations over the next 10 years. Territory Families is working in line with the LDM principles across all portfolios, with the Aboriginal Carers Growing Up Aboriginal Children program a particularly relevant example. The grants fund Aboriginal organisations to find, recruit, assess, establish placements and provide ongoing support to carers.

Territory Families released a second round of grant funding in August 2019, with six funding partnerships with Aboriginal controlled organisations now established. The Aboriginal Carer Grants program continues to be a

key out-of-home care reform and provides a model for other service transitions to community control, such as the phasing out of purchased home-based care. In July 2019, Territory Families implemented the Signs of Safety practice framework that marks a major shift in the child protection approach. Based on family decision-making principles, Signs of Safety brings the whole family together with service providers and child protection staff to discuss safety and protection concerns and develop a plan of agreed actions. Feedback from the field is that the approach improves assessment and safety planning processes, fosters stronger family support networks and supports children remaining in the care of family.

[The full response also provides information on the Mikan Child Protection Reference Group]

Building Block 3: Culturally safe and responsive systems

Territory Families has made significant advancements in supporting culturally competent service delivery and has increased its service delivery partnerships with Aboriginal organisations from less than \$1 million in 2016 to more than \$11 million in 2019. When service delivery is not through an Aboriginal organisation, strong emphasis is given to cultural competency in the service specifications.

In October 2019, the Aboriginal Cultural Security Advisory Committee was established to bring an Aboriginal perspective to the strategic direction and objectives of Territory Families, and to guide and monitor the implementation of the Aboriginal Cultural Security Framework. The Committee is made up of 20 staff members who reflect the agency's functional and organisational groupings and are positioned to drive transformational change through all business areas. Aboriginal practice leaders continue to provide case consultation at key points to provide a cultural lens, redress systemic discrimination and continually build cultural competence among practitioners.

[The full response also provides information on Aboriginal employment and workforce development and on amendments to the Care and Protection of Children Act (2017)]

Building Block 4: Accountability

As reported in 2019, the Children and Families Tripartite Forum provides a forum for high-level coordination, strategic advice and government accountability, and includes representatives from the Northern Territory and Australian governments, Aboriginal peak organisations, the North Australian Aboriginal Justice Agency and the NT Council of Social Services. In May 2020, the Tripartite Forum released a Communique in response to the Productivity Commission Inquiry into Expenditure on Children in the NT confirming support for the recommendations and agreement in principle on a 10-Year Generational Strategy and a Project Scope to develop a Coordinated Funding Framework Agreement.

[The full response also provides information on The NT Government's Child and Youth Development Research Partnership]

SOUTH AUSTRALIA

Provided by the Department for Child Protection

South Australia is committed to implementing active efforts, across government and in partnership with Aboriginal communities, to reduce the over-representation of Aboriginal children and young people in the child protection system and embed Family Matters principles. Reflecting this commitment, in 2019-20 the SA Government:

- released *Safe and Well: supporting families, protecting children* (December 2019), a new whole-of-government framework to better support vulnerable families, protect children from harm and invest in their future. Importantly, Safe and Well commits the SA Government to shifting the way it works with Aboriginal children, families and communities to reduce overrepresentation in all parts of the system and provide culturally safe services. Implementation of Safe and Well is guided by an interagency subcommittee established to lead activity, underpinned by Family Matters principles, to improve outcomes for Aboriginal children and families.
- undertook a co-design process of the new Child and Family Support System to support families and parents to keep children safe at home, connected to culture and community. Co-design was informed by extensive consultations with Aboriginal leaders and communities. As part of this process, the SA Government is re-commissioning all intensive child and family support services and has committed to 30% of funding to be set aside for ACCOs.
- opened a new purpose-built unit at the Women's and Children's Hospital. The unit provides a culturally safe space for Aboriginal women, complementing the Aboriginal Family Birthing Program.
- released the *Young People Connected, Communities Protected: South Australia's Youth Justice State Plan 2020-2023*, which has a focus on addressing the overrepresentation of Aboriginal young people in the criminal justice system. The Plan recognises the importance of Aboriginal culture and ensuring Aboriginal participation across service design and delivery.
- established an interagency committee to support educational outcomes for children in care. The committee developed a 12-month action plan that includes specific actions to support the educational participation of Aboriginal children. This work supports implementation of the Aboriginal Education Strategy 2019-29.
- provided funding to support the activities of the Commissioner for Aboriginal Children and Young People and committed to embed the commissioner's role in legislation.

In addition, the Department for Child Protection (DCP) has:

- implemented its inaugural Aboriginal Action Plan 2019-20 which utilises the Child Placement Principle as a framework for action with a commitment to active implementation efforts across each of the core principles
- established an Expert Aboriginal Child Protection Advisory Committee comprised of state and national experts to support DCP to increase Aboriginal governance and inform child protection policies, programs and practice
- engaged three ACCOs to deliver a new program to support kinship carers of Aboriginal children and young people as part of efforts to transfer responsibilities for kinship support to Aboriginal providers. With an investment of \$3 million over two years, the program recognises that Aboriginal organisations are best placed to deliver culturally safe and responsive services.
- implemented a \$1.6 million Family Group Conferencing service delivered by Relationships Australia South Australia, with a strong focus on supporting Aboriginal families through its *Ngartuitya* (Kurna word meaning 'for the children') program
- following consultation with Aboriginal communities, announced that the government will not pursue adoption for Aboriginal children, confirming that the Child Placement Principle will continue to provide the framework for permanency planning
- increased the percentage of Aboriginal children in care with a completed Aboriginal Cultural Identity Support Tool to 56.5% as at 30 June 2020 (from 20.2%)
- increased spending with Aboriginal organisations to 5.7% of the department's total expenditure as at December 2019, and released the DCP Aboriginal Procurement Policy setting future targets (6% by 2020-21 and 7% by 2021-22)
- increased Aboriginal employment to 5.2% of the department's workforce as at May 2020, an increase from 4.8% in May 2019 (driven by implementation of the DCP Aboriginal Employment Strategy 2019-22)
- continued to provide funding and support to the Family Matters SA Working Group and Reconciliation South Australia.

TASMANIA

Provided by the Department of Communities

The Tasmanian Government shares the Family Matters commitment to eliminating the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2040. The following initiatives aim to improve outcomes for Aboriginal and Torres Strait Islander children in out-of-home care in Tasmania.

- Three Aboriginal liaison positions have been created as part of the redesign of the Child Safety system. These officers have been engaged by Baptistcare and Mission Australia in the Strong Families, Safe Kids Advice and Referral Service and are regionally located to better support and work more closely with the Aboriginal community. A key function of these positions is to facilitate increased Aboriginal participation in Child Safety Service (CSS) decision-making.
- The Children, Youth and Families (CYF) partnership with the Tasmanian Aboriginal Centre (TAC) 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. In 2019, the IFES program was externally evaluated. The evaluation showed positive outcomes for families with almost 70% of families who completed the program continuing to care for their children. This initiative has provided a common ground for building relationships and sharing responsibility between services.
- A concentrated focus to improve the identification of Aboriginal and Torres Strait Islander children involved with the CSS. This has resulted in a significant decrease from 30% of children and young people for whom Aboriginal and Torres Strait Islander status is *unknown* to 2%. This will support and enable targeting of culturally responsive practices.
- The redevelopment of the CYF Beginning Practice program for new workers has been completed with the addition of new online and face-to-face training modules. This new program embeds the Child Safety Practice Framework practice elements including culturally responsive practice into the learning program. Developing an understanding of the Child Placement Principle and how to apply the principle in practice is one of core objectives of the cultural competency module.
- CYF has also partnered with the Tasmanian Aboriginal Centre to deliver more in-depth cultural training to CSS staff in 2020.
- The Tasmanian Child Advocate, together with the support of the CREATE Foundation, has developed Youth Change Makers (YCM) with the first forums held in October/November 2019. YCM is a forum for young people with a care experience aged 12-25 to contribute their views and wisdom to policy and practice reform in the CSS. It is expected that this will become an embedded mechanism to ensure ongoing consultation with young people in system co-design into the future. Face-to-face YCM meetings are held quarterly in each region of Tasmania with each region having up to 15 young people involved including at least one Aboriginal or Torres Strait Islander member. The focus of the group is the safety and connection that will be created over time by having a stable and consistent gathering of young people.
- A draft Stability Framework has been developed for the CSS to provide guidance to staff when working with children and young people in the child safety system. Two rounds of Consultation occurred with stakeholders including Aboriginal organisations to develop the Framework. The Framework identifies the importance of ensuring Aboriginal and Torres Strait Islander children are supported to have long lasting connections to family community, culture and Country. The Framework will be released in 2020.

VICTORIA

Provided by the Department of Health and Human Services

Past policies have greatly influenced the health and wellbeing of Aboriginal people, and, in many ways, have failed to adequately provide for their cultural needs. To address these ongoing impacts, the Victorian Government is committed to self-determination and self-management for Aboriginal people. This commitment is progressed through the development and delivery of policies that bring forth the Aboriginal voice and support within ACCOs in the child and family welfare field. Victoria's focus has been to reduce the over-representation of Aboriginal children and young people in child protection and care and enacting these policies.

Aboriginal Children in Aboriginal Care (ACAC) and Transitioning Aboriginal Children (TAC) to ACCOs are two key initiatives, first of their kind in Australia, that go towards achieving this commitment. ACAC and TAC collectively aim to:

- maintain Aboriginal children's cultural identity and promote connection to family, community and Country
- support Aboriginal children to return home to parents or extended families where it is safe to do so, or support the identification of culturally safe alternative care
- achieve self-determination by handing decision-making and case management for vulnerable Aboriginal children from the Department of Health and Human Services (the department) to the relevant ACCO
- improve the support and decision-making for Aboriginal children who have been placed on Children's Court protection orders.

The department is currently working in partnership with Njernda Aboriginal Corporation and Ballarat and District Aboriginal Cooperative to establish ACAC programs at these ACCOs. Additional funding has provided for expansion of the Victorian Aboriginal Child Care Agency's (VACCA) Nugee ACAC program to three teams; and Bendigo and District Aboriginal Cooperative's Mutjang Bupuwingarak Mukman ACAC program to two teams.

An evaluation of ACAC and TAC is currently underway. Interim findings from the evaluation are very positive regarding the potential to make a substantial difference in the over-representation of Aboriginal children in care. These include:

- ACAC and kinship component of TAC are contributing to positive outcomes and cultural empowerment for children, families and communities.
- As at June 2019, 45% of Aboriginal children (708 children) on contractible orders were case managed by ACCOs either through ACAC or TAC.

- Since 2016 the number of children contracted to an ACCO has grown by 250%.
- ACAC and TAC are contributing to higher reunification rates of children with their families.

The Victorian Government's *Roadmap for Reform Strong Families, Safe Children* (the Roadmap) agenda will transform the child and family service system through reform initiatives to improve the quality and safety of community services delivered, funded and regulated by the Department of Health and Human Services (DHHS). The Roadmap is a blueprint for reform of the child and family system towards earlier intervention and prevention, reducing child vulnerability, neglect and abuse, and supporting children and young people to reach their full potential. It prioritises Aboriginal self-determination, integrating services and community networks, and shifting culture and practice to drive better outcomes.

Key reforms include:

- *Roadmap for Reform, strong families, safe children* – self-determination principle
- *Wungurilwil Gagapduir: Aboriginal Children and Families Agreement* (overseen by the Aboriginal Children's Forum)
- *Korin Korin Balit-Djak Aboriginal Health, Wellbeing and Safety Strategic Plan*
- *Beyond Good Intentions Statement*.

WESTERN AUSTRALIA

Provided by the Department of Communities

The Western Australian Government is committed to working with Aboriginal people for better outcomes and is developing a whole-of-government Aboriginal Empowerment Strategy to make this commitment a reality. The strategy will be long-term, high-level, and built around Aboriginal people's views, priorities, voices, and aspirations.

The Aboriginal Advisory Panel has provided cultural expert advice to the Minister for Child Protection; Women's Interests; Prevention of Family and Domestic Violence; Community Services on the Children and Community Services Amendment Bill 2019, the Aboriginal Family Safety Strategy, investment in Aboriginal community-controlled organisations and child protection reform.

As outlined below, the Department of Communities (Communities) is undertaking a number of initiatives to improve adherence to the five elements of the Child Placement Principle: prevention, participation, partnership, placement and connection.

A priority for communities is improving the agency's cultural competency through:

- the *Aboriginal Inclusion and Engagement Strategy*, which aims to promote inclusivity and connectedness through enhancing Aboriginal cultural engagement and awareness
- the *Aboriginal Cultural Capability Reform Program*, which will lead the development of a culturally competent organisation that recognises and appreciates Aboriginal values and traditions and understands how culture influences behaviours, interpretations and evaluations of behaviours.

Communities, in partnership with the Aboriginal Cultural Council, has commenced stakeholder engagement to inform the development of a 10-year Roadmap to address the unacceptably high number of Aboriginal children in care. Communities established the Aboriginal Cultural Council in October 2019 to provide cultural advice on a range of matters. It works closely with the Leadership Team and will provide a long-term vision and actions to reduce the rate of Aboriginal children and families in contact with the child protection system, and to improve their safety and wellbeing outcomes.

In 2019, the Children and Community Services Amendment Bill 2019 (the Bill) was tabled in Parliament. On 25 June 2020, it was referred to the Standing Committee on Legislation who tabled the report in the Legislative Council on 10 September 2020.

The amendments in the Bill seek to improve the outcomes for Aboriginal children in care by building stronger connections to family, culture, community and Country, and promote greater transparency and accountability. New requirements include the following:

- Provision of cultural support plans in written proposals to the Children's Court.
- The Children's Court must consider a report from certain Aboriginal agencies or persons about whether the Protection Order (Special Guardianship) should be made for an Aboriginal child with a non-Aboriginal carer(s).
- In addition to family and Aboriginal staff, an approved Aboriginal Representative Organisation will be consulted prior to making placement decisions and in the development and review of cultural support plans (Children and Community Services Amendment Bill 2019 WA).

In August 2020, the Minister for Child Protection announced funding of \$715,000 for two years to pilot Aboriginal family-led decision-making. The trial will empower Aboriginal families to make decisions about their children in a culturally safe way. The pilot will be led and co-designed by Aboriginal people and will complement changes to the *Children and Community Services Act 2004*.

Planning and consultations are underway to inform the establishment of a Specialist Child Protection Unit in Communities. Its key role will be to strengthen Communities internal child protection expertise and professional practice to improve stewardship of the child protection system and better support children in care, their families and child protection workers.

The Aboriginal Family Safety Strategy is being developed to address the disproportionate impact of family violence on Aboriginal women, children, families and communities. The strategy will build on outcomes of the Aboriginal Family Safety Summit, which brought together Aboriginal leaders and experts to discuss the dedicated approach to Aboriginal family safety.

Details of the *Building Safe and Strong Families: Earlier Intervention and Family Support Strategy* was provided for The Family Matters Report 2019. Work in this important area and out-of-home care reform is continuing.

A revised Aboriginal Community Controlled Organisations (ACCO) Strategy and Implementation Plan is currently under development through a co-design process inclusive of ACCOs, Department of Communities divisions and other government agencies. It is anticipated that the strategy will be ready for implementation in early 2021. The ACCO strategy will work to empower and promote a strong and driven ACCO sector, by creating an equitable system that delivers culturally secure outcomes.

Please note that within Western Australia, the term Aboriginal is used in preference to Aboriginal and Torres Strait Islander, in recognition that Aboriginal people are the original inhabitants of Western Australia. Use of the term Aboriginal above refers to both Aboriginal and Torres Strait Islander peoples.

NATIONAL INDIGENOUS AUSTRALIANS AGENCY

The National Indigenous Australians Agency (NIAA) was established on 1 July 2019 to lead and coordinate Commonwealth policy development, program design and implementation and service delivery for Aboriginal and Torres Strait Islander peoples.

THE INDIGENOUS ADVANCEMENT STRATEGY (IAS)

In the 2019-20 Budget, the Australian Government allocated \$5.2 billion to the Indigenous Advancement Strategy (IAS), over four years to 2022-23.

The IAS 1.2 Children and Schooling program provides around \$230 million each year to support families to give children a good start in life, through improved early childhood development; school attendance and achievement; and successful transition to further education and work. Many of the activities funded under this program take a holistic approach to supporting families and communities to engage strongly in education. These assist with building strong wellbeing and ensure that education is able to be utilised as a protective factor.

The IAS 1.3 Safety and Wellbeing program provides around \$260 million each year to support communities to be safe, prevent and change engagement in offending and anti-social behaviours, reduce violence (including family violence), address alcohol and substance misuse, and support the social and emotional wellbeing of Indigenous Australians.

The Australian Government is also investing an extra \$23 million to enhance the delivery of critical social support programs such as social and emotional wellbeing projects including family support, women's shelters, family violence prevention and youth engagement and diversion programs during the COVID-19 Pandemic.

CLOSING THE GAP

For the first time, the new *National Agreement on Closing the Gap* has been developed in genuine partnership with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations through the Closing the Gap Partnership. The new *National Agreement on Closing the Gap* features ambitious new targets and Priority Reforms to change the way governments work, acknowledging that Indigenous Australians must determine, drive and own the desired outcomes, alongside governments.

NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER EARLY CHILDHOOD STRATEGY

In February 2020, the Prime Minister announced the development of a National Indigenous Early Childhood Strategy. The Strategy's focus will be on Aboriginal and Torres Strait Islander children aged 0-5 years old and supporting their families, so every Indigenous child grows up safe, resilient and ready to thrive throughout life. The Strategy is expected to provide a more coordinated policy and investment approach across the Commonwealth and with the states and territories. The Strategy will be developed with Aboriginal and Torres Strait Islander Australians to deliver shared outcomes. The NIAA has partnered with SNAICC to support the strategy development, consultation, and implementation co-design.

FAMILY VIOLENCE PREVENTION

The NIAA delivers funding for a range of legal assistance service providers, including the Family Violence Prevention Legal Services, with a focus on ensuring Aboriginal and Torres Strait Islander women and their families are able to access culturally appropriate, family centric and evidence-based legal advice, support, and Community Legal Education.

The Australian Government has committed \$13.5 million for two Indigenous specific measures under the Fourth Action Plan of the *National Plan to Reduce Violence against Women and their Children [2010-2022]* to provide greater support for Aboriginal and Torres Strait Islander women and children and offer practical intervention programs to work with Aboriginal and Torres Strait Islander young people and adults at risk of experiencing, or using violence.

THE COMMONWEALTH DEPARTMENT OF SOCIAL SERVICES

The Australian Government places the safety of our nation's children as its highest priority. Statutory child protection is a state and territory responsibility, but all Australian governments work together through the *National Framework for Protecting Australia's Children 2009-2020* (National Framework) to ensure Australia's children and young people receive the support that they need to be safe, belong in a loving family and to reach their full potential.

Currently, the Australian Government invests more than \$225 million annually in 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.

NATIONAL FRAMEWORK – FOURTH ACTION PLAN

The Fourth Action Plan under the National Framework (launched on 30 January 2019) has a strong focus on early intervention and improved outcomes for Aboriginal and Torres Strait Islander children and their families. The four key priorities of the Fourth Action Plan are:

- improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with, child protection systems
- improving prevention and early intervention through joint service planning and investment
- improving outcomes for children in out-of-home care by enhancing placement stability through reunification and other permanent care options
- improving organisations' and governments' ability to keep children and young people safe from abuse.

This focus includes ensuring that all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle – prevention, partnership, placement, participation and connection – are upheld.

WORK WITH ABORIGINAL COMMUNITY-CONTROLLED ORGANISATIONS (ACCOS)

The Department of Social Services (the department) has a long-standing relationship with SNAICC – National Voice for our Children and has provided funding for various initiatives, including for:

- the development of a Guide to Support Implementation of the Child Placement Principle
- delivery of workshops to support children and family sector practitioners and policy makers to develop strategies to improve their implementation of the Child Placement Principle

- a desktop review of key legislation, policies and practice in place to implement the Child Placement Principle
- documenting emerging best practice and successful models in early intervention and prevention for Aboriginal and Torres Strait Islander families.

The department also funds SNAICC to provide secretariat services to the Aboriginal and Torres Strait Islander Working Group under the National Framework, which provides expertise on issues relating to children, young people and their families.

The Fourth Action Plan also includes actions to support ACCOs and Aboriginal and Torres Strait Islander managed services to deliver family support and child protection services.

TO FOLLOW THE NATIONAL FRAMEWORK

The Australian Government is working to develop what will follow the National Framework.

At their 20 March 2020 meeting, Community Services Ministers agreed that addressing the overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems, and ensuring co-design and engagement with Indigenous communities, will be key principles underpinning the development of what will follow the National Framework.

OTHER REFORMS

The department is also working to implement other recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, including establishing a National Centre for the Prevention of Child Sexual Abuse, and the Royal Commission into the Protection and Detention of Children in the Northern Territory. The latter includes working with community sector members, including a number of ACCOs, through the Children and Families Tripartite Forum.



PART 2

STRUCTURAL DRIVERS THAT CONTRIBUTE TO ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN ENCOUNTERING THE CHILD PROTECTION SYSTEM

Aboriginal and Torres Strait Islander families and communities have successfully provided love and care for their children, growing them up strong and safe in their cultural traditions for thousands of generations.

Despite the adversity of post-colonisation history for Aboriginal and Torres Strait Islander communities, these traditions have endured and remain the dominant paradigm in community and cultural care for our children. The cultural strengths of Aboriginal and Torres Strait Islander child-rearing practices contribute to creating safe and nurturing environments for children – indeed, the literature has recognised the value of Indigenous kin and community systems that provide holistic care for children. However, despite these strengths and the committed effort of the vast majority of Aboriginal and Torres Strait Islander people to care for children, our communities find themselves under a level of strain that is impacting negatively on children, requiring a whole of community and society response to redress the issues (SNAICC 2015).

Part 2 of this report focuses on the structural drivers that contribute to children and families encountering the child protection system. For Aboriginal and Torres Strait Islander children, adverse experiences in childhood are often shaped through their connection to adults and communities that are dealing with the negative impacts of history, including dispossession and cultural identity loss, as well as directly through exposure to violence, abuse and neglect that occur more commonly in communities experiencing poverty and disadvantage (Atkinson 2013).

Aboriginal and Torres Strait Islander people experience racism in systemic and institutional ways. A survey conducted by Reconciliation Australia in 2016 found that 46% of Aboriginal and Torres Strait Islander respondents reported experiencing prejudice in the previous six months. 37% reported experiencing racial prejudice in the form of verbal abuse, and 17% reported physical violence (Reconciliation Australia 2016). The child protection system itself is rife with systemic racism and first-hand examples are provided in this section of the report to demonstrate the negative impact that has on children and families.

Poverty and socioeconomic disadvantage are described in this section as structural drivers of child protection intervention. Evidence and data are provided to demonstrate that many Aboriginal and Torres Strait Islander families do not have access to affordable or safe housing, stifling their ability to provide a safe nurturing environment for children to thrive in their early and developmental years.

Finally, the impact of complex factors such as exposure to family violence, drug and alcohol-related issues and chronic undiagnosed and untreated mental health issues are highlighted as additional and interrelated structural drivers that lead to Aboriginal and Torres Strait Islander children and families encountering the child protection system.

2.1 INTERGENERATIONAL TRAUMA

The concept of intergenerational trauma and its impact is widely acknowledged and accepted in evidence around the world. It can be defined as historical trauma and unresolved grief passed over generations through different channels, resulting in poorer physical, psychological and social outcomes (Roy 2019). There is clear evidence that if not healed, trauma negatively affects neurological development which can be passed on to future generations (Van der Kolk 2014).

One of the most significant and traumatic areas of government intervention has been the removal of Aboriginal and Torres Strait Islander children from their families. A report commissioned by the Australian Institute of Health and Welfare (AIHW) and The Healing Foundation, *Aboriginal and Torres Strait Islander Stolen Generations and descendants*, established a clear link between child removal and long-term challenges for individuals. The report found that in 2014-15 there were an estimated 114,800 descendants of Stolen Generations nationally, equating to 33% of the adult national Aboriginal and Torres Strait Islander population (one in three people) (AIHW 2018a).

The report highlighted that compared to other Aboriginal and Torres Strait Islander people that were not stolen, Stolen Generation descendants were: two times more likely to have experienced discrimination in the preceding 12 months, 1.9 times more likely to have experienced violence, 1.6 times more likely to be in poor health, 1.5 times more likely to have been arrested by police in the past five years, 1.4 times more likely to have low levels of trust in the general community, and 1.4 times more likely to report poor mental health. These figures would be even worse if compared to the broader Australian population.

Building on that report, the AIHW and The Healing Foundation released further research in 2019 that examined health and wellbeing outcomes for Aboriginal and Torres Strait Islander children aged under 15 who live in households with members of the Stolen Generation. The findings confirmed those children were 4.5 times more likely to have missed school without permission in the last 12 months, 1.8 times more likely to have poor self-assessed health, and 1.6 times more likely to live in a household with cash-flow problems in the last 12 months (AIHW 2019a).

In response to intergenerational trauma, we must invest in establishing a higher standard of cultural safety, competency and accountability across all frontline human service sectors, particularly those that deal with children and families in crisis. We must ensure that service systems do not exacerbate trauma in the way that they deliver services to their clients. If left unresolved, intergenerational trauma can have a debilitating, pervasive and long-lasting impact on our future generations, leading to sustained over-representation of Aboriginal and Torres Strait Islander children in the care and protection system.

2.2 INSTITUTIONAL RACISM

A large and growing body of evidence consistently implicates racism as a key determinant of the health of Aboriginal and Torres Strait Islander peoples. Institutional racism is a clear structural driver that leads to a high rate of Aboriginal and Torres Strait Islander children and families encountering child protection and out-of-home care systems.

In 2015-16 the Australian Human Rights Commission reported that Aboriginal and Torres Strait Islander people accounted for 54% of complaints received by the Commission under the Racial Discrimination Act (Australian Human Rights Commission 2017). According to the Australian Bureau of Statistics at that time, Aboriginal and Torres Strait Islander people only accounted for approximately 3% of the Australian population.

Despite many government inquiries and Royal Commissions into systems that disproportionately impact Aboriginal and Torres Strait Islander peoples, institutional racism continues to impede children

and families in practical ways. It results in unfair and unjust outcomes, as evidenced by the gross over-representation of Aboriginal and Torres Strait Islander children in the child protection system and imprisonment and detention rates.

In 2017 the *Royal Commission into the Protection and Detention of Children in the Northern Territory* report confirmed that the commission found multiple examples of Aboriginal parents for whom English was not a first language and therefore did not understand what they must do in order for their children to be returned to them (White & Gooda 2017). ABS Census data in that same year reported that in the Northern Territory, approximately 60% of the Aboriginal population spoke an Aboriginal language at home. Despite these barriers, many children and families continue to encounter an alienating service system that they cannot effectively engage with or understand.

In 2019 the *Family is Culture* review identified racism as a key issue reported by stakeholders. The review provided an example of a caseworker, in providing evidence about the need to remove the child, stating that an Aboriginal mother was “highly under the influence of the Aboriginal community”. The same report provided an example of a caseworker denouncing a child’s Aboriginality because they were “too young to identify as Aboriginal”, despite clear evidence of their paternal father being Aboriginal (Davis 2019).

In July 2020, *National Agreement on Closing the Gap* indicated the government’s intentions to support a stronger Aboriginal community-controlled service sector to ensure that Aboriginal and Torres Strait Islander people have an opportunity to devise and implement better overall service systems. Part 4 of this Family Matters report highlights the importance of enabling self-determination and building a strong Aboriginal community-controlled service sector as key mechanisms to tackle institutional racism and to mitigate its impact.

2.3 SOCIOECONOMIC DISADVANTAGE

One way in which Aboriginal and Torres Strait Islander peoples face socioeconomic disadvantage is through disparity of income. Low income is associated with a wide range of disadvantage, including poor health, shortened life expectancy, poor education, substance abuse, reduced social participation, crime and violence (AIHW 2017).

Aboriginal and Torres Strait Islander peoples experience, on average, lower employment rates than non-Indigenous Australians for a range of reasons. These include lower levels of education and training, living in areas with fewer employment opportunities, higher levels of contact with the criminal justice system, experiences of discrimination, and lower levels of job retention (Gray, Hunter & Lohar 2012).

The AIHW found that Aboriginal and Torres Strait Islander people have higher unemployment rates than non-Indigenous Australians; they also earn lower household incomes and are more likely to rely on a government pension or allowance as their main source of income (AIHW 2017).

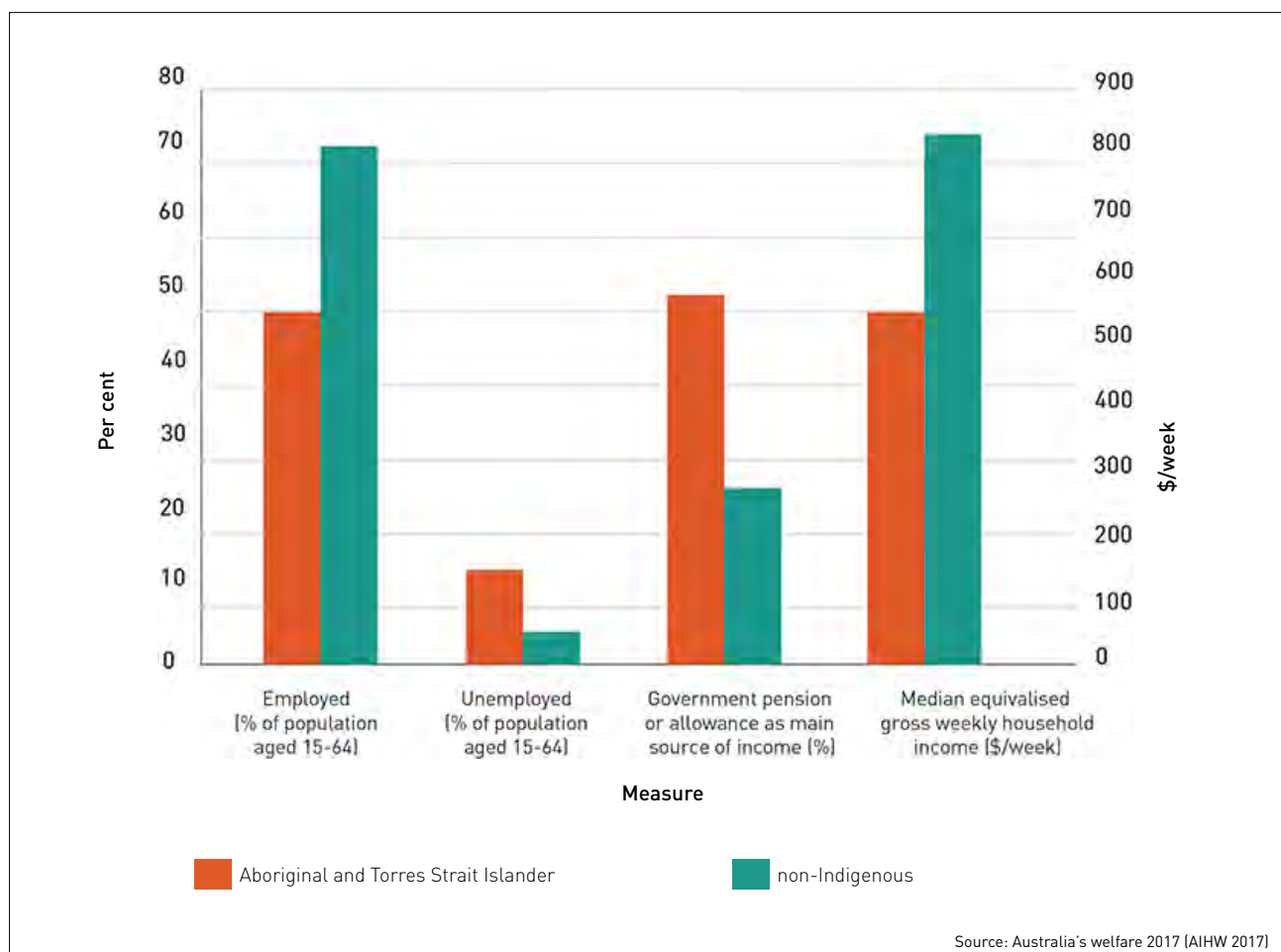
Figure 14 depicts employment rates (people aged 15-64), proportion of people with a government pension or allowance as their main source of income (aged 15 and over) and median equivalised gross weekly household income (\$ per week), by Aboriginal and Torres Strait Islander status, 2014-15.

For people aged 15 and over, the median equivalised gross weekly household income of Aboriginal and Torres Strait Islander people was lower than that for non-Indigenous people (\$556/week compared with \$831/week). The median equivalised gross weekly household income for Aboriginal and Torres Strait Islander people aged 15 and over was also lower in 'very remote' areas (\$400/week) than in major cities (\$671/week).

Based on 2016 Census data, Markham and Biddle (2018) used the modified OECD equivalence scale that defines the poverty line as half the median income of the total population. On this measure, the poverty line in 2016 was \$404 per week before housing costs. Markham and Biddle's analysis demonstrated that just under one in three (31.4%) Aboriginal and Torres Strait Islander people were living below the poverty line at that point in time.

There is a growing body of evidence demonstrating the relationship between family poverty and the risk of being subject to statutory child protection intervention (Morris et al. 2018). For Aboriginal and Torres Strait Islander communities, high rates of poverty stem from experiences of colonisation, discrimination, forced child removal, and the intergenerational trauma impacts (The Healing Foundation 2013).

FIGURE 14 Comparing employment rates, people on a government pension/allowance and median equivalised gross weekly household income for Aboriginal and Torres Strait Islander people and non-Indigenous people 2014-15



2.4 POOR ACCESS TO SAFE, AFFORDABLE AND QUALITY HOUSING

Access to safe and healthy housing environments has a substantial impact on the capacity of families to provide safe and supportive care for children. Disparities exist across a range of housing measures. Compared to non-Indigenous Australians, Aboriginal and Torres Strait Islander people are half as likely to own their own home (with or without a mortgage), 10 times more likely to live in social housing, and three times as likely to live in crowded dwellings (AIHW 2019b).

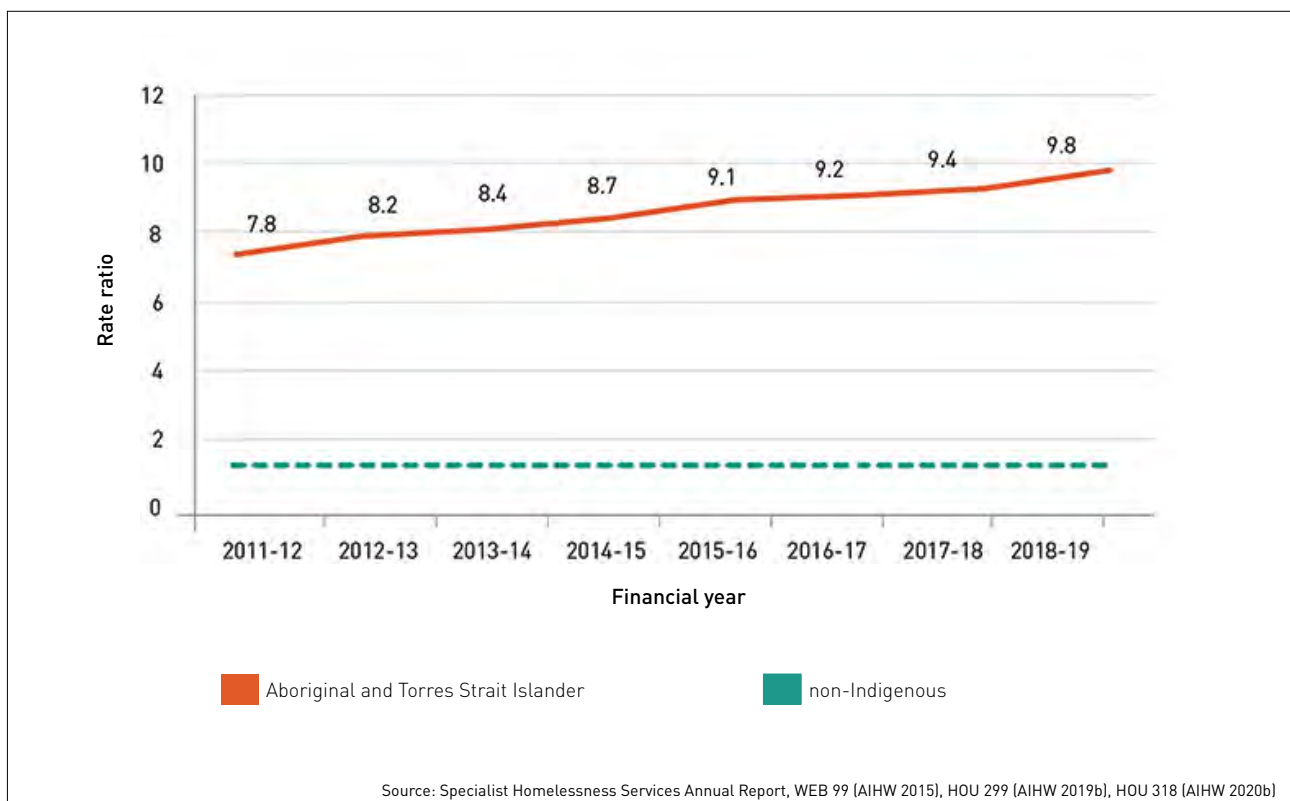
Housing quality, affordability, location and appropriateness are all important determinants of health and wellbeing. Problems with housing – for example, homelessness, mortgage and rental stress, and unstable housing tenure – are indicative of the types of vulnerability and risk that can lead to children coming to the attention of child protection authorities (AIHW 2019b). Furthermore, housing problems make it more difficult for children to be reunified with their family once they are removed.

The financial burden and insecurity associated with a lack of access to affordable housing can negatively impact the wellbeing of people and families (AIHW 2019c). Indeed, studies have demonstrated that housing insecurity places children at risk of abuse and neglect (Warren & Font 2015; Marcal 2018).

The burden of homelessness on Aboriginal and Torres Strait Islander peoples is further reflected in their usage of specialist homelessness services across Australia. In 2017-18, one in four (or 65,200) individuals who accessed specialist homelessness services identified as Aboriginal and/or Torres Strait Islander (AIHW 2019c). The true extent of Aboriginal and Torres Strait Islander people requiring assistance is likely to be substantially more profound than what these figures indicate – due to barriers and a reluctance of some communities to access much needed support.

In 2018-19, across Australia, clients accessing homelessness services were 9.8 times more likely to be Aboriginal and Torres Strait Islander, up from a rate ratio of 7.8 in 2011-12. The demand for support has steadily increased over the past decade.

FIGURE 15 Rate ratios comparing Aboriginal and Torres Strait Islander clients and non-Indigenous clients accessing specialist homelessness services in Australia from 2011 to 2019



Many remote communities have trouble accessing support due to diminished levels of support service infrastructure. The disparity between the rates of Aboriginal and Torres Strait Islander and non-Indigenous clients accessing homelessness services in remote areas of Australia continues to increase rapidly over time. In 2018-19, Aboriginal and Torres Strait Islander families were 21.2 times more likely to access specialist homelessness services, despite poor levels of service accessibility in some geographical areas.

HEAVY RELIANCE UPON SOCIAL HOUSING

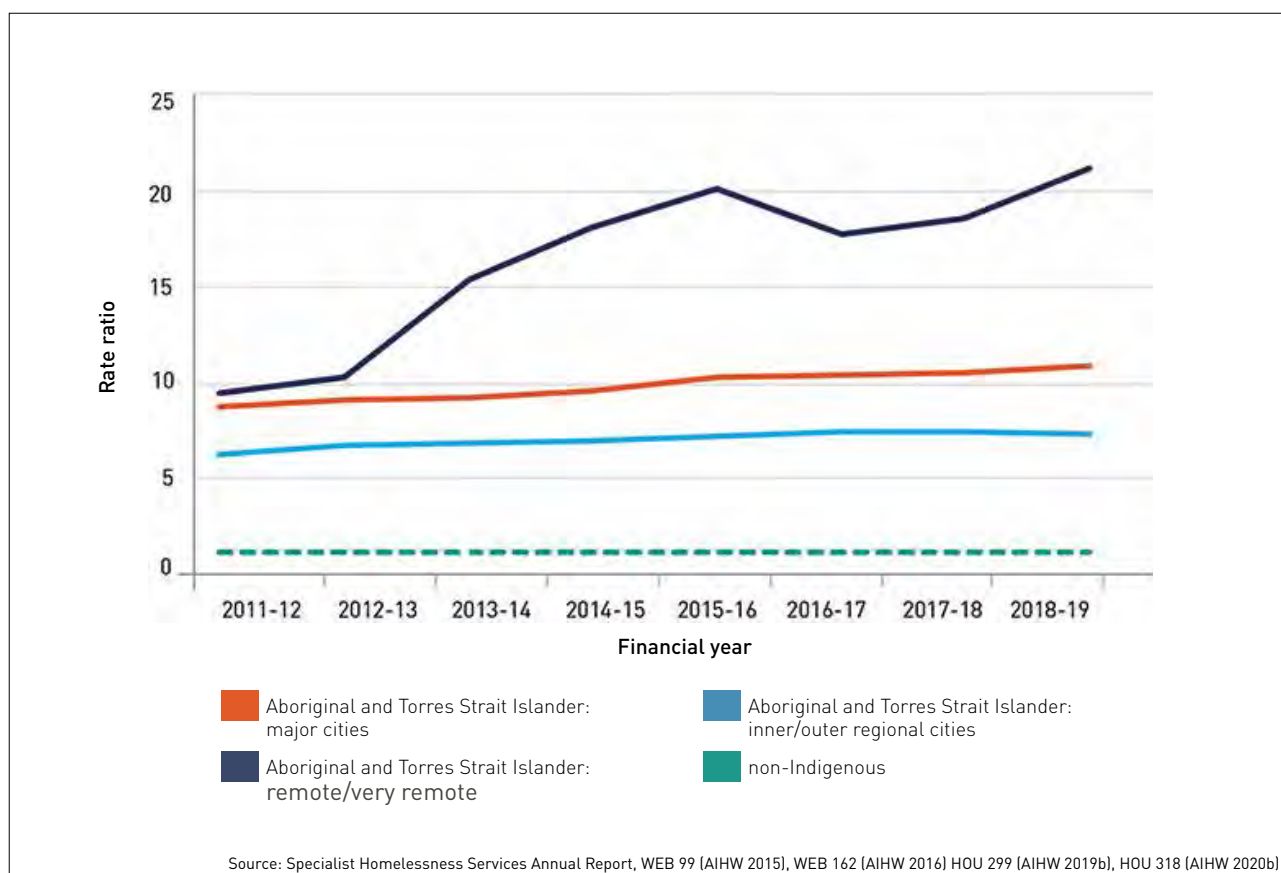
Social housing is rental housing provided by state and territory governments and community sectors. Its purpose is to assist people who are unable to access suitable accommodation in the private rental market. Social housing includes public housing, state-owned and managed Aboriginal and Torres Strait Islander housing, community housing, and Aboriginal and Torres Strait Islander community housing (AIHW 2019b). As at 30 June 2018, one in seven (14%) households in social housing included an Aboriginal and Torres Strait Islander household member (AIHW 2019c).

POOR QUALITY HOUSING

The 2014-15 National Aboriginal and Torres Strait Islander Social Survey collected information on basic types of household facilities considered important for a healthy living environment, and whether the household dwelling had major structural problems. The survey findings revealed:

- 29% of Aboriginal and/or Torres Strait Islander people were living in a dwelling with major structural problems. Most commonly, these were major cracks in walls or floors, followed by major plumbing problems
- 15% of Aboriginal and/or Torres Strait Islander people were living in a household in which at least one basic facility considered important for a healthy living environment (namely, facilities for preparing food, washing clothes, washing people, or sewerage facilities) were not available or did not work
- nearly one in five (19%) Aboriginal and/or Torres Strait Islander people were living in a house that did not meet an acceptable standard (that is, at least one basic household facility was unavailable or there were more than two major structural problems).

FIGURE 16 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous accessing specialist homelessness services by remoteness in Australia from 2011 to 2019



It is very challenging for Aboriginal and/or Torres Strait Islander families to raise healthy and vibrant children in these inferior and often unsafe living environments.

2.5 EXPOSURE TO FAMILY VIOLENCE

Family violence is characterised by patterns of abusive behaviour in an intimate relationship or other type of family relationship where one person assumes a position of power over another and causes fear. It is also known as domestic violence, family violence, or intimate partner violence.

Research shows that domestic and family violence often begins when women are pregnant or have recently given birth. Where violence was previously occurring, it often escalates in frequency and severity during pregnancy and early motherhood (Clements et al. 2011). Aboriginal and Torres Strait Islander women, women aged between 18-24 years and women with a disability are at a particularly significant risk of experiencing severe violence from their partners during pregnancy (Campo 2015; Mitra et al. 2012).

For Aboriginal and Torres Strait Islander peoples, the social, cultural, spiritual, physical and economic impact of family violence is devastating. The greatest direct impact of family violence is on Aboriginal and Torres Strait Islander women, which leads our children to be especially vulnerable to the direct and indirect impacts of family violence – causing deep and lasting harm and contributing significantly to Aboriginal and Torres Strait Islander children's over-representation in Australia's child protection systems (SNAICC et al. 2017).

It is important to recognise that family violence is understood to be significantly under-reported (Willis 2011). Due to under-reporting of family violence, it is not possible to establish the full extent or prevalence of family violence, sexual assault, and other types of violence (Phillips & Vandebroek 2014). However, available research indicates that family violence occurs at higher rates for Aboriginal and Torres Strait Islander peoples than for the non-Indigenous population. In 2015, Aboriginal and Torres Strait Islander women were 32 times more likely to be hospitalised as a result of injuries caused by family violence and twice as likely to be killed by a current or former partner (AIHW 2018b).

Many Aboriginal and Torres Strait Islander women do not report violence for many complex reasons, including but not limited to: fear of reprisals or of having children taken away; lack of confidence in police or community support; language and cultural barriers; and lack of awareness of support services (Willis 2011). Limited availability of supports for victims/survivors (predominately mothers) to safely maintain care of their children can lead to the forced separation of children from victims/survivors (SNAICC et al. 2017).

Despite higher rates, family violence is not inherently part of Aboriginal and Torres Strait Islander culture. Indeed, evidence suggests that culture is a central and key protective factor that supports family to be

free of violence, and community-led strategies can ensure culturally safe and adapted responses that address intergenerational trauma and the complexities underlying violence in each community (SNAICC et al. 2017; The Healing Foundation & White Ribbon Australia 2017).

IMPACT OF FAMILY VIOLENCE ON ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN

A Victorian report found that 88% of Aboriginal and Torres Strait Islander children in out-of-home care had experienced family violence (Commission for Children and Young People 2016). Children who witness family violence as a child are, in turn, more likely to perpetrate or be a victim of violence in adulthood (AIHW 2018b). Family violence is a major issue driving involvement with the child protection system in Australia. In 2018-19, emotional abuse, which includes exposure to family violence, was the most common type of substantiated harm for all children (AIHW 2020).

2.6 DRUG AND ALCOHOL ABUSE

Research demonstrates that parental substance misuse is one of the most significant risk factors for child abuse and neglect (Australian Institute of Family Studies 2017). Substance misuse can also present significant risks to children through conditions developed in utero, such as fetal alcohol spectrum disorders (FASD).

The lack of identification, diagnosis and provision of family support specific to FASD is being increasingly recognised as a major driver of child protection intervention and placement breakdown due to parents and carers not being equipped with the knowledge and strategies to cope with and manage child behaviours (Williams 2017). In 2018-19, Aboriginal and Torres Strait Islander people were seven times as likely to access treatment, up from 6.2 in 2015-16, as depicted in Figure 17.

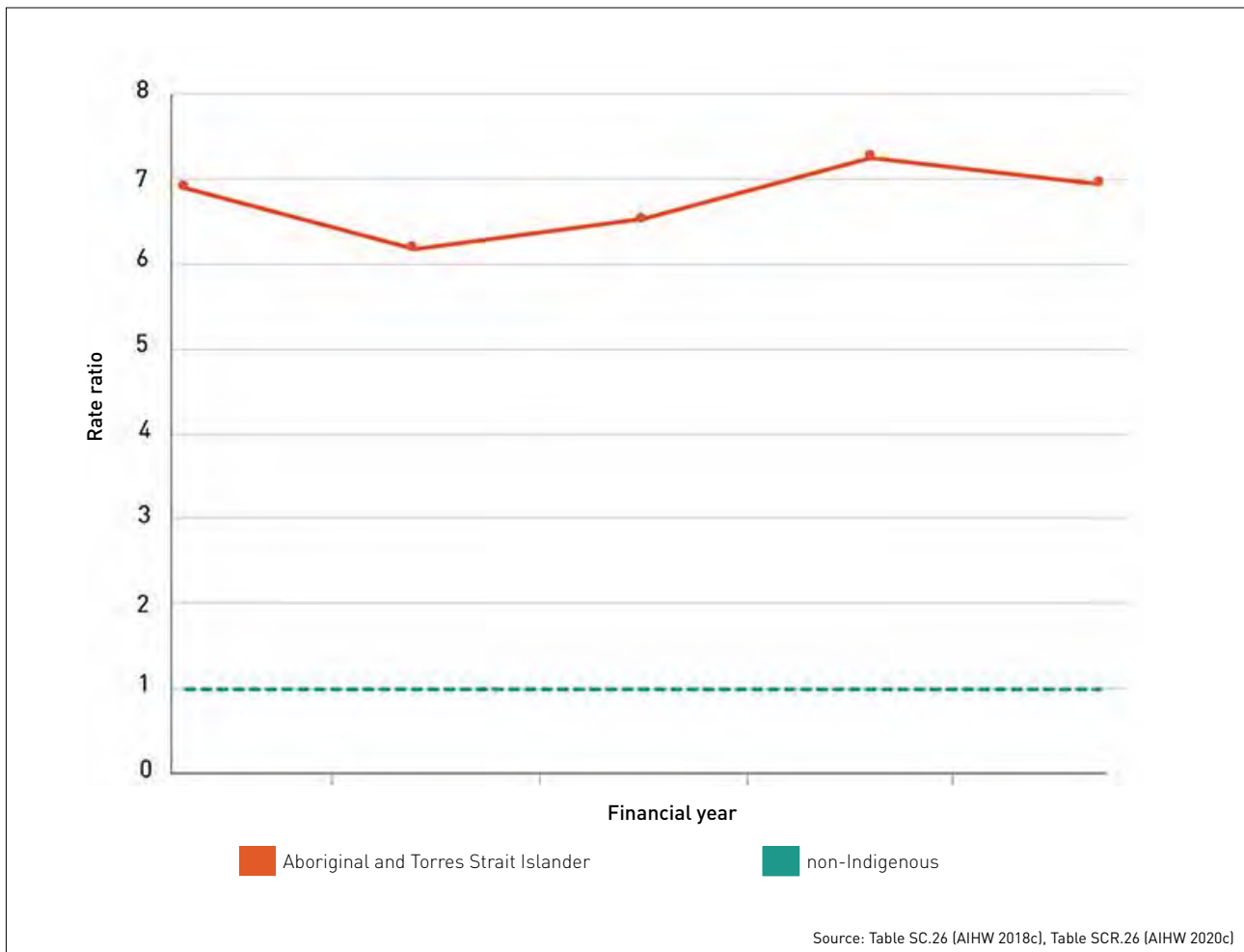
2.7 MENTAL HEALTH

It is well known that Aboriginal and Torres Strait Islander peoples experience higher rates of mental illness than non-Indigenous Australians. Factors such as loss of land, culture and spirituality, systemic issues and disadvantage are recognised as contributing to the higher risk of Aboriginal and Torres Strait Islander people with mental health issues encountering the criminal justice system (Baldry et al. 2015).

Evidence indicates that psychological distress among Aboriginal and Torres Strait Islander peoples is linked to contemporary experiences of racism and social exclusion in Australian society, as well as the ongoing impacts of intergenerational trauma and colonisation (Paradies & Cunningham 2012).

The AIHW's report on the health and welfare of Aboriginal and Torres Strait Islander peoples (2015) stated that Indigenous adults living in non-remote areas

FIGURE 17 Rate ratios of Aboriginal and Torres Strait Islander clients and non-Indigenous clients accessing alcohol and other drug treatment services



were significantly more likely to have high or very high levels of psychological distress than those in remote areas (32% and 24%, respectively).

Figure 18 demonstrates that Aboriginal and Torres Strait Islanders report high/very high levels of psychological distress at a rate of more than double the non-Indigenous population across all reported states and territories.

Analysis conducted on behalf of the Indigenous Health Performance Framework indicates that 30% of respondents to the 2014-15 National Social Survey reported that they had not accessed healthcare when they needed to in the past 12 months. Of those respondents, 32% reported reasons related to cultural safety, including embarrassment and fear (22%) and mistrust (9%) (Department of the Prime Minister and Cabinet 2017, p. 164). Despite these issues, Aboriginal and Torres Strait Islander people continue to access mental health services at a much higher rate than non-Indigenous people.

Figure 19 shows the rate ratios for Aboriginal and Torres Strait Islander and non-Indigenous people receiving clinical mental health services in 2008-09 to 2017-18. In 2017-18, as in previous years, Aboriginal and Torres Strait Islander people were over three times as likely than the non-Indigenous population to use state and territory governments' specialist public mental health services.

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



FIGURE 19 Rate ratios of Aboriginal and Torres Strait Islander clients and non-Indigenous clients accessing alcohol and other drug treatment services



ADOPTING A HEALING LENS

The Healing Foundation's submission to the Productivity Commission Inquiry into the Social and Economic Benefits of Improving Mental Health emphasised the need for increased focus and investment in healing programs to address the social and emotional wellbeing of Aboriginal and Torres Strait Islander communities as a supplement to clinical treatment.

'Healing' refers to the process by which people come to a stronger sense of self-identity and connection, and through this can address the distress that they experience, changing how they are able to interact. Healing involves a holistic and ongoing approach that is deeply rooted in culture and addresses physical, social, emotional, mental, environmental and spiritual wellbeing (The Healing Foundation 2009). Collective healing moves away from the 'treatment' of individuals to a model where "individuals develop their own skills and capacities to empower healing in themselves and their families and communities" (The Healing Foundation 2014).

In 2017, the Healing Foundation facilitated the country's first ever National Youth Healing Forum in Queensland. Young people from all over the country came together to articulate the priority issues that were impacting on them, their peers and their communities. Mental health and suicide both featured as prominent issues identified by the young participants. A headline quote from the *National Youth Healing Forum Report* read:

"We need increased focus on positive programs that keep people happy and healthy rather than only targeting them at crisis point."

(The Healing Foundation 2017)

2.8 SUPPORTING CHILDREN WITH A DISABILITY

While it is not currently possible to find out how many Aboriginal and Torres Strait Islander children in the child protection system have a disability (as this data is not recorded accurately or consistently across states and territories and is not readily available), there have been several recent reports that shed some light on the issue.

In 2016 the Victorian Children's Commission noted that 14% of the children reviewed during Taskforce 1,000 were indicated to have a known disability. Of this cohort of children, intellectual disability featured prominently, accounting for 65% of the disabilities noted (Commission for Children and Young People 2016, p. 95)

In 2017 the Royal Commission and Board of Inquiry into the Detention and Protection of Children in the Northern Territory heard that it is possible that the number of children with disabilities who are on a care or protection order is underestimated. While departmental records indicated that 13% of children in out-of-home care had some kind of either physical or intellectual disability,

Dr Howard Bath, the former Children's Commissioner for the Northern Territory, believed this figure was an underestimate, reflecting problems in data collection, and that the figure was probably more likely to be 40% (White & Gooda 2017, p. 440).

Most recently in 2019, Professor Megan Davis' review into the experience of Aboriginal children in out-of-home care in New South Wales found that there was significant data gap in respect of the identification of children with disability who encounter the child protection system. Family and Community Services (FACS) could not provide this data to the inquiry as its systems did not identify these issues within assessment tools utilised. However, analysis of FACS (Administrative) data illustrated that 18.4% of children in out-of-home care on 30 June 2016 (Aboriginal and non-Indigenous) had a disability (Davis 2019, p. 175).

So, while it is generally accepted that children with a disability are over-represented within child protection services, little research has been conducted to identify the prevalence of children with a disability within out-of-home care. Child protection authorities do not apply a uniform definition of *disability* and do not routinely capture information about a child's experience of disability within data collection frameworks (Snow, Mendes & O'Donohue 2014).

What is known is that children and young people with disability are disproportionately represented in out-of-home care and that Aboriginal and Torres Strait Islander children with complex health and developmental needs are more likely to become known and escalate through the child protection system (Davis 2019, p. 175). Without planning and engagement with Aboriginal and Torres Strait Islander communities and organisations, the systemic neglect that currently exists in addressing the disability needs of our children and families will continue.





PART 3

PRIORITIES FOR A BETTER SUPPORT SERVICE SYSTEM

Early investment in strengthening families provides long-term social and economic benefits by interrupting trajectories that lead to health problems, criminalisation, and child protection intervention.

Service engagement and availability barriers must be addressed to ensure access for Aboriginal and Torres Strait Islander families to a full range of culturally safe and acceptable universal early childhood, education, health, housing, legal and other social services, sustainably resourced in the long-term. Providing all Aboriginal and Torres Strait Islander children with the opportunity to thrive on an equal basis with others requires progressing the holistic realisation of their rights, including rights to safety, family, housing, food, health, education, culture and participation.

Under this approach, governments should take steps to ensure that quality, culturally safe services required to realise these rights are accessible and available to all Aboriginal and Torres Strait Islander families. Ensuring families and communities are equipped to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture and Country. Aboriginal and Torres Strait Islander families have unique needs for healing supports to address the impacts of intergenerational trauma that have resulted from experiences of colonisation, the Stolen Generations and other discriminatory government policies.

Part 3 of this report provides analysis of available data pertaining to priority service sectors that have been identified as the most active and critical in responding to issues impacting on a child's development, wellbeing and safety; namely, maternal child health, early childhood education and care, and intensive family support services.

Part 3 also examines government expenditure that depicts a primary investment towards the tertiary end of the child protection system, rather than any significant focus on early intervention and prevention. We need to see a shift towards increased investment in building strong, healthy and safe families in order to close the gap in Aboriginal and Torres Strait Islander over-representation in the child protection system.

This section of the report emphasises the need for all service sectors to invest in workforce development to increase their capacity to provide quality services and to enable better outcomes, especially at the front line where service providers are frequently dealing with vulnerable and marginalised clients in crisis. Many Aboriginal and Torres Strait Islander children and families report experiences of systemic racism which further exacerbate underlying and deep-seated intergenerational trauma. We need to ensure that service systems focus on the delivery of safe, culturally response and tailored support to achieve better outcomes in the long-term.

Finally, this section focuses on the importance of quality evaluation to capture outcomes, to scale up successful approaches, and to support locally-led innovative solutions. Services need to be designed in genuine partnership with Aboriginal and Torres Strait Islander communities. This is best achieved via a commitment to co-design programs and initiatives and ensuring that Aboriginal and Torres Strait Islander peoples have a strong voice in evaluating performance from an Aboriginal and Torres Strait Islander perspective and defining what a positive future looks like for their own children.

3.1 MATERNAL AND CHILD HEALTH

Inequity trajectories start early for children. Pregnancy, birth and early childhood are critical transition periods for families, especially mothers and infants, and present a time of great opportunity for healthy growth, learning and development, as well as to reduce vulnerabilities associated with child protection notifications (Holland 2015).

While most Aboriginal and Torres Strait Islander women, infants and families do well and thrive, there remains significant proportions who experience poor maternal health, perinatal and early childhood development outcomes. For expectant mothers,

experiences of disadvantage are closely linked to a range of factors that affect the healthy development of children during pregnancy and in early childhood. Key factors that negatively impact child development at this critical stage include domestic violence, psychological stress, substance misuse and poor nutrition (Gibberd et al. 2019; Moore et al. 2017).

Despite these heightened risks, women from the most disadvantaged areas, and particularly those living in rural and remote areas, are also the least likely to access critical antenatal care (ANC), particularly during the first trimester when risk of harm to the foetus is heightened and where service links and referrals are best established (Moore et al. 2017).

ANC is an important step in establishing a trusted relationship between the Aboriginal and Torres Strait Islander family and service professionals, and can be a critical pivot in the trajectory of an infant's life as it opens the door to many other services on referral – not just maternity services. Regular ANC that commences early in pregnancy has been found to have a positive effect on health outcomes for mothers and infants (Australian Health Ministers Advisory Council [AHMAC] 2012; Arabena et al. 2015).

ANC is especially important for Aboriginal and Torres Strait Islander women who are at higher risk of giving birth to pre-term and low-birthweight babies, and who have greater exposure to other risk factors and complications such as anaemia, poor nutrition, chronic illness, hypertension, diabetes, smoking, and high levels of psychosocial stressors (Clarke & Boyle 2014; AHMAC 2012).

REPORTS FOR UNBORN CHILDREN

Several risk factors experienced by Aboriginal and Torres Strait Islander women during pregnancy, including family violence and substance misuse, are also associated with a heightened risk of pre-birth notifications to child protection (Taplin 2017). Evidence indicates 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 (O'Donnell et al. 2019). The provision of early intervention supports to vulnerable families during pregnancy, including antenatal care, is a crucial opportunity to address risk factors that place them at risk of child protection involvement and prevent the removal of Aboriginal and Torres Strait Islander children at birth.

In many instances, potential harm to unborn infants is identified by health professionals. Those working in the health sector are encouraged to make prenatal reports, as this may allow for the provision of early assistance to mothers and their babies (Davis 2019). However, due to a lack of capacity in child protection services and systems, often parents are provided with little or no casework support and the report will lead to a High Risk Birth Alert. Fear of child removal at birth

may lead pregnant women to avoid health services. The consequences of this may be severe for Aboriginal and Torres Strait Islander mothers, as they are more likely to have pre-existing health conditions than non-Indigenous mothers (Davis 2019). Further, there are no data to indicate whether prenatal reporting leads to improved outcomes for the child or whether it reduces the likelihood of child removal at or shortly after birth (Davis 2019). Culturally safe health services are imperative to ensure adequate prenatal care, minimise the reporting of unborn children, and reduce the fear of child removal that may limit access to services designed to support vulnerable families.

There is also evidence to suggest mothers who have a history of child removal are at risk of inadequate or no prenatal care during subsequent pregnancies. Fear of involvement with child protection services is intensified, resulting in disengagement from support services. Culturally appropriate early intervention services in first pregnancies that aim to prevent pre-birth notifications and removal at birth are crucial for the health not only of the first child but those that follow (Wall-Wieler et al. 2019).

While the Australian Institute of Health and Welfare (AIHW) reports on the number of unborn children who receive a child protection service, this is defined as beginning at investigation of a notification (AIHW 2019d). Data is not reported on in jurisdictions where legislation does not allow for investigation prior to the child's birth (that is, Northern Territory and South Australia). Victoria does not consider unborn children to be in the scope of child protection, therefore unborn reports are excluded from the Child Protection National Minimum Data Set reporting.

Figure 20 describes the number of unborn child reports with a child protection service across jurisdictions. The standout finding depicts a dramatic increase of unborn reports in New South Wales from 218 in 2018 to 595 in 2019. New South Wales made a change to the way that data was recorded, limiting a reportable incident to a circumstance where a field visit was undertaken to substantiate a report. It would seem on face value that a change such as this would have resulted in a reduction in the number cases recorded, rather than a dramatic increase. This warrants in-depth investigation to determine contributing factors and reasons behind such an increase.

In the two-year time period between April 2017 and March 2019, 146 out of 702 (21%) unborn reports for Aboriginal children in Victoria progressed to out-of-home care within 12 months of birth. This is significantly higher than the non-Indigenous cohort (13%) (DHHS 2019a). Although Victoria cannot begin a child protection investigation prior to a child's birth, there is a commitment to refer all unborn child reports for Aboriginal and Torres Strait Islander mothers to ACCOs for support to prevent unnecessary child removals at birth, with 100% referral to ACCOs a target of Wungurilwil Gagapaduir (Victorian Aboriginal & and

FIGURE 20 Aboriginal and Torres Strait Islander and non-Indigenous unborn child reports with a child protection service

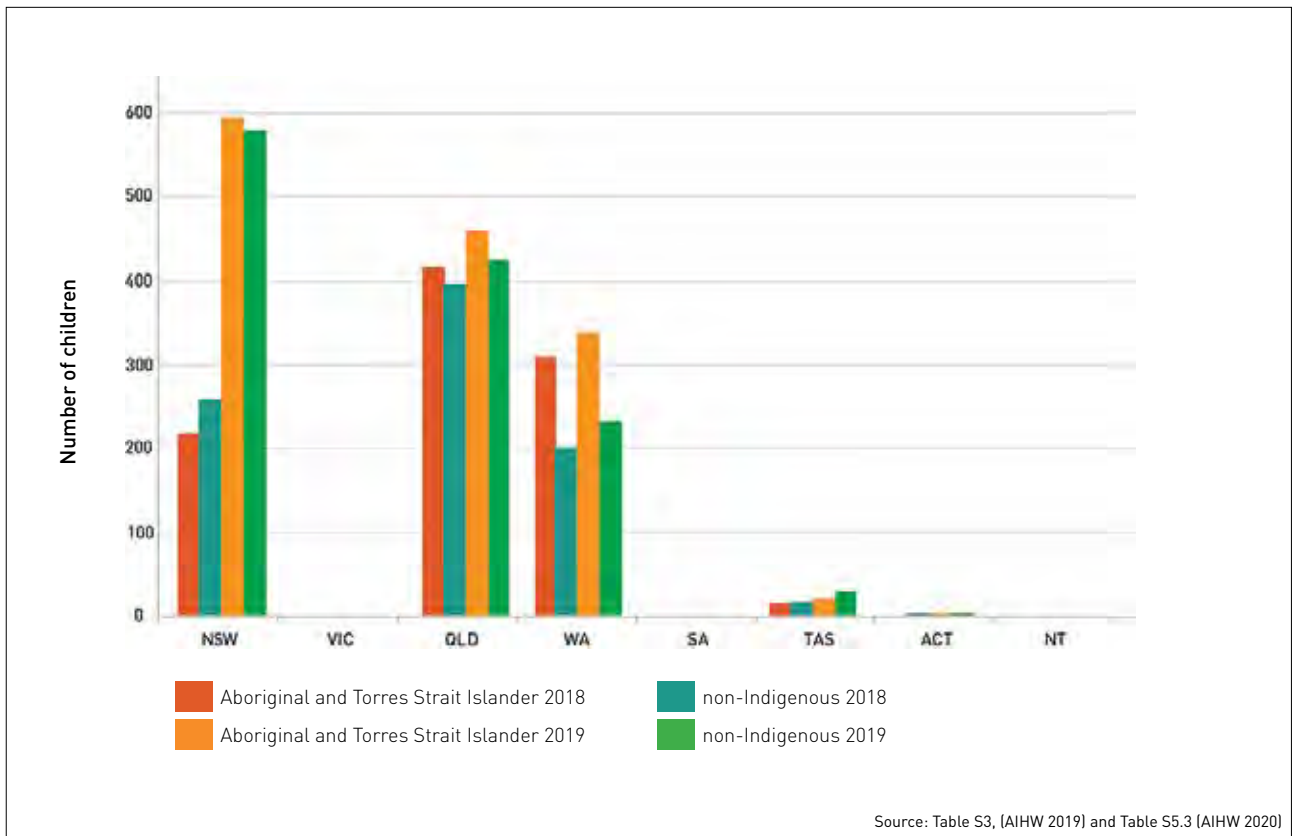
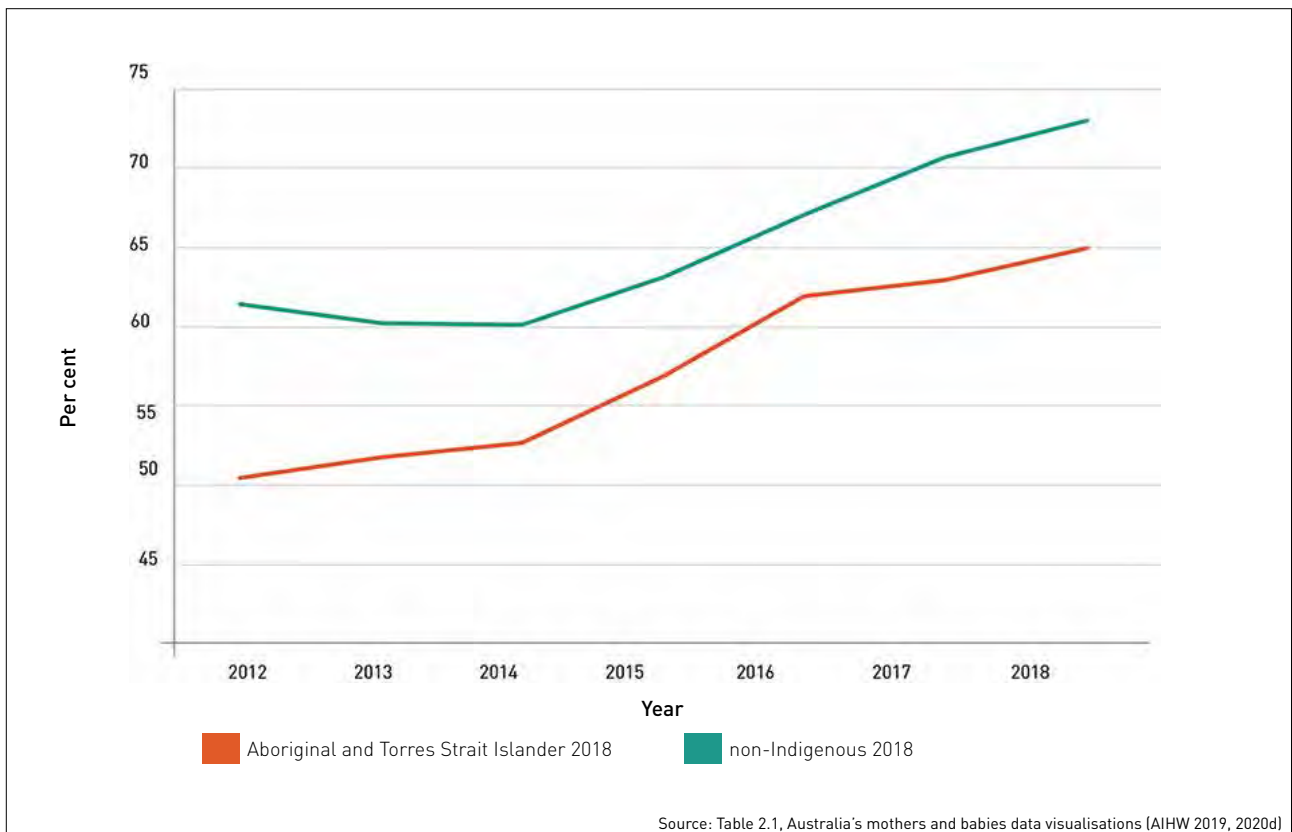


FIGURE 21 Age-standardised percentage of Aboriginal and Torres Strait Islander mothers and non-Indigenous mothers who attended at least one antenatal care session during the first trimester



Young People's Alliance 2019a). Currently, when the unborn child is believed or known to be Aboriginal or Torres Strait Islander, an Aboriginal and Child Specialist Advice Service (ACSASS) must be consulted. Self-determination informs Victoria's ACSASS, which provides advice on all aspects of a child's safety, including cultural safety, the right to grow up with their family, and to remain within their community when safely remaining with family is not an option (VACCA 2019).

ANTENATAL CARE

Initiating antenatal care in the first trimester is a significant indicator for future service engagement. Aboriginal and Torres Strait Islander women are less likely to access ANC in the first trimester of pregnancy and, overall, access fewer antenatal care visits than non-Indigenous women.

Figure 21 depicting data from *Australia's mothers and babies data visualisations* (AIHW 2019d), shows that the proportion of Aboriginal and Torres Strait mothers who attended at least one antenatal care session in the first trimester of pregnancy increased from 50.5% in 2012 to 64.9% in 2018. However, in 2018 the age-standardised proportion of Aboriginal and Torres Strait Islander mothers who attended ANC in the first trimester was still lower than for non-Indigenous mothers (by 8.1 percentage points, 64.9% compared with 73%, respectively).

BIRTHWEIGHT

The health of a baby at birth is a determinant of their health and wellbeing throughout life (AIHW, 2018). Birthweight is a key indicator of infant health and a determinant of a baby's chance of survival and health later in life (AIHW 2018c).

Figure 22 shows that Aboriginal and Torres Strait Islander babies are twice as likely to have a low birthweight than non-Indigenous babies. This data confirms the importance of early engagement in culturally appropriate antenatal care for Aboriginal and Torres Strait Islander women. To address this disparity in birthweight and highlight its importance, one of the outcomes in the *National Agreement on Closing the Gap* (July 2020) is for 91% of babies born to Aboriginal and Torres Strait Islander mothers to have a healthy birthweight by 2031 (Coalition of Peaks & Australian Governments 2020, p. 18)

MORTALITY RATES

From 2017 to 2018, the gap between Aboriginal and Torres Strait Islander and non-Indigenous child mortality rates decreased by 0.31%. However, the gap remains unacceptably high, with child mortality rates for 0 to 4-year-olds more than two times higher for Aboriginal and Torres Strait Islander children than non-Indigenous children since 2013 (see Figure 23). Maternal health is a key driver for child mortality rates, and while health outcomes for Aboriginal and Torres Strait Islander mothers and children have improved, substantial differences remain between health outcomes for Aboriginal and Torres Strait Islander and non-Indigenous mothers and babies. Non-Indigenous child mortality has improved at a faster rate than for Aboriginal and Torres Strait Islander children, resulting in a failure to meet the Closing the Gap target to halve the gap in mortality rates for Aboriginal and Torres Strait Islander children under five within a decade (by 2018) (Australian Government 2020a, p. 15). This illustrates that Aboriginal and Torres Strait Islander families are not benefiting equally from improvements in mainstream maternal and child health supports and highlights the need for dedicated strategies and efforts centred on improving outcomes for Aboriginal and Torres Strait Islander families and children.

3.2 EARLY CHILDHOOD EDUCATION AND CARE

There is overwhelming evidence of the positive impact on the lives of children who have access to high-quality early childhood education and care (ECEC). Evidence is clear that the highest positive impact is for vulnerable children (Heckman 2008; Sparling et al. 2007) and that "the highest rate of return in early childhood development comes from investing as early as possible, from birth through to age 5" (Arefadib & Moore 2017, p. 5). However, the current ECEC system is geared towards non-Indigenous working families rather than the needs of vulnerable Aboriginal and Torres Strait Islander children, placing them at higher risk of developing problems that will impact on their long-term health, their education outcomes and social wellbeing.

It is alarming that Aboriginal and Torres Strait Islander children are more than twice as likely to be falling behind in their developmental milestones than other children when they start school (AEDC, 2018). The Australian Early Development Census (AEDC) provides a measure of 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. In 2020, the new *National Agreement on Closing the Gap* has adopted a target to increase children developmentally on track against all five domains of the AEDC from 35% in 2018 to 55% by 2031.



FIGURE 22 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous babies born with low birth weight from 2012 to 2018

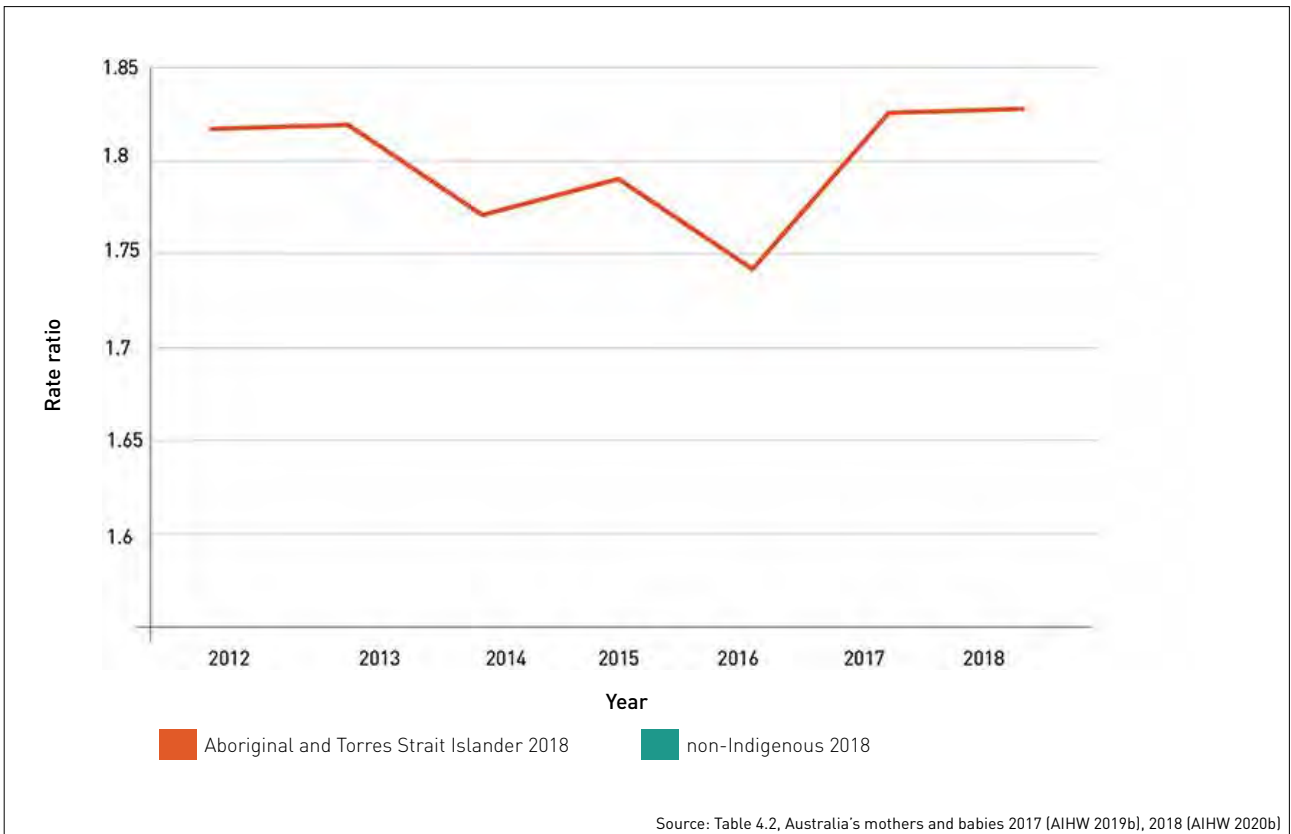


FIGURE 23 Child mortality rate for Aboriginal and Torres Strait Islander and non-Indigenous 0 to 4-year-olds 1998-2018



Figure 24 shows that gains were made between the 2009 and 2015 AEDC towards closing the gap in children developmentally on track, with Aboriginal and Torres Strait Islander children increasing from 0.48 to 0.62 times as likely as non-Indigenous children to be on track against all five domains. However, these gains were not sustained in the 2018 AEDC, with the rate ratio dropping slightly to 0.61. New South Wales has achieved consistent improvement to have the highest rate of Aboriginal and Torres Strait Islander children on track against all five domains (42%) and the lowest gap between Aboriginal and Torres Strait Islander and non-Indigenous children with a rate ratio of 0.72 in 2018. The Northern Territory has by far the lowest rate of Aboriginal and Torres Strait Islander children on track on all five domains, sitting at just 18% in 2018.

While the Closing the Gap target focuses on increasing the number of children developmentally on-track, it is important not to lose focus on those who are most vulnerable and falling farthest behind. Notably, Figures 25 and 26 below show that the gains that were made in Aboriginal and Torres Strait Islander children

developmentally on track on all five domains between 2009 and 2015 were not made in the rates of children experiencing developmental vulnerability. Nationally, Aboriginal and Torres Strait Islander children are 2.5 times more likely to be developmentally vulnerable in two or more domains than their non-Indigenous peers (Figure 25), and are more than twice as likely to be developmentally vulnerable than non-Indigenous children on two or more domains across each jurisdiction (Figure 26).

These rates have shown no significant improvement, declining only slightly over the past decade. In the Northern Territory, Aboriginal and Torres Strait Islander children are 4.37 times more likely to be developmentally vulnerable on two or more domains – the highest rate of vulnerability in the country – followed by Western Australia (3.3 times more likely) (Figure 26). Even in the three states with the lowest rates, Queensland, New South Wales and Tasmania, Aboriginal and Torres Strait Islander children are over two times more likely to be vulnerable on two or more domains.

FIGURE 24 Rate ratio of Aboriginal and Torres Strait Islander children and non-Indigenous children on track on all five domains of the AEDC



It is clear that Aboriginal and Torres Strait Islander children require greater access to quality and culturally safe early childhood support services to ensure that they can start school strong. It is positive that, in 2017, the national rate of Aboriginal and Torres Strait Islander children attending a preschool program in the year before schooling rose to be on par with that of non-Indigenous children, and has remained that way in 2019 (Figure 27). This national increase in preschool attendance has been driven by the *National Partnership Agreement* to achieve access to preschool for every child in the year before school.

However, there are substantial variations between jurisdictions (Figure 28). Preschool attendance rates in the year before school for children in the Northern Territory remain consistently low, with Aboriginal and Torres Strait Islander children 62% as likely as their non-Indigenous peers to attend a preschool program (Figure 27).

The gains in access to preschool education in the year before school have not been matched by gains in access to other early childhood services. Aboriginal and Torres Strait Islander children continue to be under-

represented in early childhood education and care services such as long day care, family day care and out-of-school-hours care. In 2019, Aboriginal and Torres Strait Islander children aged 0 to 5 across Australia were attending Australian Government Child Care Subsidy (CCS)-approved child care services at 72% the rate of non-Indigenous children, up from 50% in 2018 (Australian Government 2020a, table 3A.12).

However, the 2020 data is not comparable to previous years due to significant changes in data collection. Notably, many of the former Budget Based Funded Program services have been included for the first time as they began to operate under the mainstream CCS, and, significantly, there has been a change to the way Aboriginal and Torres Strait Islander families are defined. Previously, children associated with an 'Indigenous customer' were counted as 'Indigenous'. Now, children are also counted as Indigenous if the customer's partner is Indigenous. The fact that Indigenous identification is based on the Indigenous status of a parent/carer or their partner rather than the child is problematic and likely to contribute to a significant overcount.

FIGURE 25 Rate ratios comparing developmentally vulnerable Aboriginal and Torres Strait Islander and non-Indigenous children 2009 to 2018

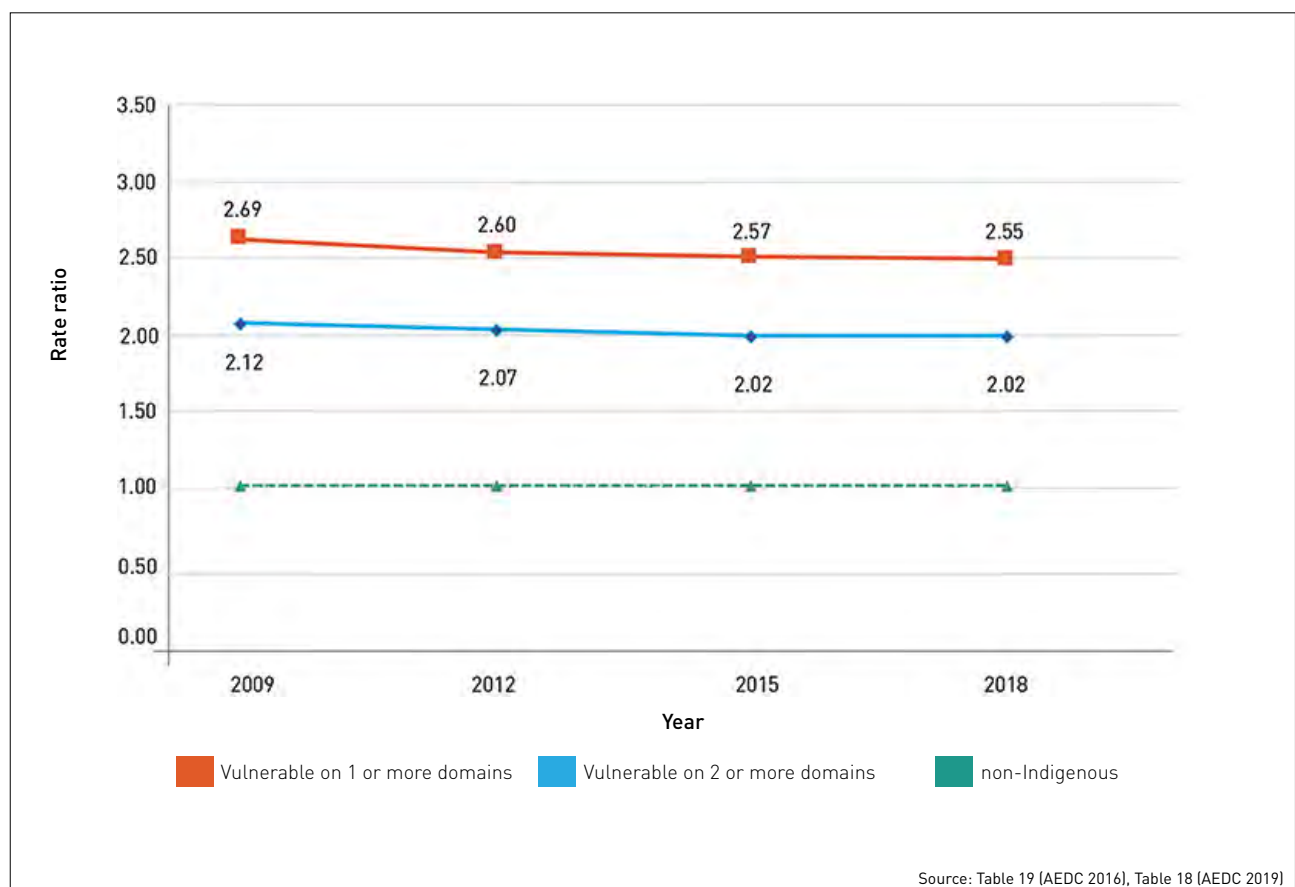
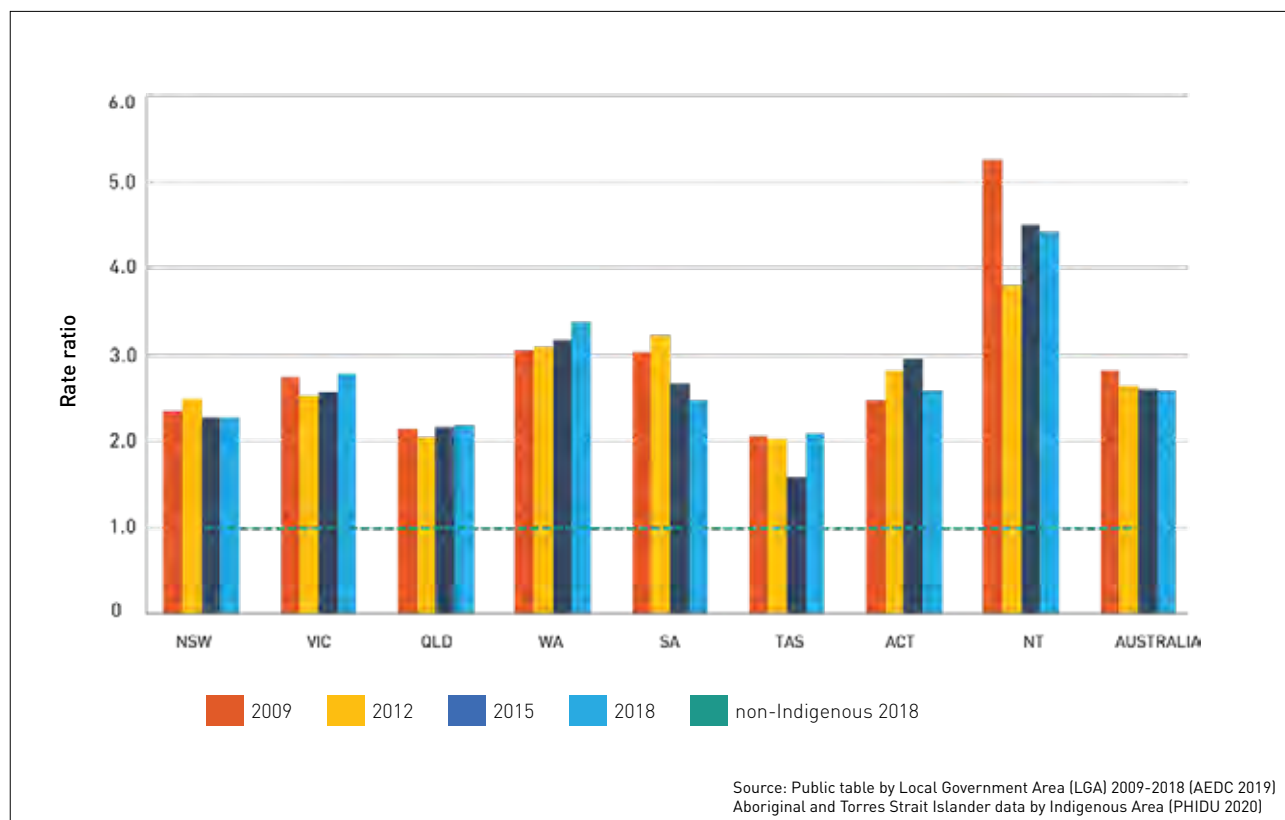


FIGURE 26 Rate ratio of Aboriginal and Torres Strait Islander children and non-Indigenous children developmentally vulnerable on two or more domains 2009 to 2018



There are clear differences between attendance rates for Aboriginal and Torres Strait Islander children in each jurisdiction, with attendance rates varying from 33% of the overall rate for non-Indigenous children in the Northern Territory to 88% in Victoria (Figure 29).

There is a misconception that these ECEC services operate as babysitting services, only required to be available to support working parents. Rather, Aboriginal and Torres Strait Islander ECEC services, such as Multifunctional Aboriginal Children’s Services (MACS) and Aboriginal Child and Family Services (ACFCs), operate as fundamental hubs for Aboriginal and Torres Strait Islander families, providing the culturally safe wraparound supports that ensure the safety, health and wellbeing of children and communities. These services help to build stronger Aboriginal and Torres Strait Islander communities by nurturing strong local leadership, a skilled workforce and connected families (Brennan 2013). These services connect vulnerable families to an array of integrated services that are designed to meet locally determined needs and priorities, and they ensure Aboriginal and Torres Strait Islander children are well placed to start school strong.

The unique ability for Aboriginal and Torres Strait Islander ECEC services to break down barriers to access that are otherwise unable to be broken down by mainstream providers can be seen in the results of a 2014 evaluation of the New South Wales ACFCs, which showed that 78% of children attending child care through the ACFCs had not previously accessed ECEC services (Cultural and Indigenous Research Centre Australia 2014, p. 50). To achieve parity in access to ECEC services, approximately an additional 12,400 Aboriginal and Torres Strait Islander children across Australia require access based on 2019 attendance rates (Steering Committee for the Review of Government Service Provision 2020, table 3A.12 and 3A15).

FIGURE 27 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous children aged 4 and 5 years attending a preschool program in the year before schooling from 2012 to 2019

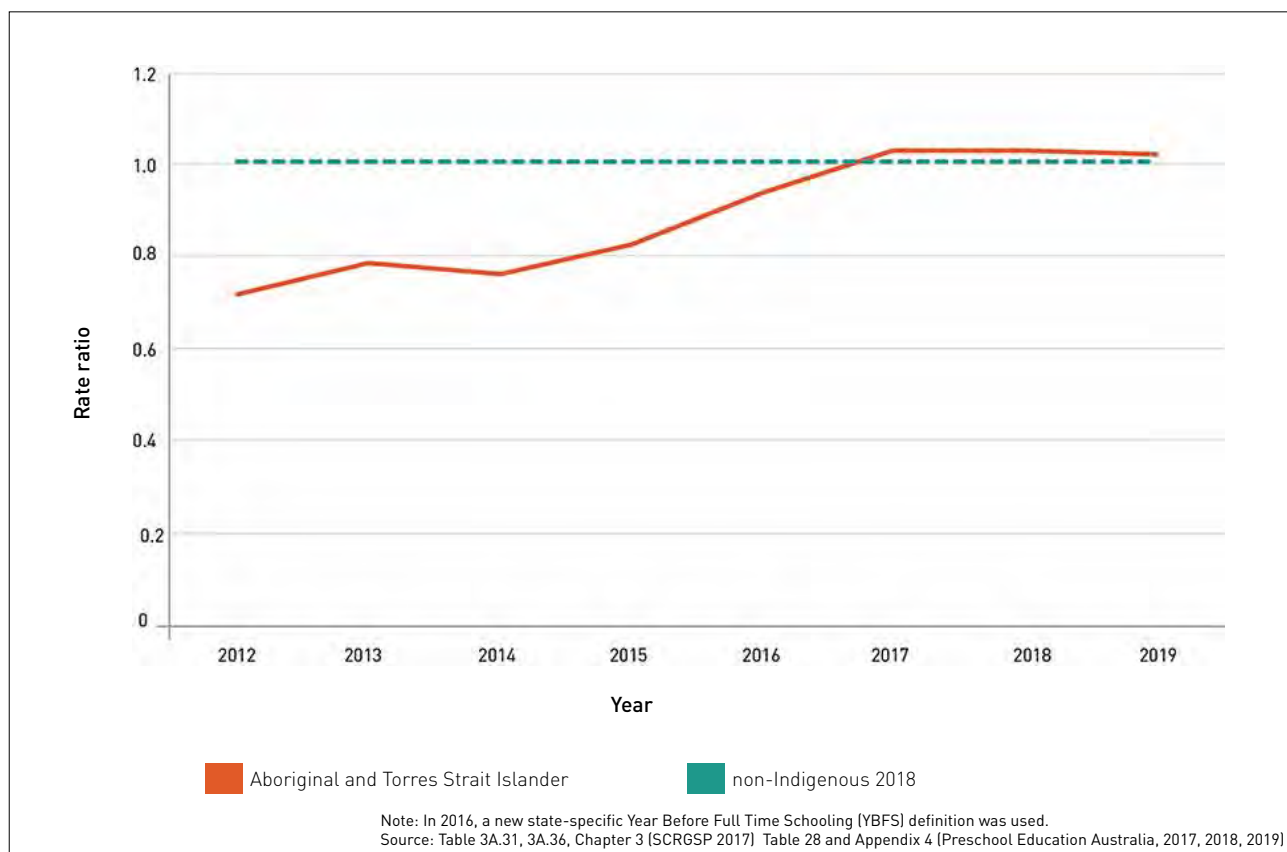


FIGURE 28 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous children aged 4 and 5 years attending a preschool program in the year before schooling in 2019

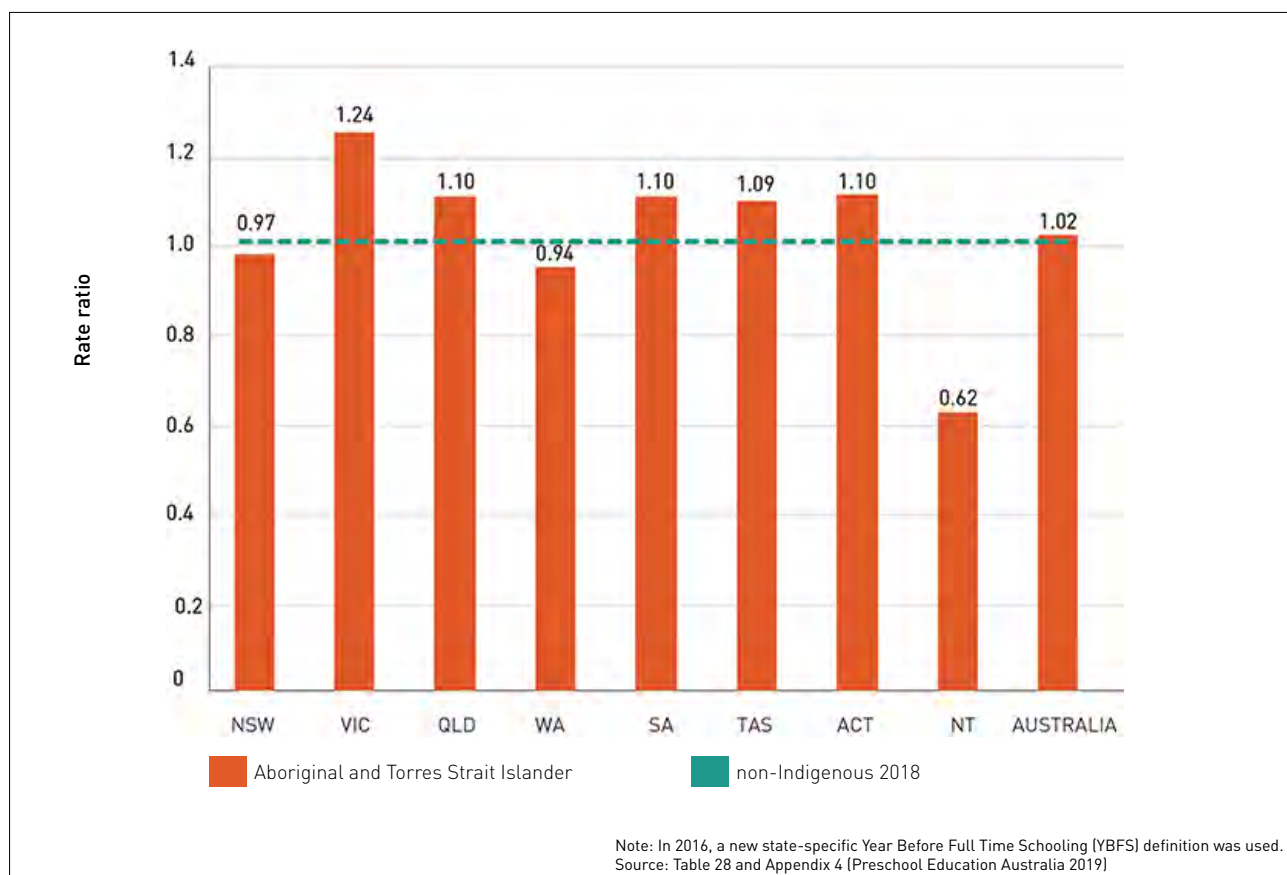


FIGURE 29 Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous children aged 0 to 5 attending Australian Government CCS-approved child care services in 2019



A FOCUS ON THREE-YEAR-OLDS

Financial returns on investments in early education have been found to be highest for ages 0 to 3, and diminish progressively as children become older, with interventions for disadvantaged children having the highest economic returns (Heckman 2008). While Australia has had success in increasing the four-year-old preschool attendance rate of Aboriginal and Torres Strait Islander children, this has not translated into significant improved developmental outcomes (AEDC 2015, 2018). Early education for our most vulnerable children must start earlier in life to close the gap in AEDC outcomes.

The *Lifting Our Game* report states that Australian governments should expand universal access to early childhood education to three-year-old children and recommends that Australian governments progressively implement Universal Access to 15 hours per week of a quality early childhood education program for all three-year-olds, with access prioritised for disadvantaged children, families and communities during rollout (Pascoe & Brennan 2017). Although national and international research clearly demonstrates the benefits of early childhood education, almost all other developed nations invest more than Australian governments do in this sector and provide at least two years of early childhood education (Pascoe & Brennan 2017).

The barriers to accessing three-year-old preschool differ across Australian jurisdictions. Aboriginal and Torres Strait Islander three-year-olds are entitled to 15 hours of free preschool per week in Victoria and the Australian Capital Territory, and 10 hours per week in Tasmania. However, these entitlements are not available in other states and territories. In New South Wales and South Australia, Aboriginal and Torres Strait Islander three-year-olds have access to subsidised preschool, while there are no provisions for three-year-old preschool for Aboriginal and Torres Strait Islander children in Western Australia, Queensland or the Northern Territory. The only exception is that in the Northern Territory, three-year-olds in very remote communities can access 15 hours of free preschool if they are accompanied by a guardian.

RESILIENCE DESPITE ADVERSITY – THE IMPACT OF COVID-19 ON THE EARLY YEARS SECTOR

The impacts of COVID-19 have exposed weaknesses within the early childhood education and care system that disproportionately impact on Aboriginal and Torres Strait Islander children and families. In July 2018 the Australian Government Department of Education and Training introduced the new Child Care Package, a *user pays* funding model for early childhood education and care services that replaced the previous Budget Based Funding Program model available to Multifunctional Aboriginal Children’s Services.

The Child Care Subsidy (CCS) effectively mainstreamed Aboriginal and Torres Strait Islander ECEC centres, placing the onus on families to apply for subsidies via Centrelink, and introduced the Activity Test, which halves the subsidised hours of child care to just 12 hours per week for many low-income families which do not meet work or study requirements. Aboriginal and Torres Strait Islander early years services have reported that the introduction of the CCS resulted in a decrease in attendance rates for Aboriginal and Torres Strait Islander children, primarily as a result of the administrative requirements involved in applying for the subsidy and the Activity Test entitlements. In SNAICC's May 2019 survey, 58% of the 31 services that responded to a question about hours of access reported that Aboriginal and Torres Strait Islander children were accessing fewer hours of ECEC since the introduction of the CCS. This is concerning as Aboriginal and Torres Strait Islander children were already accessing ECEC services at half the rate of non-Indigenous children before the package was introduced.

Quotes from Aboriginal and Torres Strait Islander services providers from SNAICC's May 2019 survey:

"10-15 children have gone. [Families] find the new system difficult to navigate."

(Child care provider, New South Wales)

"A lot of our Indigenous families have dropped out as it's too much of a complicated process for them." (Child care provider, Northern Territory)

"Five families who really need the support have dropped out. Mostly due to out-of-pocket costs, the amount of hours they are entitled to, and issues with the CCS and not understanding the system." (Child care provider, South Australia)

A silver lining, in what has otherwise been an alarming global pandemic, was the Australian Government Department of Education and Training's decision to suspend the operation of the CCS and provide free child care to families for a limited period. The removal of key barriers to access, including administrative registration requirements and the operation of the Activity Test, resulted in some Aboriginal and Torres Strait Islander services reporting significant increases in the numbers of Aboriginal and Torres Strait Islander children attending their services, as well as increases in the attendance hours for existing children. Some services reported that vulnerable Aboriginal and Torres Strait Islander families which weren't previously accessing ECEC supports did so during this time.

However, the suspension of the CCS was short-lived – it was reimposed in most states and territories after six weeks. Aboriginal and Torres Strait Islander early years services are working hard to maintain the momentum they gained with vulnerable Aboriginal and Torres Strait Islander families during that time, to ensure that those

families remain engaged and accessing crucial ECEC supports for the wellbeing and developmental needs of their children, despite the reimposition of stricter administrative and cost barriers.

THE ECONOMIC ARGUMENT FOR INVESTING IN THE EARLY YEARS

In addition to extensive research proving the benefits of early education and care in enhancing vulnerable children's development and lifelong social and emotional wellbeing, general expert consensus worldwide is that it is somewhere between economically worthwhile and imperative for governments to invest more heavily in the early years, particularly for vulnerable populations (UK Department for Education & Wave Trust 2013). A review of nine of the most comprehensive and credible international studies found that returns on investment on well-designed early years interventions significantly exceeded their costs, with benefits ranging from 75% to over 1,000% higher than costs (UK Department for Education & Wave Trust 2013). A longitudinal US study of 900 disadvantaged children showed that access to early education at age three provided a return of \$10.83 per dollar invested, with a net benefit per participant of \$83,708; the primary sources of benefits being increased earnings and tax revenues, averted criminal justice system and victim costs, savings for child welfare, special education, and grade retention. Importantly, the study found that children with four or more family risk factors yielded almost double the benefits of those with fewer family risk factors (\$12.8 vs. \$7.2 per \$1 invested) (Reynolds et al. 2011).

From an economic perspective, the earlier that vulnerable Aboriginal and Torres Strait Islander children can access the unique supports they require to be able to change their trajectory towards improved health and education outcomes, the less likely they are to require welfare support in the future. Clear international evidence supporting this notion is backed up by Australian findings, with a 2019 PwC report identifying approximately \$2 of benefits for every \$1 spent on early childhood education, for a return on investment of 103%, with this number increasing for disadvantaged populations (PwC 2019). The Australian Institute for Health and Welfare has identified a significant community-wide benefit of investing in early childhood education, stemming from a reduction in long-term unemployment and reliance on welfare support (AIHW 2015a). In Australia, one of the most significant predictors of involvement in the justice system is low educational attainment, with a 2015 report showing two in three prisoners had not studied past Year 10 (AIHW 2015b). For these reasons, greater investments are required to support the early education of our vulnerable children, and such investments will do more than benefit the children themselves – they will benefit Australian society as a whole.

3.3 INTENSIVE FAMILY SUPPORT SERVICES

Prevention and early intervention programs and services are essential for strengthening families and enabling them to provide the best possible environment for their children. While quality data are not available to depict access rates for all family support services, data are published about access for intensive family support (IFS). IFS models provide time-limited, in-home, intensive casework supports aimed at addressing the complex needs of families experiencing vulnerabilities (Steering Committee for the Review of Government Service Provision 2019). Some of these are operated by Aboriginal and Torres Strait Islander community-controlled organisations, and they have been found to bridge known barriers to service delivery by providing culturally strong casework supports and assisting families to access and navigate the broader service system (SNAICC 2015).

Figure 30 shows that, in 2018-19, Aboriginal and Torres Strait Islander children were 6.28 times more likely to commence an IFS service than non-Indigenous children, noting that data was unavailable for Queensland and

Tasmania. This represents a steady increase from 2016-17 where Aboriginal and Torres Strait Islander children were 4.6 times as likely to commence a service.

The rate ratios ranged from 6.75 times more likely for an Aboriginal and Torres Strait Islander child to commence IFS than a non-Indigenous child in New South Wales, to over 20 times more likely in Western Australia.

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 prioritise families which have been screened in for investigation of a *risk of harm* report (Australian Centre for Child Protection 2017). Although these services are considered voluntary, there is some conjecture about the extent to which families have free choice to participate. The potential consequences for families choosing not to engage with services include more intrusive interventions by the statutory agency and removal of children into out-of-home care (SNAICC 2015).

FIGURE 30 Rate ratios comparing Aboriginal and Torres Strait Islander children and non-Indigenous children commencing intensive family support services (IFSS) in 2019

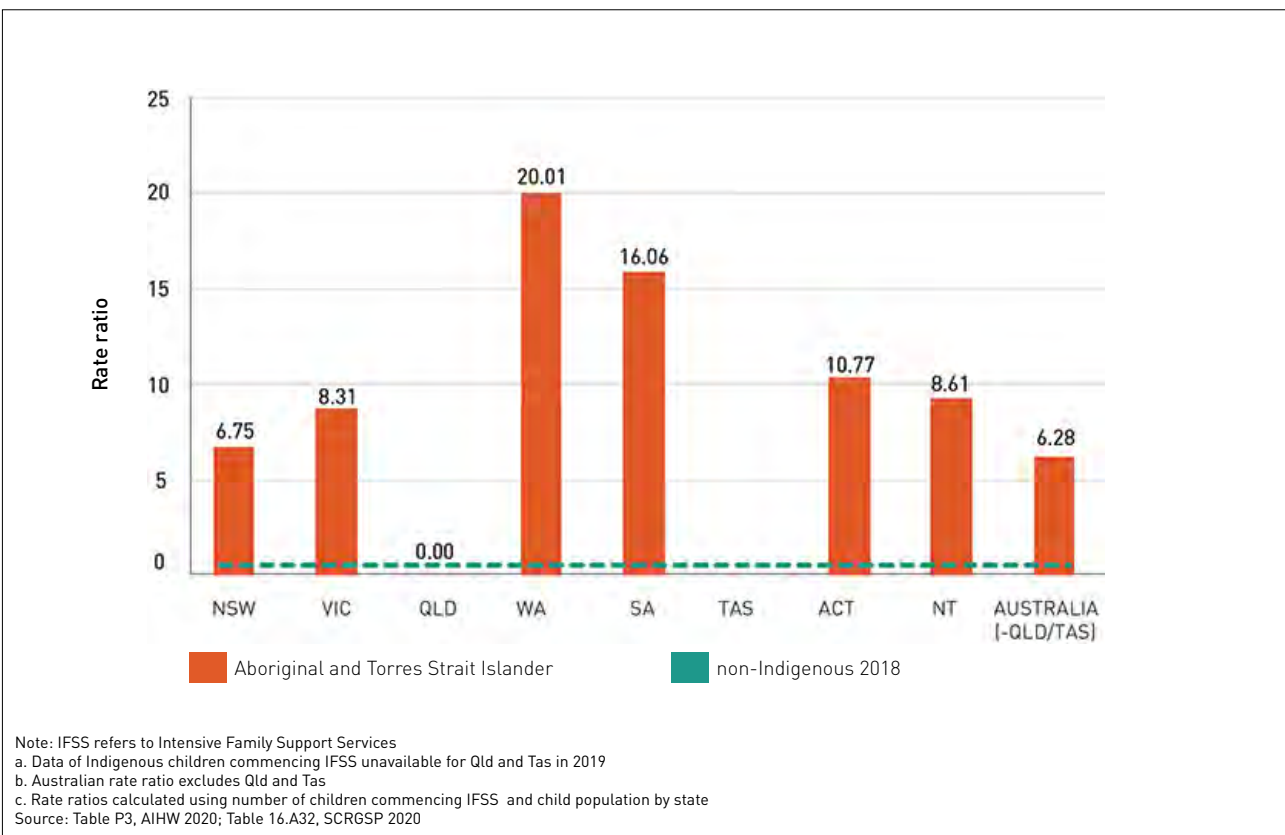


TABLE 2 Number of Aboriginal and Torres Strait Islander and non-Indigenous children and families accessing IFS services by state and territory

JURISDICTION	NSW	VIC	WA	SA	NT	ACT
Number of Aboriginal and Torres Strait Islander children accessing IFS	3265	1450	634	471	569	75
Number of children (Aboriginal and Torres Strait Islander status unknown)	10	1106	4	0	0	0
Number of non-Indigenous children and families accessing IFS	6910	10986	599	593	168	189
Percentage of IFS clients that were Aboriginal and/or Torres Strait Islander	32.0%	10.7%	51.3%	44.3%	77.2%	28%

*Data was not available for Tasmania and Queensland for reasons stated.

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 rate ratios should not be looked upon favourably or with a view that the service system is somehow *more accessible* for Aboriginal and Torres Strait Islander children and families.

ABORIGINAL AND TORRES STRAIT ISLANDER UPTAKE OF INTENSIVE FAMILY SUPPORT

Jurisdictions were invited to provide recent data to depict the current uptake of intensive family support services (IFSS) across their state or territory. Victoria, South Australia, Northern Territory, New South Wales and the Australian Capital Territory all provided data. Data was reported as unavailable in Tasmania. Queensland reported that it is making improvements to data collection methods with a focus on improving accuracy and data quality and aims to provide better data in *The Family Matters Report 2021*. Table 2 presents the national picture.

3.4 GOVERNMENT INVESTMENT

Publicly reported state and territory expenditure on child protection and family support services is 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. However, examination of recurrent expenditure provides a useful indication of the level of IFS provided to families for the purposes of 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 the *National Framework for Protecting Australia’s Children 2009-2020* 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 (Australian Research Alliance for Children and Youth 2008, p. 47).

Figure 31 depicts that 84.1% of current expenditure is allocated to the tertiary end of the sector, compared to 15.9% in measures that seek to prevent, support and reunify families. At only 7.5% and 8.4% of the overall budget, respectively, governments are not only under-investing in intensive family support services and family investing services, but also not shifting the balance despite rhetoric about the value of prevention and early intervention. To reduce unnecessary state intervention in Aboriginal and Torres Strait Islander family life, expenditure must be rebalanced from statutory child protection intervention (that is, tertiary level and court-ordered) to early intervention family support services (that is, voluntary and secondary level) (Council of Australian Governments 2009).

Figure 32 provides a snapshot of state and territory government investment in family support services (FSS) and intensive family support services (IFSS) (initiatives as a percentage of total child protection government investment).

The figures depict that nationally there has been a reduction in proportional investment (in terms of a percentage of overall expenditure) in family and intensive family support services from 17.1% in 2015/16 to 15.9% in 2018/19.

Investment proportions have been steady in Victoria (25.2%) and the Northern Territory (28.4%). These jurisdictions have the highest proportional expenditure rates nationally by a significant margin.

New South Wales (13.4%), South Australia (8.7%) and Western Australia (5.3%) reported substantial decreases in proportional expenditure in family support initiatives compared to the previous financial years, falling further behind leading jurisdictions. Tasmania also reported a modest decrease in proportional expenditure (12.8%).

FIGURE 31 Real recurrent expenditure for child protection in Australia 2018-19

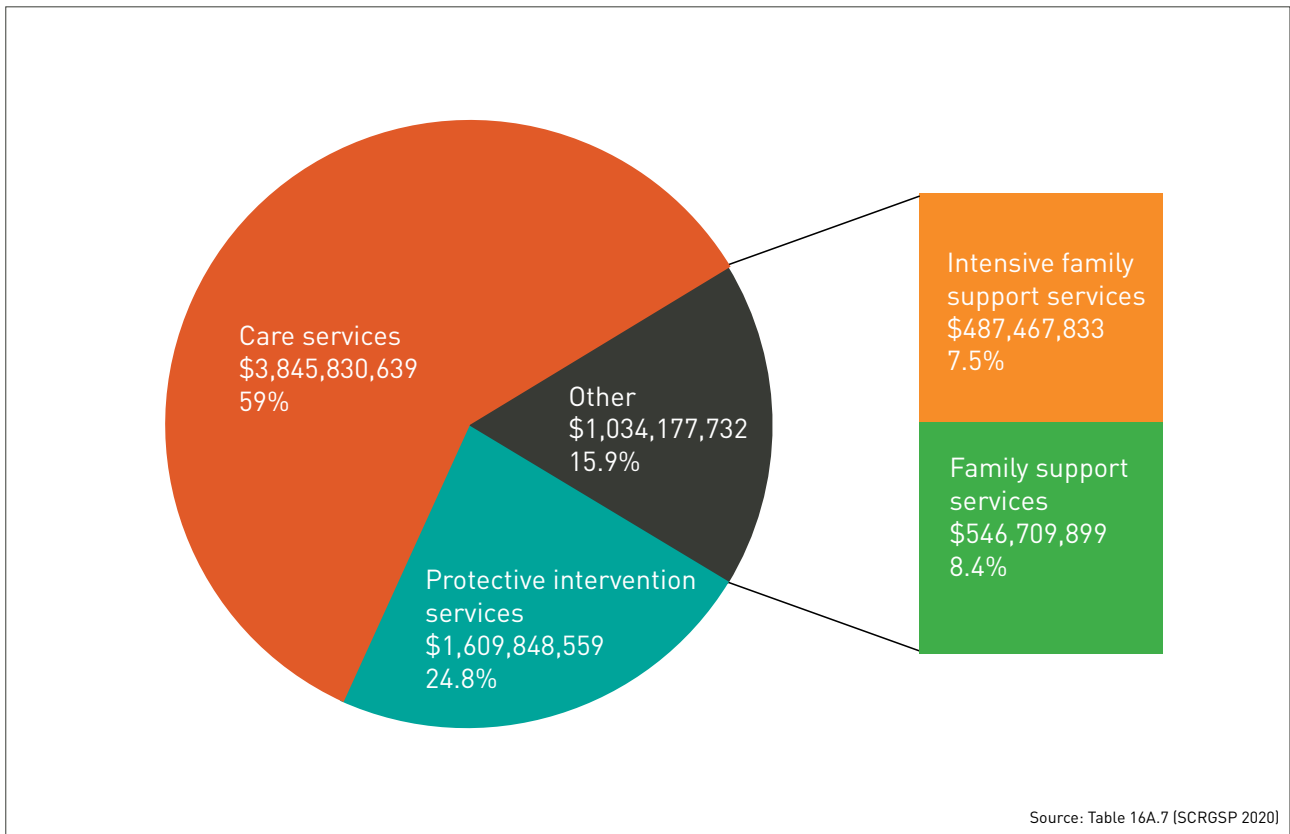
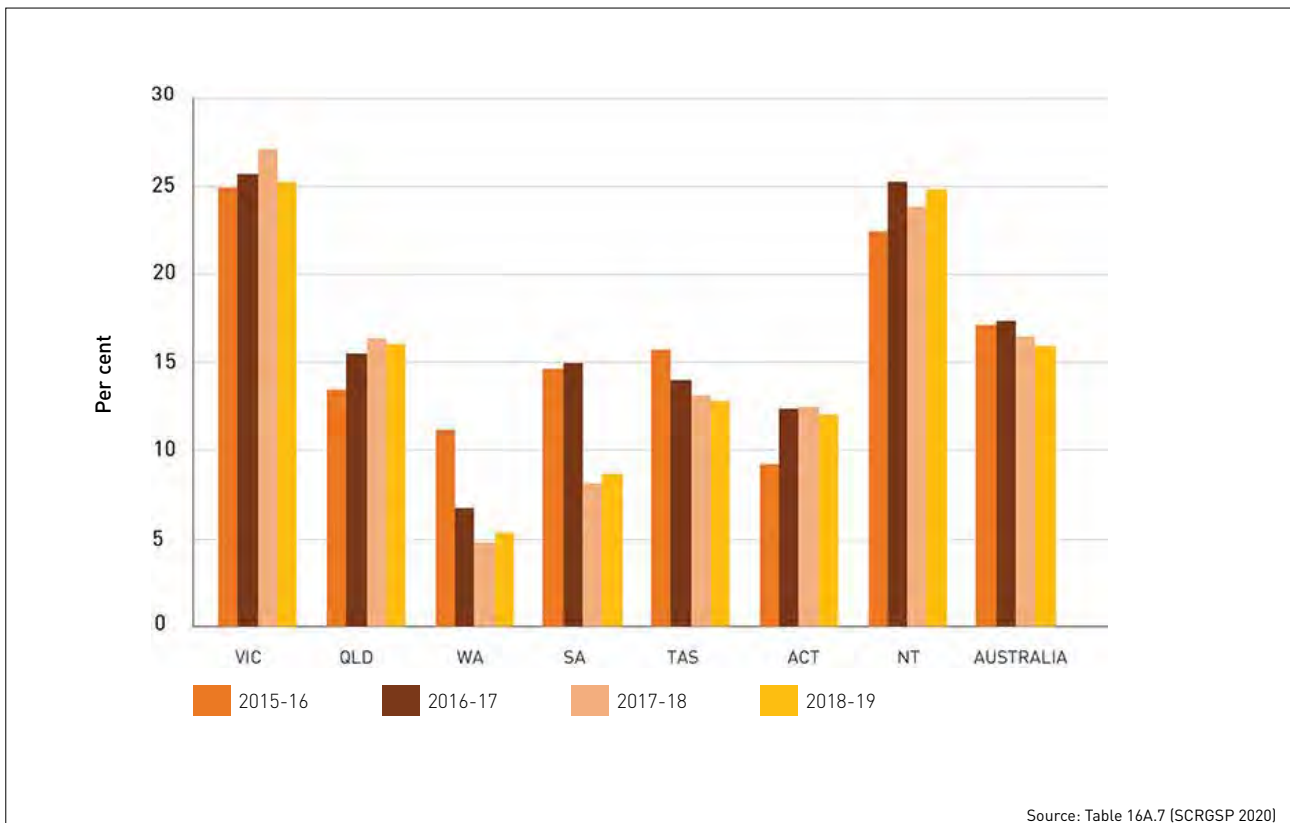


FIGURE 32 Total % expenditure on family support and intensive family support 2015-19





“At only 7.5% and 8.4% of the overall budget, respectively, governments are not only under-investing in intensive family support services and family support services, but also not shifting the balance despite rhetoric about the value of prevention and early intervention”



Queensland (16.1%) and the Australian Capital Territory (12%) have seen increases in proportional investment over the same five-year period, however their proportional investment remains modest when compared to Victoria and the Northern Territory.

Data on 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 the services are actually focused on prevention rather than child protection intervention, and 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 10.7% of children commencing an intensive family support service in Victoria in 2018-19 were Aboriginal or Torres Strait Islander. This is compared to 22% 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.

Another example is that the Northern Territory's high proportion of expenditure on family support and intensive family support (24.8%) relates to a high internal spend on family support functions that are part of the statutory intervention system. The Northern Territory Government reported that \$8.9 million is spent on external support services, which sits alongside approximately \$8 million invested by the Australian Government on intensive family support services in the Northern Territory annually (Australian Government Productivity Commission 2020). This suggests that the remaining 68% of the \$52.2 million spent on family support and intensive family support was invested internally in the statutory system (Steering Committee for the Review of Government Service Provision 2019). This analysis aligns with the views of Northern Territory community stakeholders, many of whom have expressed concern at the lack of visible family support services on the ground.

3.5 WORKFORCE DEVELOPMENT TO ENABLE SUSTAINABLE IMPROVEMENTS

All jurisdictions' service sectors that deal with children and families within the child protection system need to invest in quality workforce development to increase their capacity to provide culturally safe and responsive services that enable better outcomes, especially at the frontline where service providers are frequently dealing with vulnerable and marginalised clients in crisis.

Many Aboriginal and Torres Strait Islander children and families report experiences of systemic racism which further exacerbate underlying and deep-seated intergenerational trauma. There is an urgent need for jurisdictions to focus on well-resourced and targeted workforce development initiatives to improve the knowledge, skills, proficiency, efficacy and capacity of all key service sectors. This strategy should be nationally coordinated with a view to establishing national standards of good practice. The strategy should be multi-pronged and include (at a minimum):

- improved education and training for all frontline workers, including specific elements that focus on how to work effectively with Aboriginal and Torres Strait Islander families and improve cultural safety, competency and accountability.
- increased training and support to all front-line staff involved with supporting Aboriginal and Torres Strait Islander children, with a specific focus on supporting strong cultural connections for Aboriginal and Torres Strait Islander children to form strong and proud cultural identities
- intensive trauma-informed training across all service systems within the child protection system, to ensure that all workforces are better equipped to respond to the challenges associated with intergenerational trauma within an appropriate developmental framework
- the development of practical assessment tools and resources that assist agencies and community-based organisations to adequately assess their current capacity and proficiency in terms of cultural awareness, trauma awareness and their ability to provide quality services to Aboriginal and Torres Strait Islander children.

The development of practical assessment tools and resources that assist agencies and community-based organisations to adequately assess their current capacity and proficiency in terms of cultural awareness, trauma awareness and their ability to provide quality services to Aboriginal and Torres Strait Islander children.

DEVELOPMENT OF ABORIGINAL AND TORRES STRAIT ISLANDER SERVICE MODELS

It is important that Aboriginal and Torres Strait Islander children and families have Aboriginal and Torres Strait models to turn to. Unfortunately, a history of abuse, intervention, and control by government and non-government services in Aboriginal and Torres Strait people's lives has led to a general lack of trust in these service systems.

Part 4 of this report emphasises the importance of investment in a strong, Aboriginal community-controlled sector that provides pathways for Aboriginal and Torres Strait Islander communities to develop and implement locally developed, culturally safe and responsive service systems.

SNAICC has advocated consistently over several decades, detailing how culture is a protective factor for Aboriginal and Torres Strait Islander children. Preservation and support for strengthening Aboriginal and Torres Strait Islander children's cultural identity must be the cornerstone in the design of a better child protection system.

3.6 IMPROVING EVALUATION TO BUILD BETTER SERVICE SYSTEMS

The Family Matters campaign strongly advocates for an increased focus on initiatives that will support Aboriginal and Torres Strait Islander children and young people to have a greater voice and role in defining what success means to them. In so doing, they participate in planning discussions to devise more effective and responsive evaluation methodologies that focus on capturing outcomes that are relevant to Aboriginal and Torres Strait Islander children and families at a community level.

In May 2020, the Productivity Commission reported that only one-fifth of evaluations of Aboriginal and Torres Strait Islander-specific policies and programs reported engaging with Aboriginal and Torres Strait Islander people in evaluation decision-making. Furthermore, the commission confirmed that two-thirds of mainstream policy or program evaluations that mentioned or provided results for Aboriginal and Torres Strait Islander people did not report engaging with Aboriginal and Torres Strait Islander people at all.

These findings demonstrate huge pitfalls and the true extent of current poor evaluation practice. Furthermore, these findings amplify the need for increased accountability and oversight concerning the determination of evaluation priorities, the design of evaluation methodologies, and the necessity to include Aboriginal and Torres Strait Islander perspectives in order to achieve better outcomes.

Establishing trust and a quality dialogue with clients is critical and should be considered core business rather than an add on or afterthought, particularly for agencies that service a significant cohort of Aboriginal and Torres Strait Islander clients. All evaluation stakeholders need to get better at understanding and defining what success means and looks like for Aboriginal and Torres Strait Islander communities. This requires agencies to adopt an Aboriginal and Torres Strait Islander lens, rather than a government-led approach.

Co-design is an important approach to incorporating Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges into evaluations. The term *co-design* is often confused with *consultation*. Genuine *co-design* requires a commitment for agencies to engage the perspectives of Aboriginal and Torres Strait Islander people from the very beginning of the evaluation spectrum to the very end.

Supporting quality dialogue and effective partnerships between all levels of government and the Aboriginal community-controlled sector will lead to better opportunities to identify innovative solutions that are being developed and implemented at a local community level.





PART 4

SELF-DETERMINATION, CULTURAL AUTHORITY AND CONNECTION TO CULTURE

4.1 INTRODUCTION

Respect for Aboriginal and Torres Strait Islander peoples' right to self-determination and culture is essential to achieving all four building blocks of the Family Matters campaign:

- All families enjoy access to quality, culturally safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive.
- Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children.
- Law, policy and practice in child and family welfare are culturally safe and responsive.
- Governments and services are accountable to Aboriginal and Torres Strait Islander people.

If we are to improve outcomes for Aboriginal and Torres Strait Islander children and achieve the Closing the Gap target to reduce over-representation, transformative change is needed that places Aboriginal and Torres Strait Islander people and perspectives at the heart of systems that impact children. Efforts to advance safety and wellbeing for children must be driven by the cultural authority of Aboriginal and Torres Strait Islander families and communities, who know best what is needed for their children to thrive. Our policies and ways of working must be aligned to the right of self-determination and the evidence that Aboriginal and Torres Strait Islander leadership in and oversight of systems will overcome the racism inherent in systems and lead to better outcomes for Aboriginal and Torres Strait Islander children. The rights of children to grow up connected to their culture must be protected, and the strengths and knowledge of Aboriginal and Torres Strait Islander people to care for and bring up children strong in culture must be at the forefront of practice.

This part explores the key concepts and mechanisms that should drive systemic reform to achieve positive outcomes for Aboriginal and Torres Strait Islander children, including self-determination, connection to culture and implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. It highlights

and draws upon recent literature, reviews and reports and the priority areas for reform in the *National Agreement on Closing the Gap* (Coalition of Peaks and Australian Governments 2020). It analyses the extent to which governments across Australia enable Aboriginal and Torres Strait Islander participation and partnership in decision-making at the individual level and systems levels through laws, policies and practice.

It has been an eventful year. The COVID-19 pandemic has exacerbated existing flaws within systems, disproportionately impacting Aboriginal and Torres Strait Islander children and families. Since the death of George Floyd, who was callously killed in the United States on 25 May 2020 by the brutal force of a police officer, the call for an end to systemic racism that enables this brand of brutality against people of colour has echoed around the world. Protests across Australia called for an end to the over-incarceration of Aboriginal and Torres Strait Islander people and an end to Aboriginal and Torres Strait Islander deaths in custody. The *National Agreement on Closing the Gap* (July 2020) marked a historic partnership between the Australian Government and Aboriginal and Torres Strait Islander peak organisations. The need for reforming our institutions is significant and requires long term commitment and resources to ensure that aspirational goals are turned into practice.

4.2 SELF-DETERMINATION

MEANING OF SELF-DETERMINATION

Aboriginal and Torres Strait Islander children and families have a right to have control over their own lives. The right of self-determination is a fundamental principle of modern international law, enshrined in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and in Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Australia has ratified both treaties and is therefore legally bound by the international scheme of rights and responsibilities. The right has been enshrined in the United Nations Declaration of the Rights of Indigenous People (UNDRIP), which has been endorsed by Australia,

extending its definition and application in international law to provide an internal right of Indigenous peoples' on this continent to autonomy and self-government.

More recently, the final Coalition of Peaks engagement report (Coalition of Peaks 2020) highlighted the importance of self-determination and the need for Aboriginal and Torres Strait Islander people and communities to have control over the decisions that affect them.

“Recognition of First Nations sovereignty and sovereign right to self-determination on the Rights of Indigenous Peoples is the first step (for the) Makarrata and truth-telling commission, formal apologies and reparations.”

(survey response)

The Uluru Statement from the Heart, a call by Aboriginal and Torres Strait Islander peoples around the country for structural reforms, references the child removal numbers and tells us plainly “this is the torment of our powerlessness”, expressing:

“When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.”

In the child protection context, the right to self-determination means that Aboriginal and Torres Strait Islander peoples must be empowered to design, develop, implement and review the operation of the child protection system according to their own processes. However, while the language of self-determination may be invoked in legislation and policy, it tends not to reflect this robust understanding. For example, the *Family is Culture* report found that while it may appear positive that the NSW Government is using the language of self-determination, without the appropriate structural changes it creates an unrealistic expectation about achieving true self-determination. The report comments that self-determination is:

“... not about the state granting Aboriginal communities the ‘permission’ to develop and implement support services; it is about recognising that Aboriginal families have the right to be free from unwarranted state interference and the right to respond appropriately to issues within their communities. Meaningful self-determination also recognises that Aboriginal people have been negatively affected by over two centuries of colonisation and require financial and other support to develop and implement services to ameliorate their socioeconomic disadvantage.”

(Davis 2019, p. 85).

The language of self-determination is often misused and misunderstood in the context of government policy and decision-making, falling short of the true meaning of the concept. According to the *Bringing them home* report, self-determination requires:

“... more than consultation because consultation alone does not confer any decision-making authority or control over outcomes. Self-determination also requires more than participation in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been determined by Indigenous peoples. Inherent in the right of self-determination is Indigenous decision-making carried through into implementation.”

(Human Rights and Equal Opportunity Commission 1997, p. 276).

In recent years the language of self-determination has been revived in state, territory and Commonwealth initiatives, although the extent to which there is full appreciation and commitment to its implementation is uncertain. The release of the *National Agreement on Closing the Gap* (Coalition of Peaks & Australian Governments 2020) includes priority reform areas that support formal partnerships and shared decision-making, and building the community-controlled sector in order to recognise the right to self-determination for Aboriginal and Torres Strait Islander communities. The degree to which this commitment will translate into practice is yet to be determined. As Pat Turner, Lead Convenor of the Coalition of Peaks, stated at the Closing the Gap press conference, “the real hard work starts tomorrow”.

DATA SOVEREIGNTY

The concept of data sovereignty is increasingly becoming a priority reform and advocacy area as a means for Aboriginal and Torres Strait Islander people to achieve true self-determination. The Australian Institute of Aboriginal and Torres Strait Islander Studies describes Indigenous data sovereignty as “the right of Indigenous peoples to govern the collection, ownership and application of data about Indigenous communities, lands, and resources” (Bodkin-Andrews et al. 2019). Indigenous data sovereignty is becoming a global movement, with Indigenous people around the world advocating for the rights of First Nations over data about them (Bodkin-Andrews et al. 2019).

The Closing the Gap engagement process (Coalition of Peaks 2020) explored this concept in significant detail, with a priority reform to ensure Aboriginal and Torres Strait Islander people have access to locally relevant data and information becoming part of the final *National Agreement on Closing the Gap*.

Participants in the engagement process told the Coalition of Peaks that partnerships and shared decision-making must be supported by access to the same data and information that governments have:

“Data is power, the people that have that information get to control what the narrative is that is shared to the public and media. Community should be in control of that, but government must be willing to cede some of that power. If they really care about self-determination, then they need to show it (Melbourne, Victoria)”

(Coalition of Peaks and Australian Governments 2020, p. 70).

The new *National Agreement on Closing the Gap*, released in July 2020, outlines and agrees to the following key features that should be contained in data and information-sharing practice between governments and Aboriginal and Torres Strait Islander people and communities:

- There are partnerships in place between Aboriginal and Torres Strait Islander representatives and government organisations to guide the improved collections, access, management and use of data to inform shared decision-making for the benefit of Aboriginal and Torres Strait Islander people.
- Governments agree to provide Aboriginal and Torres Strait Islander communities and organisations access to the same data and information on which any decisions are made, subject to meeting privacy requirements, and ensuring data security and integrity.
- Governments collect, handle and report data at sufficient levels of disaggregation, and in an accessible and timely way, to empower local Aboriginal and Torres Strait Islander communities to access, use and interpret data for local decision-making.

Aboriginal and Torres Strait Islander communities and organisations are supported by governments to build capability and expertise in collecting, using and interpreting data in a meaningful way (Coalition of Peaks and Australian Governments 2020, p. 14).

Access to data for Aboriginal and Torres Strait Islander communities is particularly important in the child protection context where, historically, data captured by governments about children and families has informed various iterations of punitive, interventionist and discriminatory policies and created a high level of distrust. This has been highlighted in recent reports and reviews such as the *Family is Culture* report which strongly reiterated the importance of government departments engaging with Aboriginal and Torres

Strait Islander people when it comes to quantifying and interpreting administrative data (Davis 2019). According to the report, the first step towards Aboriginal data sovereignty is creating frameworks and infrastructure that support rigorous stakeholder engagement over any administrative data concerning Aboriginal and Torres Strait Islander people and children.

The Productivity Commission’s *Expenditure on Children in the Northern Territory* report, released in March 2020, similarly stated that the reluctance of governments to share data with communities has itself created a level of distrust and disempowerment. The report recommended that governments should collate regional and community-level data on outcomes and share this data with communities (Australian Government Productivity Commission 2020, rec. 6.1 and 7.1).

State and territory child protection departments across Australia are yet to formally endorse concepts of data sovereignty and partner with Aboriginal and Torres Strait Islander communities to interpret data relating to their children and families. It is worth noting that there are a number of significant initiatives in a formative stage of improving shared access to data. The Queensland Government is in the process of developing regional data profiles to improve Aboriginal and Torres Strait Islander oversight for the Our Way strategy; the Victorian Government shares regional data with Aboriginal service leaders through the Aboriginal Children’s Forum, supporting accountability for the implementation of the *Wungurilwil Gapgapduir*; and there is ongoing work between Child and Families Secretaries (CAFS), SNAICC and the AIHW to develop improved data measurement and reporting aligned to the Aboriginal and Torres Strait Islander Child Placement Principle, with a new AIHW data report on the Child Placement Principle due out this year.

With the release of the *National Agreement on Closing the Gap* and the priority area reform focus on shared access to data and numerous reports and recommendations, state and territory actions concerning data sharing over the next year will be critical to ascertaining whether they are truly committed to achieving meaningful self-determination for Aboriginal and Torres Strait Islander peoples.

SUPPORTING A STRONG ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY-CONTROLLED SECTOR

Through the signing of the *National Agreement on Closing the Gap*, the Australian Government committed to building a formal Aboriginal and Torres Strait Islander community-controlled service sector to deliver services to support self-determination for Aboriginal and Torres Strait Islander communities (Priority Area 2). In the Coalition of Peaks engagement report (Coalition of Peaks 2020), participants clearly stated that:

“Community control is essential. It’s a celebration of Aboriginal people’s achievements. It implicitly recognises the strength, the expertise and the right to self-determination by Indigenous communities.”

Achievement of this priority reform area requires long-term investment and commitment, as one of the participants noted:

“Provide long-term funding for programs (5+ years) that includes time to build relationships and trust in communities, recognise that results may take decades for incremental change.”

(survey response)

Evidence of the link between self-determination and community control and Aboriginal and Torres Strait Islander health and wellbeing is well documented (Bourke et al. 2018; Dudgeon, Bray & Walker 2020; Cronin 2019; Butler et al. 2019). Investing and funding Aboriginal and Torres Strait Islander community-controlled services is therefore essential to adequately meeting the needs of Aboriginal and Torres Strait Islander children and their families. Further, investment is required in workforce development and quality evaluation to build evidence and support innovation for Aboriginal and Torres Strait Islander community-controlled organisations (ACCOS), as discussed in detail in Part 3.

Through Closing the Gap, government parties have agreed to implement measures to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations, particularly ACCOs. This requires allocating a meaningful proportion of funding to ACCOs when delivering initiatives intended to service the broader population across socioeconomic outcome areas of the agreement. A meaningful proportion should take into account the service demands of Aboriginal and Torres Strait Islander people. Despite all states committing to develop reporting on the proportion of their expenditure on ACCOs through the *National Framework for Protecting Australia’s Children 2009-2020*, current AIHW data does not capture this. However, some states and territories provided this data to inform this report. This year, four jurisdictions provided data indicating their expenditure on ACCO services broken down by family support, intensive family support, child protection and out-of-home care. The Northern Territory provided data on the total expenditure on child protection services. Western Australia provided data on proportion of ACCO expenditure from external services. Tasmania and Victoria did not provide any data in relation to their expenditure on ACCOs.

Figure 33 compares the expenditure on ACCOs between jurisdictions, mapped against the percentage of children in care who are Aboriginal and Torres Strait Islander children, which provides a guide to what a proportion of expenditure aligned to need should be. The expenditure on ACCOs is measured against the total expenditure

for child protection services reported in the *Report on Government Services* (Steering Committee for the Review of Government Service Provision 2020).

New South Wales leads the nation in the proportion of expenditure on ACCOs, with 5.9%, although it still falls significantly short of the percentage of children in care who are Aboriginal or Torres Strait Islander (40%) and three quarters of the expenditure is spent on out-of-home care services. Queensland leads the nation in ACCO expenditure on family support (14.7%) and intensive family support (24.7%), which is commendable given the priority call of the Family Matters campaign for investment in community-led prevention and early intervention. However, Queensland also has the second largest percentage gap overall, with only 4.8% of children protection investment provided to ACCOs where 44% of children in care are Aboriginal or Torres Strait Islander. The Northern Territory reported the second-largest percentage of expenditure on ACCOs, with 5.7%, yet the largest percentage gap with 90% of children in care being Aboriginal or Torres Strait Islander. The Australian Capital Territory only reported 1% of expenditure on ACCOs and with 28% of children in care that are Aboriginal or Torres Strait Islander, it will need to increase its expenditure by 28 times to reach to the proportion of children in out-of-home care. Victoria is known to invest very significantly in Aboriginal and Torres Strait Islander organisations for child protection-related services, including through its current program to transfer case management and delegate statutory authority to ACCOs; however, it does not report on its funding allocation. Western Australia reported that 20.76% of its total expenditure on family support and intensive family support services was provided to ACCOs and that 13.91% of total expenditure on child protection services was provided to ACCOs in the year 2018 - 2019. However, this data was provided as a proportion of expenditure on external services and thus is incompatible with what has been provided by other states and territories.

The Australian Government Department of Social Services and the National Indigenous Australians Agency (NIAA) were requested to provide input on their expenditure on ACCOs providing child and family services. While neither provided relevant expenditure data, NIAA reported that 43% of activities in its \$248.8 million Children and Schooling program area and 73% of activities in its \$260.1 million Safety and Wellbeing program are delivered by ‘Indigenous organisations’. It is unknown how this translates to the level of expenditure, and, notably, a broad definition of ‘Indigenous organisation’ is applied that does not address key aspects of community control, capturing organisations that self-identify and have “at least 51% Indigenous organisation membership”.

While there is still a long way to go on allocating a meaningful proportion of expenditure to ACCOs, tracking, reporting and being accountable to the data is an important step.

DELEGATION OF STATUTORY POWERS TO ACCOS

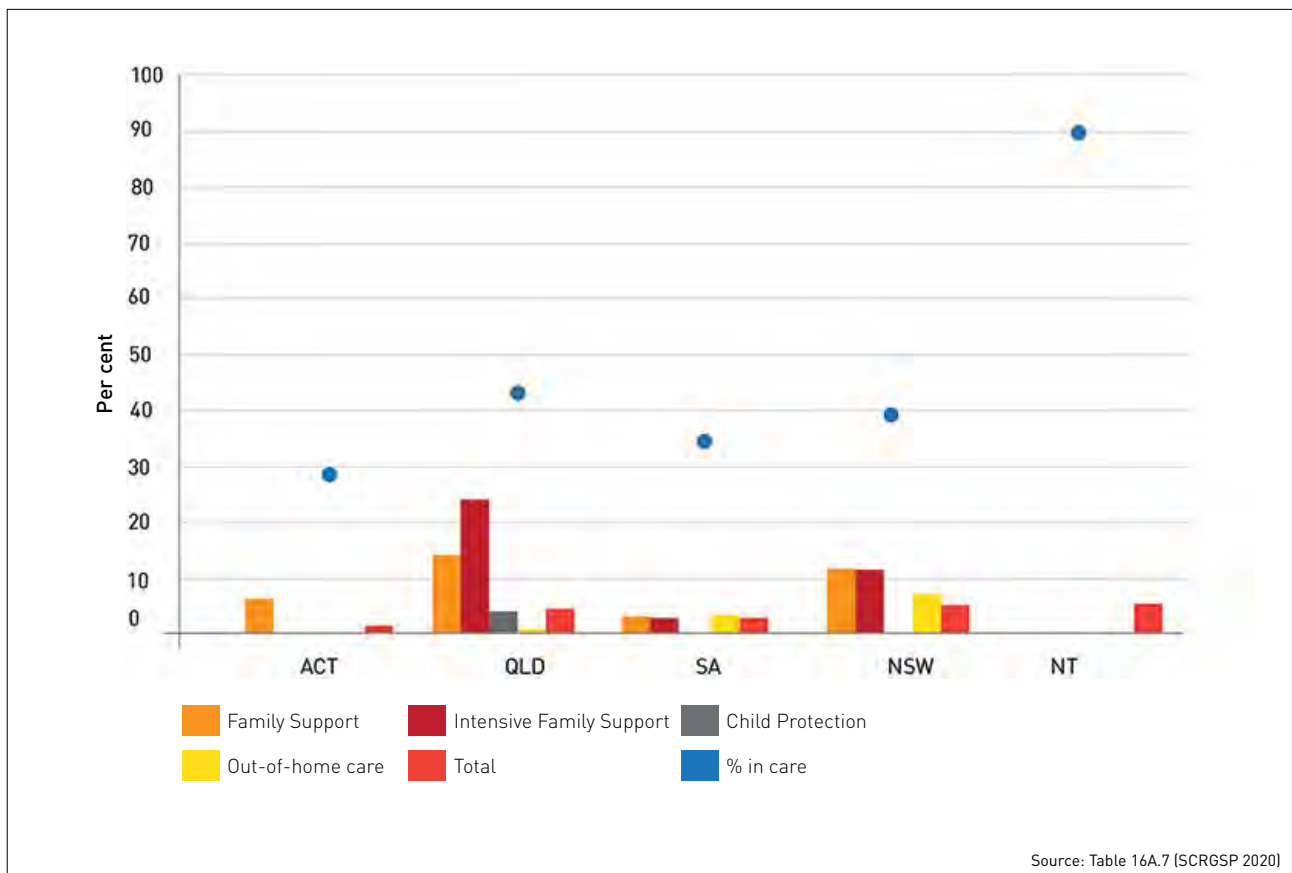
One mechanism to support self-determination through empowering Aboriginal and Torres Strait Islander community-controlled organisations (ACCOS) in the child protection context is the delegation of statutory powers to ACCOs. This has been implemented to varying degrees in Victoria and Queensland. In Victoria, section 18 of the Children Youth and Families Act 2005 (Vic.) enables the Secretary of the department to authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under the Act in relation to a protection order in respect of an Aboriginal child. This power has been exercised through Victoria’s Aboriginal Children in Aboriginal Care program, with ACCOs taking full responsibility for the care and case management of Aboriginal children in out-of-home care.

This role has been commenced through the Victorian Aboriginal Child Care Agency (VACCA) with the Nugel program, and pre-authorised with the Bendigo and District Aboriginal Cooperative with the Mutjang

Bupuwingarrak Mukman program, and, more recently the Njernda Aboriginal Corporation. Preliminary data indicates that children in these programs have remained connected to, or redevelop connections to their families, communities and cultures, by being placed within the care of their kin or by being reunified with their families (Victorian Aboriginal Children & Young People’s Alliance 2019b).

In Queensland, legislation amending the *Child Protection Act 1999* in 2019 enables the Chief Executive to delegate one or more of their functions or powers under the Act to the CEO of an Aboriginal and Torres Strait Islander community entity to make decisions for the child in relation to those matters. Implementation of these provisions is underway with partnerships being formed with two ACCOs. While these initiatives fall short of enabling ACCOs to design and deliver their own systems, they are important examples of governments’ willingness to relinquish control over key decisions in the interest of promoting self-determination for Aboriginal and Torres Strait Islander people in order to achieve better outcomes for their children.

FIGURE 33 % Expenditure on Aboriginal community-controlled organisations in comparison with % of children in care that are Aboriginal or Torres Strait Islander



CASE STUDY

NUGEL PROGRAM BY VACCA – VICTORIA

In Victoria, Aboriginal Children in Aboriginal Care is the program which enables s18 of the *Children Youth and Families Act 2005* (Vic.). S18 enables the Secretary of the Department to authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers conferred on the Secretary by or under this Act in relation to a protection order in respect of an Aboriginal child. This means that Child Protection role will cease, and the ACCO will take on all statutory decision making and responsibility for the child. As part of this process, VACCA launched its Nugel program in November 2017. Nugel is the Wurundjeri word for “belong”.

Nugel have been authorised in relation to 102 children since the program commenced in November 2017, and during this time has safely returned many children home. VACCA has safely returned many children home, the early findings from the evaluation of the ACAC implementation highlight that based on the reunification rates from 2017-2019 for an indicative sample of 100 children, the projected reunification rate in the Hume Moreland and North-East Metro Area for VACCA was higher (22%) than the reunification rate for DHHS (5%). This is significant achievement as many of these children have been in care for years

Nugel’s practice approach is embedded in Cultural Therapeutic Ways – a whole of agency approach which places culture at the centre and integrates this with theories of self-determination and trauma. It recognises that children have a sacred place at the centre of Aboriginal communities, and that Aboriginal children are born into circles of care that include immediate family, broader kinship networks and the community as a whole. Nugel is part of this community, and therefore seek to strengthen and empower Aboriginal families to be able to take on this responsibility.

DATA GAP

STATE, TERRITORY AND COMMONWEALTH DATA ON EXPENDITURE ON ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN AND FAMILIES AND COMMUNITY-CONTROLLED SERVICES

Reported data is limited in showing the percentage of expenditure on family support, intensive family support and child protection services targeted to Aboriginal and Torres Strait Islander children and families (not available), and/or delivered by community-controlled agencies (fully reported by four jurisdictions only). This data is needed to ensure a better understanding of the costs of service provision for Aboriginal and Torres Strait Islander children, and relative investment in culturally safe and targeted interventions that could prevent their entry to out-of-home care, or promote early reunification or restoration with family.

THE INDIGENOUS EXPENDITURE REPORT

Two key gaps need to be addressed concurrently in the collection and reporting of Aboriginal and Torres Strait Islander expenditure data, through the Productivity Commission’s Indigenous Expenditure Report, to provide a meaningful indication of the extent to which community-controlled services are enabled to respond to the needs of children and families:

1. Aboriginal and Torres Strait Islander expenditure data needs to include child protection and family support services.
2. Data must differentiate between Aboriginal and Torres Strait Islander-specific service delivered by Aboriginal and Torres Strait Islander community-controlled organisations and those delivered by governments and services. The available data on investment in family support services has significant comparability issues because there is no nationally agreed-upon definition of family support service with variations in types and levels of support across jurisdictions.

Recommendation: That Commonwealth, state and territory governments urgently progress the development and reporting of nationally consistent data that identifies expenditure on child protection and family support services both provided to Aboriginal and Torres Strait Islander children and provided by Aboriginal and Torres Strait Islander community-controlled services.

4.3 ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The Aboriginal and Torres Strait Islander Child Placement Principle was first established 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.

Unfortunately, after 40 years, full implementation of the Child Placement Principle has not yet been realised. Full implementation of the Child Placement Principle aligns with all recent *National Agreement on Closing the Gap* priority areas 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 (Coalition of Peaks & Australian Governments 2020).

This part of the report analyses the progress to implement the five elements of the Child Placement Principle. The elements of the Child Placement Principle are all interrelated, and therefore implementing one element relies on the implementation of all other elements. Two other concepts are discussed first: institutional racism, ritualism and active efforts.

TACKLING INSTITUTIONAL RACISM

Part 2 of this report explored institutional racism as a key determinant of the health of Aboriginal and Torres Strait Islander people and a structural driver that leads to a high rate of Aboriginal and Torres Strait Islander children and families encountering child protection and out-of-home care systems. Tackling institutional racism is also a significant barrier to implementing the ATSI CPP which seeks to put culture at the centre of decision making. The Australian Government has acknowledged the need for government agencies and institutions to address systemic, daily racism, and promote cultural safety and transfer power and resources to communities in the *National Agreement on Closing the Gap*. However, the extent of the government's commitment to transforming mainstream government organisations and eliminating racism will become clearer in the coming years.

In Australia, the fight for an end to institutionalised racism is not new and has formed a part of the lived experiences of Aboriginal and Torres Strait Islander people for centuries. Despite numerous inquiries and Royal Commissions into systems that disproportionately

adversely impact Aboriginal and Torres Strait Islander people and subsequent recommendations to address institutionalised racism, it continues to this day. In 2019, during the Closing the Gap consultations, participants told the Coalition of Peaks:

“Institutional racism can sometimes be hidden – attitudes, behaviour, body language and waiting times.”

(survey response, New South Wales)

“Sometimes I worry that if I disclose what’s going on in family and community, it will reinforce the idea that Aboriginal families all have problems.”

(survey response, Victoria) (Coalition of Peaks 2020)

In the child protection context, discriminatory treatment of Aboriginal and Torres Strait Islander children and families is well documented. As recently as 2019, the *Family is Culture* review reported racism as a key issue that has been raised by stakeholders (expanded on in Part 2). In the consultation that informed South Australia’s Commissioner for Aboriginal Children and Young People Inaugural Report December 2019, Aboriginal community members told the Commissioner:

“The ongoing racism and prejudice which labels us in the system. The unnecessary ‘over’ intervention needs to stop.”

(Aboriginal community member, Ceduna)

“We need to stop the Stolen Generation happening again. It is the same policy. Just a different face.”

(Aboriginal community member, Port Pirie) (Lawrie 2019)

In the Northern Territory, approximately 60% of the Aboriginal population speak an Aboriginal language at home (ABS Census 2016), and many Aboriginal parents continue to be subject to systems and court processes that they don’t understand. As mentioned in Part 2 of this report, in 2016, the Royal Commission into the Protection and Detention of Children in the Northern Territory heard multiple examples of Aboriginal parents, for whom English was not a first language, who did not understand what they must do in order for their children to be returned to them (White & Gooda 2017, p. 272).

Despite the Northern Territory Government’s whole-of-government Language Services Policy, the *Pathways to the Northern Territory Aboriginal Justice Agreement* engagement report released in early 2020 found that “Aboriginal people do not receive the language services they need, and as a result struggle to make sense of justice processes and outcomes.” (Northern Territory Government 2020, p. 84). The imposition of punitive systems on Aboriginal people in a language they do not understand prevents any meaningful participation in decision-making and is a blatant example of the institutional racism they continue to experience today.

More broadly, the *Family is Culture* report suggested that systems are often incomprehensible to many families and urged specialised advocacy supports to enable effective engagement and participation.

RITUALISM

The concept of ritualism has been explored in the context of implementing human rights standards and defined as “formal participation in a system of regulation while losing sight of its substantive goals” (Charlesworth 2015). Most recently the concept was applied in the child protection context in the *Family is Culture* report when addressing the complexities of a large-scale bureaucracy. In reviewing the child protection system in New South Wales, the report found that case workers worked within a regulatory framework that has been “attuned to risk aversion”, noting that the ritualism is most evident in the application of the Child Placement Principle. The review notes:

“Ritualism takes the form of compliance manifest in endlessly changing policies espousing departmental commitment to ATSICPP, meetings (where minutes are more important than substance), glossy brochures, tick-a-box forms etc. Despite this, the outward appearance of compliance – formal participation in a system of regulation – shields a culture of non-compliance, as this Review has found.”

(Davis 2019)

This description of the barriers to implementing the ATSICPP echoes the findings of previous reviews and studies that revealed the lack of substance and quality of practice, even when compliance outwardly appears high (ACT Government 2019, SNAICC 2018b).

ACTIVE EFFORTS

The lack of significant progress in reducing the rates of over-representation of Aboriginal and Torres Strait Islander children in the child protection system is a result of insufficient effort made by governments to address systemic flaws. In order to turn the tide, active efforts are required to engage and find solutions with the Aboriginal and Torres Strait Islander community.

The active efforts concept is drawn from the *Indian Child Welfare Act* (ICWA), which aims to ensure safety and connection for Indigenous children in the United States. Active efforts must be ‘timely’, ‘thorough’ and ‘purposeful’. The United States’ understanding of active efforts provides useful guidance on how the concept might be interpreted in the Australian context. The National Indian Child Welfare Association’s *Guide to Compliance with Indian Child Welfare Act* stipulates that active efforts should be initiated at the investigation point of statutory intervention and may include:

- conducting a strengths-based assessment that takes into account the cultural needs of the child and the lived realities of their community

- developing a case plan in partnership with a child’s family and community
- providing early intervention supports to families before a child is removed, except in cases of imminent risk
- providing services that support the reunification of a child with his or her parent or Indigenous kin after the removal of a child (SNAICC 2017).

The ‘active efforts’ threshold should be applied across all government law, policy and practice relating to implementing the Child Placement Principle.

PREVENTION

The prevention element is broad and covers a wide range of topics that are interwoven throughout this report. Essentially, any recommended action by this report goes towards preventing harm to Aboriginal and Torres Strait Islander children and their families. Elements of prevention include improving broader social determinants of health (that is, the conditions under which Aboriginal and Torres Strait Islander children are born and grow), addressing institutional racism and intergenerational trauma and embedding self-determination within our systems. Prevention means empowering communities to make decisions and servicing community needs. It includes the provision of access to culturally safe universal services including housing, education and health. In the context of child protection, prevention includes the provision of culturally safe family support for families who may be vulnerable to prevent children from being removed.

PARTNERSHIP

Partnerships with Aboriginal and Torres Strait Islander peoples and organisations need to be developed through active efforts and a shared commitment to building deeper, respectful and more genuine relationships.

The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision-making, including in:

- individual case decisions at intake, assessment, intervention, placement and care, and judicial decision-making processes
- the design and delivery of child and family services.

More broadly, the new *National Agreement on Closing the Gap*’s priority reforms include (1) formal partnerships and shared -decision-making and (2) building formal Aboriginal and Torres Strait Islander community-controlled service sectors.

The terms ‘co-design’, ‘partnership’, and ‘engagement’ are often used in government policy frameworks but the extent to which they are realised varies. This was clear in the *Closing the Gap engagement report*, where participants reported:

“Consultation and co-design are terms that are bandied around, but we need to have a voice in whatever process is happening, in whatever work we’re doing, at whatever level.”

(national meeting report, Australian Capital Territory)

“There needs to be (a partnership), but not just on paper – [it] needs to be living.”

(Griffith, NSW)

“Aboriginal people need to be involved in the decision-making ... Aboriginal people know what is best for their communities [and] need to work with government.”

(Muswellbrook, NSW) (Coalition of Peaks 2020)

The Productivity Commission’s *Expenditure on Children in the Northern Territory* study report, released in 2020 similarly found that, “It remains that community input into service selection and design is often belated or superficial – the end result of these processes is that the system of children and family services in the Northern Territory is fragmented with government expenditure poorly targeted and failing to best address the needs of children and families.” (Australian Government Productivity Commission 2020, finding 5.1).

For a partnership to be meaningful, it must be genuine and respectful. Governments across Australia must acknowledge the inherent power imbalances within the system and work to build trust and mutual understanding with the Aboriginal and Torres Strait Islander community.

When reviewing the partnership element of the principle, the *Our Booris, Our Way* report (ACT Government 2019) found that, of children living at home, only 11% of the cases were referred to programs specific to Aboriginal and Torres Strait Islander people. For children on short-term orders, the cultural services team was consulted in only 85% of cases and consultation with an Aboriginal and Torres Strait Islander organisation in 53% of the cases. Despite these statistics, the report identified some individual cases of positive case work which included:

- open, regular and solution-based communication with support services
- involvement of ACCOs
- providing options to the family and encouraging them to select services that they felt most comfortable being involved with.

An effective way to work towards implementing the partnership element is through specifically funding ACCOs to take a formal role in child protection decisions across the continuum. This has been done to a certain extent in Queensland with its Family Participation Program and in Victoria with the Aboriginal Child Specialist Advice and Support Services (ACSASS) program. A key function of the Family Participation Program is to facilitate independent Aboriginal and

Torres Strait Islander family-led decision-making in a way that optimises a family’s participation and confidence in the process. The ACSASS program funds community-controlled organisations to provide culturally informed, holistic consultation to child protection practitioners about the wellbeing of Aboriginal children and young people. A new, innovative and Aboriginal and Torres Strait Islander-led approach to involving ACCOs in decision-making prior to statutory intervention is Queensland’s HALT Collective, profiled below.

CASE STUDY

THE HALT COLLECTIVE

The HALT Collective is a collaborative Brisbane district community-led intake process. When the Brisbane Regional Intake Service is notified about an Aboriginal and Torres Strait Islander family, a referral to HALT may be considered. HALT members, including Aboriginal and Torres Strait Islander Wellbeing Services Kurbingui, Kummara and ATSIChS, as well as Indigenous Family and Child Connect and the Department of Child Safety, Youth and Women’s Cultural and Indigenous Practice Advisors inform and assess the case. HALT has led to more collaborative work and stronger partnerships around family engagement, planning and intervention, as well as stronger partnerships between the department and the secondary sector.

Between November 2018 and March 2020, HALT discussed 60 Aboriginal or Torres Strait Islander families who were notified to the Brisbane Regional Intake Service. Of these:

- 28 (47%) were recorded as a Child Concern Report with a follow-up Aboriginal and Torres Strait Islander community support response in place
- 26 (43%) were recorded as a Child Protection notification but received a joint response from a Child Safety Service Centre and a community-controlled organisation
- 6 (10%) were recorded as a Child Protection Notification and assessed by a Child Safety Service Centre
- 98% of the children are currently with family members.

PLACEMENT

Aboriginal and Torres Strait Islander children have the right to grow up safe within their family and community. The placement element seeks to ensure that a child maintains the highest level of connection possible to their Aboriginal and/or Torres Strait Islander family, community, culture and country (SNAICC 2017).

Placement of an Aboriginal and Torres Strait Islander child in out-of-home care is prioritised in the following way:

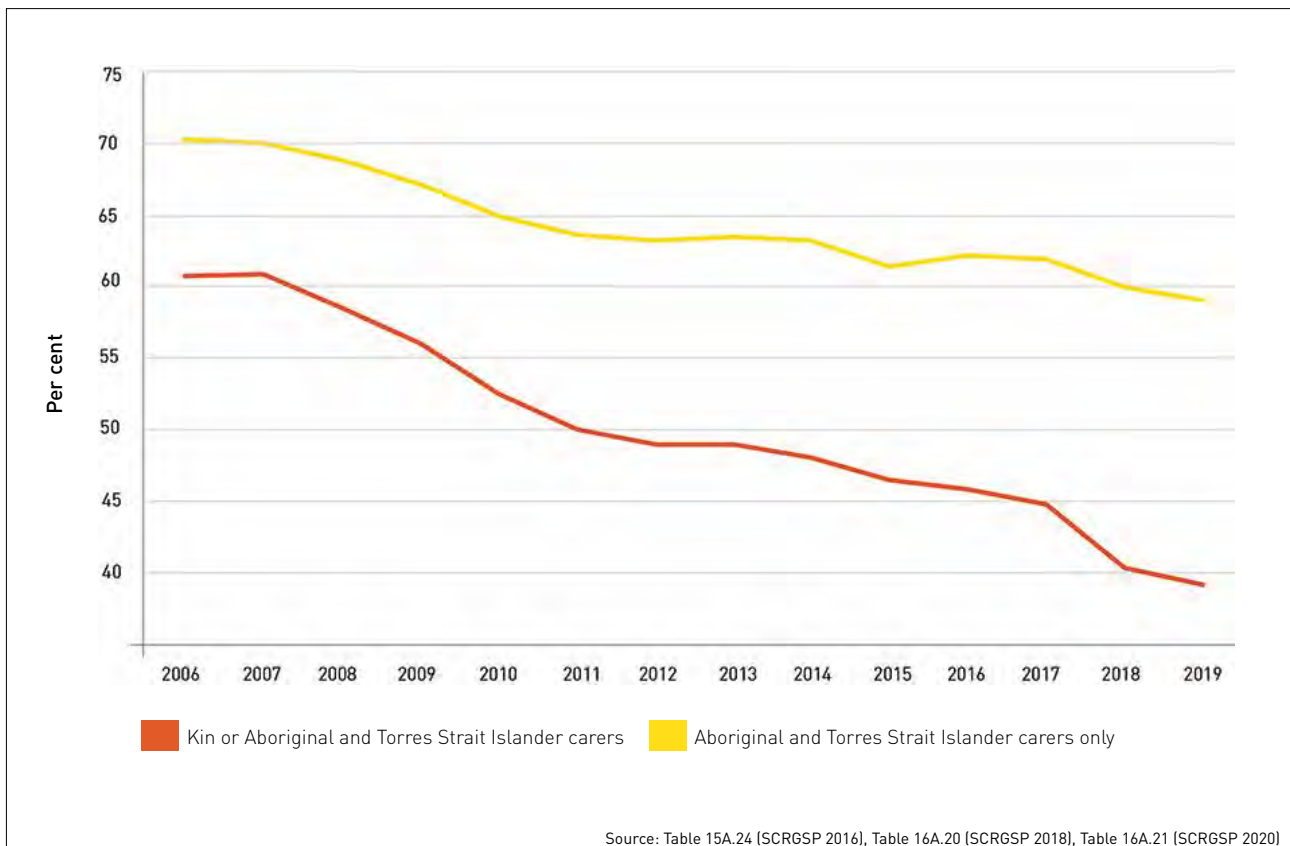
- with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or
- with Aboriginal or Torres Strait Islander members of the child's community; or
- with Aboriginal or Torres Strait Islander family-based carers; or, as a last resort
- a non-Indigenous carer or in a residential setting (SNAICC 2017).

If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family. Full compliance with the principle requires active efforts to fully explore a child's family and community relationships, and cultural connections to identify potential placements. It requires knowledge of kinship systems, cultural practices and traditional customs.

(SNAICC 2018a). The outcome of a placement decision is reported in the Report on Government Services (RoGS) which indicate whether a child is placed with Aboriginal and Torres Strait Islander family or kin, other family or kin, other Aboriginal and Torres Strait Islander carers, or in Aboriginal and Torres Strait Islander residential care (Steering Committee for the Review of Government Service Provision 2020). However, this data provides only a proxy measure of compliance, as it does not indicate the extent to which practitioners explore a child's family and community relationships and cultural connections to identify potential placements or consult with those with cultural authority for a child. Nevertheless, it is a useful tool to measure progress in achieving the intended outcomes of the placement element of the principle.

Figure 34 shows that the rate of placement of Aboriginal and Torres Strait Islander children with family and kin or other Aboriginal and Torres Strait Islander carers has continued to drop from 74.8% in 2006 to 63.6% in 2019. Figure 34 also shows a far greater and deeply concerning drop in the rate of placement with Aboriginal and Torres Strait Islander carers (excluding non-Indigenous family and kin). The rate of Aboriginal and Torres Strait Islander children in out-of-home care placed with Aboriginal and Torres Strait Islander carers dropped from 45% at 30 June 2018 to 43.8% at 30 June 2019.

FIGURE 34 Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers from 2006 to 2019



The sharp decline in children being cared for by Aboriginal and Torres Strait Islander carers is alarming, dropping almost ten percentage points in just the last five years. The percentage of Aboriginal and Torres Strait Islander children placed with non-Indigenous kin is higher than ever before (19.8%), pointing towards increasing systemic bias against placing children with their Aboriginal and Torres Strait Islander kin. These statistics are even more alarming when considering concerns that have been identified with the inappropriate definition of Aboriginal and Torres Strait Islander kinship. For example:

- the Northern Territory defines family as “anyone who is closely associated with the child or another family member of the child” (Care and Protection of Children Act 2007 (NT), sec. 19)
- the legislation in the Australian Capital Territory defines a kinship carer as a family member or a significant person. A ‘significant person’ is a non-family member who the “child or young person, a family member of the child or young person or the director-general considers is significant in the child’s or young person’s life” (Children and Young People Act 2008 (ACT), sec. 516 and 14).

- Queensland’s legislation defines kin in relationship to a child as meaning ‘any of the child’s relatives who are persons of significance to the child; and anyone else who is a person of significance to the child (Child Protection Act 1999 (QLD), sec. 3).

The use of a broad interpretation of ‘kin’ or ‘family’ means that in most if not all jurisdictions, some Aboriginal and Torres Strait Islander children are being raised by non-Indigenous, non-family members deemed by the state to be, for example, part of their social network or a person of significance to the child. The result from such a placement can be the varying degree of separation from family and culture, which cannot rightly be deemed as compliant with the intent of the Child Placement Principle. Wide statutory definitions of ‘kin’ that do not truly reflect Aboriginal and Torres Strait Islander kinship, distort data available on how many Aboriginal and Torres Strait Islander children in out-of-home care are having their cultural rights respected and cultural needs met.

Figure 35 shows Victoria and the Australian Capital Territory have seen a steady increase in the number of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander

FIGURE 35 Percentage of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carer between 2014 and 2019 by state and territory



carers since 2014. Victoria rose from 65.8% to 78.8%, while the Australian Capital Territory has gone from 55.3% to 64.3%. Victoria has been the clear investment leader in implementing the placement principle with legislation that enables powers and functions to be transferred to ACCOs (discussed earlier in this part). Victoria's investment in ACCOs and commitment to transfer all Aboriginal children to Aboriginal case management by the end of 2021 can be clearly linked to their increase in and highest percentage of placements of Aboriginal children with family and kin.

Concerningly, the Northern Territory has the lowest percentage of placement across Australia of Aboriginal and Torres Strait Islander children being placed with kin or other Aboriginal and Torres Strait Islander carer at 30 June 2019 (36.9%). Despite this, some progress has been made in the Northern Territory over the last two years, with a slight increase since 2017. This may be attributed to the Aboriginal Carers Growing Up Aboriginal Children Program which includes

funding to ACCOs to find, recruit, assess and establish placements, and provide ongoing support to carers.

There may be various factors that account for the decline in the rate of Aboriginal and Torres Strait Islander children in out-of-home care who are placed with Aboriginal and Torres Strait Islander kin nationally. Potential factors include:

- the inability of statutory authorities to identify appropriate Aboriginal and Torres Strait Islander kin to provide care
- the failure to resource ACCOs with relevant cultural authority to support the identification of kin; lack of supports provided to Aboriginal and Torres Strait Islander carers or potential carers
- the use of culturally inappropriate assessment tools to assess potential and existing carers
- difficulties for kin in meeting the eligibility criteria (Bromfield, Higgins, Higgins & Richardson 2007).

CASE STUDY

PROMISING PRACTICE: YALU ABORIGINAL CORPORATION – A GRASS ROOTS RESPONSE THAT ENGAGES FAMILIES THROUGH RAYPIRRI ROM (ABORIGINAL LAW) PRINCIPLES

Yalu Aboriginal Corporation in Galiwinku is one of six recipients of the Aboriginal Carers Growing Up Aboriginal children program. The program works with Yolngu families to keep children within their family homes or close to family. Yalu Aboriginal Corporation works specifically on a grass roots level in Galiwinku community to keep children within their family homes. The program also identifies and develops Yolngu families to qualify to become foster carers to maintain kinship connections and cultural practices.

Yalu is an Aboriginal Corporation that delivers programs, research and community education to strengthen health and wellbeing from a foundation of cultural integrity. They are grounded in a commitment to facilitate two-way learning of Yolngu Rom (Law) and Western ideology with mutual understanding and respect. All the services have been created out of community identified needs and are underpinned with Yolngu values and law. Drawing on the Yolngu philosophy of interconnectedness, the programs aim to create a holistic and connected approach. As a result, Yalu is central to the community development of Galiwin'ku.

The Yalu Families & Children Safe Together program has been successful so far with early signs of success in breaking down the stigma of welfare taking children away from their families, and it has started down the path of expanding the footprint to neighbouring remote communities. The success is due to the grass roots approach and engaging through Raypirri Rom (Aboriginal Law) principles – showing where it matches child protection laws.

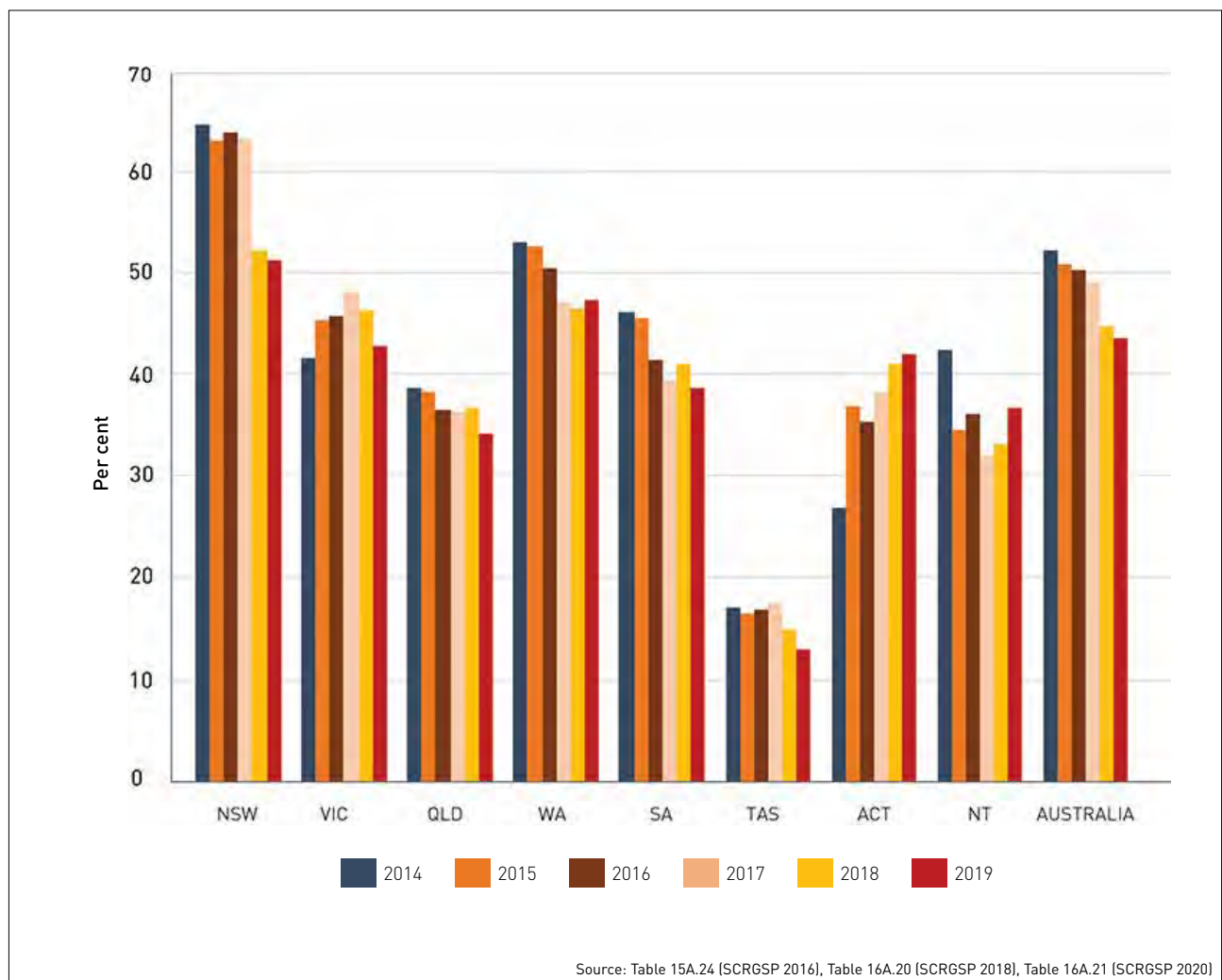
Yalu also has a pool of staff that provide practical help when needed, including peer matching teenage clients to encourage re-enrolment in school and engaging with Centrelink for benefits. Yalu has highly skilled Aboriginal staff who assist Territory Families staff with family meetings, mediation and family mapping. There is a high degree of practical assistance with transport of clients and carers and delivering aides to daily living. All in all, this approach is visible family strengthening.

There's lots more to do but Yalu is confident that the scope for strengthening families with our Territory Families colleagues is a path well worth following. The experience of this program demonstrates the success of and need for locally based solutions and local decision-making as Aboriginal leaders in the community know best what the community needs are.

The *Family is Culture* report observed that, 'it is important for Aboriginal carers to be assessed using a culturally appropriate model that is based on Aboriginal concepts of family structure, approaches to child rearing and cultural foundations' (Davis 2009, p. 303). Research has highlighted the strain on Aboriginal and Torres Strait Islander families and communities resulting from pressures of additional care while also experiencing higher levels of poverty and disadvantage (Kiryaly & Humphreys 2011). This strain is compounded by lower levels of support provided to kinship carers as opposed to foster carers. Concerns have also been raised regarding potential racism in decision-making leading to the preferencing of non-Indigenous kin placements. These concerns align with literature on the negative impacts of wrongly assumed dysfunction of Aboriginal and Torres Strait Islander communities that contribute to discriminatory child protection intervention (Cuneen 2015).

Figure 36 shows that Western Australia, the Australia Capital Territory and the Northern Territory all had increases in the placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander carers between 2018 and 2019. Western Australia rose from 46.9% to 47.6%, after a steady decrease since 2013. The Australian Capital Territory continued its upward trajectory, rising from 41.2% to 42.2%. The Northern Territory had the biggest increase, from 33.3% to 36.9%, but remains the second lowest rate in the country after Tasmania. The remaining states and territories all saw decreases in the placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander carers from 2018 to 2019, reflecting the national data.

FIGURE 36 Percentage of Aboriginal and Torres Strait Islander children placed with Aboriginal and Torres Strait Islander carers between 2014 and 2019



New South Wales had the greatest decline in the placement of children with Aboriginal and Torres Strait Islander carers, decreasing from 64.9% to 51.5% between 2014 and 2019. The impact of this decrease has been compounded by the recently announced funding cuts to AbSec, the peak body for Aboriginal children and families in New South Wales and the failure to achieve the transition of Aboriginal children in Out of Home Care to accredited ACCOs. This financial year will see the organisation lose 50% of its \$5.7 million annual funding. AbSec works to advocate on behalf of and empower Aboriginal children, young people, families and communities impacted by the child protection system. The community-controlled organisation also provides policy advice to the NSW Government to embed culturally safe systems and practice. The funding cut will therefore have devastating effects on Aboriginal and Torres Strait Islander children in the state's child protection system, who have already been disproportionately impacted by COVID-19.

States and territories were also asked to provide data for the percentage of Aboriginal and Torres Strait Islander children admitted to care in 2018-2019 who were placed with Aboriginal and Torres Strait Islander kin or carer. This provides an indication of current practice as distinct from the data analysed above which calculates the percentage based on the total number of Aboriginal and Torres Strait Islander children in care, some of whom have been in care for a long time. Four states provided this data. The Australian Capital Territory reported that, from the Aboriginal and Torres Strait Islander children admitted to care in 2018-19, 32% were placed with an Aboriginal and Torres Strait Islander kin or carer. The Northern Territory reported that 57% were placed with Aboriginal and Torres Strait Islander kin or carer. South Australia reported that 28% were placed with an Aboriginal and Torres Strait Islander kin or carer. In Queensland, 22.4% were placed with an Aboriginal and Torres Strait Islander kin or carer – an extremely low rate, well below the current percentage for Aboriginal and Torres Strait Islander children in care. This data raises high concern that, based on current practice and outcomes, the rates of placement with Aboriginal and Torres Strait Islander carers will likely continue to decline significantly in Queensland and South Australia.

In the AIHW's Child Protection Australia and RoGS data, placement of Aboriginal and Torres Strait Islander children in residential care settings that are targeted to Aboriginal and Torres Strait Islander children, irrespective of whether they are Aboriginal and Torres Strait Islander-run services, is counted as compliant with the Child Placement Principle. As the lowest, 'last resort' option in the placement hierarchy, a child living in residential care should not be counted as a compliant placement and as such, 'Aboriginal and Torres Strait Islander residential care' placements have been excluded from the data in figures 34, 35 and 36.

In addition, Aboriginal and Torres Strait Islander children on third-party parental responsibility orders are excluded from the data reporting the relationship between the child and their carer in all states and territories due to the changes to the way out-of-home care is defined since 2018-19. As such, it is unknown whether these children are placed in connection with their family and culture, except for where states and territories have reported relevant data to this report. This data and the issue of children on permanent care orders being excluded from the out-of-home care count, and the impact this has, is explored in Part 1 of this report.

RECONNECTION

For Aboriginal and Torres Strait Islander children removed and placed in out-of-home care outside of their families and communities, maintaining and developing connections to their families, communities and cultures is essential to their safety and wellbeing (Dockery 2010). These connections are critical for social and emotional development, identity formation, and physical safety (Lohoar, Butera & Kennedy 2014). Where family and community placements cannot be immediately identified, active efforts to identify safe and appropriate Aboriginal and Torres Strait Islander relative and kinship care placements are essential but often fall off the agenda and are poorly reported on.

States and territories were asked to provide data related to their efforts to find placement options for children at a higher level of the placement hierarchy – often termed 'reconnection'. This data captures the reconnection of Aboriginal and Torres Strait Islander children in out-of-home care who moved from non-relative/kinship placement to live with a relative/kinship carer. South Australia and the Australian Capital Territory provided relevant data.

The Australian Capital Territory reported that seven Aboriginal and Torres Strait Islander children were reconnected to Aboriginal and Torres Strait Islander relative/kinship care placement in the reporting period. South Australia reported that 56 Aboriginal and Torres Strait Islander children were reconnected to Aboriginal and Torres Strait Islander relative/kinship care placement in the reporting period.

DATA GAPS

PLACEMENT WITH ABORIGINAL AND TORRES STRAIT ISLANDER FAMILY, KIN AND OTHER CARERS

Currently, there is limited data available on whether the placement hierarchy has been considered in placement decisions (Commission for Children and Young People 2015) and whether active efforts are being undertaken to ensure Aboriginal and Torres Strait Islander children's needs and rights of connection are being met in placement decision-making (SNAICC 2017). Further, placement-type data should be reported with reference to entry cohorts, rather than at a point-in-time, in order to monitor trends over time. Reporting the total number of children in out-of-home care distorts the true picture, since many children have been in out-of-home care for a very long time. Current practices need to be determined with reference to current (annualised) data.

Recommendations:

- National development and reporting of data around the proportion of Aboriginal and Torres Strait Islander children in out-of-home care with completed genograms/family maps; for whom there was consultation with an ACCO in the determination of placement; and for whom there was a family group conference or family-led decision-making meeting regarding placement decisions.
- Exclusion of residential care from data reporting on proxy compliance with the placement hierarchy to recognise that residential care placements do not reflect placement at a high level of the placement hierarchy.
- National development and reporting of annualised entry cohort data by placement type for Aboriginal and Torres Strait Islander children in out-of-home care to determine current practice and trends in placement with family, kin and other.

PARTICIPATION

Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them, including intervention, placement and care, and judicial decisions (SNAICC 2018a). The powers of the government to remove a child from their family are incredibly significant and a misuse of these powers can lead, and has led, to intergenerational trauma, harm and generally poor life outcomes. As such, governments have a responsibility to afford children, families and communities procedural justice to ensure that they are meaningfully informed and involved in these life-impacting decisions.

Ensuring the rights of Aboriginal and Torres Strait Islander children and families to participate in decisions affecting them requires:

- high cultural competency of professionals to engage families in child protection decision-making processes
- family participation in case planning
- reflection on and acknowledgement of the complexity of the system and thus barriers to understanding and navigating it
- the provision of advocacy support for families
- quality family decision-making processes.

In particular, taking into account the expressed wishes of the child requires:

- availability of child advocates ensuring adequate representation for Aboriginal and Torres Strait Islander children
- adequate procedures and professional capacity to support participation of children in child-protection decision-making (SNAICC 2018a).

Numerous reviews and inquiries across the country have identified ways in which to effectively engage with Aboriginal and Torres Strait Islander children and families in practice. For example, the recent *Our Booris, Our Way* report identified practical ways that the ACT Government can improve its practice and demonstrate active efforts to implement the participation element of the principle, including:

- “more understanding of Aboriginal child-rearing practices and how a child’s culture is being respected, nurtured and maintained by the family
- use of a range of communication mechanisms with clear messaging rather than relying on formal letters to communicate with families with low levels of literacy
- changing communication styles and use of reasonable adjustments to meet the needs of family members who may have intellectual, physical, sensory or cognitive impairments to ensure that their voices are heard and the wishes for their children are understood and respected
- engaging fathers at the beginning of Child and Youth Protection Services intervention
- more engagement of extended family and recording this information in data systems to facilitate finding kin” (ACT Government 2019).

Flexibility in timing and strategy for engaging with children and young people should also be given consideration, as well as that of key decision-making meetings, to enable their participation.

ABORIGINAL AND TORRES STRAIT ISLANDER FAMILY-LED DECISION-MAKING

Models of Aboriginal and Torres Strait Islander family-led decision-making (ATSIFLDM) promote meaningful participation and self-determination of children and their families in child protection decision-making. They provide opportunities to bring Aboriginal and Torres Strait Islander cultural perspectives and worldviews to the fore in decision-making, ensuring respect for Aboriginal and Torres Strait Islander values, history and unique child-rearing strengths (Drywater-Whitekiller 2014). Family-led decision-making processes have already been implemented in some states and territories. These are largely based on New Zealand's family group conferencing model with adaptations to enable unique ATSIFLDM processes supported by independent Aboriginal and Torres Strait Islander facilitators and agencies (Ipsos & Winangali 2017; AbSec 2019).

Independent Aboriginal and Torres Strait Islander facilitators and agencies play a critical role in family-led decision-making. While strong partnerships with government child protection services are essential to any model of family-led decision-making, Australian trials have demonstrated the strengths and success of ATSIFLDM processes led by ACCOs (Ipsos & Winangali 2017). Sector leaders from various jurisdictions have echoed this, noting that the success of the Aboriginal family-led decision-making model relies on having an independent Aboriginal and Torres Strait Islander convenor and that if government is running it rather than an ACCO, engagement and consultation are usually limited (SNAICC 2020b).

There has been some recent progress across Australia to increase implementation of family-led decision-making by Aboriginal and Torres Strait Islander facilitators and agencies and related processes. Following Queensland's successful trial between 2016 and 2017, the Queensland Government rolled out a Family Participation Program across the state in 2018 – and is providing funding to 15 ACCOs to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making. This has been lauded as a positive step towards better practice and implementing the participation element of the Child Placement Principle. Nevertheless, there are gaps in implementation, as stakeholders have reported that family-led decision-making is not offered widely or consistently across all points of the child protection continuum and not at all decision-making points for a family. The Queensland experience demonstrates that meaningful reform takes time, prolonged commitment and resources.

Victoria and Australian Capital Territory have also introduced versions of family-led decision-making. Victoria continues its long-standing state-wide program, which has strong involvement by ACCOs; however, inconsistencies are still reported in the way it is implemented. (ACT Government 2019; SNAICC 2019). A family group conferencing model was trialled successfully in the Australian Capital Territory in partnership with Curijo, an Aboriginal consulting business. Preliminary data provided by the ACT Government indicates that, between November 2017 and May 2019, family group conferences were held in relation to 65 Aboriginal and Torres Strait Islander children. 44 of those children were successfully prevented from entering care. The government has committed to spending a portion of \$1.44 million over four years in the 2018-2019 budget to support the program. In December 2019, *the Our Booris, Our Way* report observed case conferencing is used infrequently and recommended that every opportunity be taken to engage the child and family in decision-making, particularly using conferencing mechanisms to promote shared understanding and facilitate participation of families in decision-making for their children (ACT Government 2019, rec. 16).

CASE STUDY

THE YARNING MAT

A central way that non-government and government family support services engage with Aboriginal and Torres Strait Islander families is through the Yarning Mat. The mat is based on an extensive understanding of Aboriginal kinship systems and family life. It enables Aboriginal families to talk about their lives and concerns for children in a safe, non-shaming, and culturally sensitive way.

It was developed by Faye Parriman, a Yamatji woman from the Nhanda clan in the wildflower country of the Western Desert area, who previously worked as a Parenting Research Centre implementation specialist and practice coach. Faye is also a Noongar woman from the Balladong clan in South Western Australia. Today the Yarning Mat is delivered as a part of a number of Aboriginal community-controlled family support services, including Anyinginyi Health Aboriginal Corporation, Central Australian Aboriginal Congress Inc., and NPY Women's Council.

New South Wales has similarly introduced a family group conferencing model; however, the *Family is Culture* report (Davis 2019) highlighted significant implementation issues and inconsistencies in the way they have been conducted and engaged extended family members. Further, there were concerns raised that Family & Community Services limits the utility of the family group conference by not funding ACCOs to facilitate the process (Davis 2019, pp. 313-314). In August 2020, Western Australia announced a two-year pilot of Aboriginal family-led decision-making as part of a larger effort to address over-representation of Aboriginal children in out-of-home care. However, the failure to include family-led decision-making in the state's recent legislative reforms has created concerns regarding the extent of the government's commitment to reform in this area.

The experience in Australia is not unique. Introducing meaningful -family-led -decision-making requires ongoing commitment, resources and investment. Even in New Zealand, where the Family Group Conference has been legislated for 30 years, Judge Andrew Becroft remarked to the Royal Commission into the Protection and Detention of Children in the Northern Territory in 2017:

“It’s very easy to institutionalise any response and we need to do better with family group conferences to rejuvenate them and ensure wider involvement of family, whanau, hapu, subtribe, and iwi, and it’s very easy under pressure for the conference participants to shrink to the smallest group and too many conferences are held in Child and Youth and Family offices.”

(Transcript, 30 June 2017, p. 5394, lines 10-20)

For Aboriginal and Torres Strait Islander children and families in Australia, states and territories must continually review, reflect and reform their practices to ensure that the aspirational goals of Aboriginal and Torres Strait Islander family-led decision-making are implemented into practice. The legacy of past interventionist policies requires active efforts to rebuild the trust that has been lost and avoid the institutionalisation of any decision-making process.



CASE STUDY

CHILD ADVOCACY PROGRAM – NGAANYATJARRA PITJANTJATJARA YANKUNYTJATJARA WOMEN’S COUNCIL

Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women’s Council (NPYWC) is led by women’s law, authority and culture to deliver health, social and cultural services for all Anangu. The Child Advocacy Program currently delivered by NPY Women’s council was introduced in response to families feeling confused, overwhelmed and disempowered in their interactions with the tri-state child protection departments of Central Australia.

The primary focus of the Child Advocacy Program is individual case management and advocacy. Additionally, platforms of work also include up-skilling NPYWC staff, community development and systemic advocacy. Through individual case management and advocacy, the Child Advocacy Officer advocates with families to ensure that access with family and community occurs and that where possible reunification occurs or kinship carers are determined.

In 2019, NPYWC was successful in securing an 18-month grant to fund a second Child Advocacy Officer under the Territory Families Aboriginal Carers Growing Up Aboriginal Children grants program. Until then the program was unfunded, with costs coming from the organisation’s Child Nutrition and Wellbeing Program and the Walytjapiti program.

The Child Advocacy Program is an innovative solution that assists children and families navigate through complex and confusing systems and get the support they need. It recognises the system’s lack of accessibility, compounded by endless cycles of reform and addresses this by providing support to families in a culturally safe and meaningful way.

RESPECT AND ACKNOWLEDGEMENT OF CULTURAL AUTHORITY AND TRADITIONAL CHILD-REARING PRACTICES

A key barrier to participation in decision-making in many child protection systems is its lack of respect, recognition and acknowledgement of cultural authority and traditional child-rearing practices. Numerous reviews have found child protection practitioners lacking cultural awareness and misinterpreting Aboriginal child-rearing practices (Davis 2019; ACT Government 2019; White & Gooda 2017).

During the Royal Commission into the Protection and Detention of Children in the Northern Territory, the Northern Australian Aboriginal Justice Agency noted:

“Aboriginal decision-making processes and traditional protection systems steeped in cultural understandings have not been respected ... there is a lack of trust between child protection services and Aboriginal people, and that this distrust is the most significant barrier to the provision of effective child services in communities.”

(White & Gooda 2017)

Meaningful implementation of the participation element is all the more important given the potential for cultural incompatibilities, which have already led to a level of mistrust between Aboriginal and Torres Strait Islander communities and child protection departments (White & Gooda 2017).

LEGISLATIVE ALIGNMENT WITH PARTNERSHIP AND PARTICIPATION ELEMENTS OF THE PRINCIPLE

Participation of Aboriginal and Torres Strait Islander people in decisions that affect them is a core human right (UN General Assembly 2007, art 18). The extent to which this right is legislated in the context of child protection decision-making varies across jurisdictions. According to the United Nations Committee on the Rights of the Child, model legislation should ensure that the “child’s views are solicited and considered including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family” (UN Committee on the Rights of the Child 2009, p. 13). The table below breaks down the various components of legislating the participation element of the principle and maps progress of states and territories in implementation.

Queensland’s legislation remains the most comprehensive in the country in terms of meaningfully supporting the participation of Aboriginal and Torres Strait Islander children, families and communities, and Victorian legislation is also closely aligned to this purpose. Notably, legislation in each of these states provides for the delegation of statutory powers to ACCOs, creating the potential for enabling greater recognition and exercise of Aboriginal and Torres Strait Islander people’s right to self-determination and meaningful participation in child protection matters.

CASE STUDY

MERIBA OMASKER KAZIW KAZIPA (TORRES STRAIT ISLANDER CHILD REARING PRACTICE) BILL 2020 (QLD)

On 16 July 2020 the Queensland Parliament introduced the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Bill 2020 to:

- recognise the Torres Strait Islander Alian Kastom child-rearing practice
- establish a process for applications to be made for the legal recognition of the practice
- provide for a decision-making process that will establish the legal effect of the practice.

In its submission to the Parliamentary Committee, the Queensland Indigenous Family Violence Legal Service described this as a “historic piece of legislation for Queensland and a first in Australia” clearly supporting and legally recognising the cultural rights and cultural practices of Torres Strait Islander people.

Similarly, the Aboriginal and Torres Strait Islander Legal Service praises the Bill for addressing the issues faced by Torres Strait Islander clients as a result of lack of recognition of traditional adoptions and child-rearing practices.

Despite this, several concerns have been raised, regarding the terminology and language of the Bill with recommended amendments to ensure that it is written in an appropriate way that is respectful to the Torres Strait Islander language.

The resulting Act will allow cultural parents to apply for a cultural recognition order that will result in a permanent transfer of parentage from the birth parents to the cultural parents. The Bill also establishes a new statutory role of a commissioner to consider and decide these applications. This a landmark example of recognition of Traditional Customary Law within a Western Framework.

DATA GAPS FOR PARTICIPATION

There is limited nationally consistent data available to capture the progress of implementing the partnership principle. The principle could be measured through the inclusion of the following indicators:

- Aboriginal and Torres Strait Islander children admitted to out-of-home care for whom the input of family regarding placement decisions was collected through a family group conference or family-led decision-making.
- Aboriginal and Torres Strait children in out-of-home care with cultural support plans that include the input of the child.
- Aboriginal and Torres Strait children in out-of-home care with cultural support plans that include the input of family members.
- Aboriginal and Torres Strait children in out-of-home care with cultural support plans that include the input of family collected through a family group conference or family-led decision-making.

CONNECTION

Aboriginal and Torres Strait Islander children have a right to remain connected to their culture (UN General Assembly 2007, art. 8 and 11). The *National Agreement on Closing the Gap* acknowledges that strong Aboriginal and Torres Strait Islander cultures are fundamental to improving life outcomes for Aboriginal and Torres Strait Islander peoples. There is vast evidence suggesting a strong link between children's wellbeing and development and their connection to their culture (Bourke et al. 2018; Butler et al. 2019; Dockery 2020).

Australia's historical colonialist legacies of discriminatory policies, including those that brought about the Stolen Generations, have led to high levels of removal of children from their families, Aboriginal and Torres Strait Islander children disconnected from their culture, and perpetuated intergenerational trauma (Atkinson et al. 2014). These policies continue to influence systems today, as patterns of disempowerment span across generations, with continued high rates of Aboriginal and Torres Strait Islander children living in out-of-home care. Recognising and respecting the right of Aboriginal and Torres Strait Islander children to their culture is essential to healing the harm that has occurred, and continues to occur, within our institutions.



TABLE 3 Alignment of state and territory child protection legislation with elements of participation

	ACT ⁱⁱ	NSW ⁱⁱⁱ	NT ^{iv}	QLD ^v	SA ^{vi}	TAS ^{vii}	VIC ^{viii}	WA ^{ix}
Aboriginal and Torres Strait Islander self-determination is a recognised principle in the Act.	NO	YES	YES	YES	NO	YES	YES	YES
Aboriginal and Torres Strait Islander participation and/or consultation is a decision making principle in the Act.	NO Participation requirements not specific to decision making	YES	YES	YES	NO	YES	YES	YES
Consultation/participation of an external Aboriginal and Torres Strait Islander agency is expressly required for all significant decisions .	NO Submissions considered	YES Required by principle, but no enabling process is specified	NO	YES	NO	NO	NO Required by agreed protocol, but not legislation	NO
Consultation with an external Aboriginal and Torres Strait Islander agency is expressly required prior to placement decisions .	NO	YES	NO	YES	YES	NO	YES	NO Internal or external consultation
Input from external Aboriginal and Torres Strait Islander agencies is expressly required in judicial decision-making .	NO Limited input requirement for long-term orders	NO	NO	NO	YES For placement decisions only	NO Evidence and submissions	YES For permanent care orders only	NO
The Act mandates that a child has meaningful opportunities to express his or her views and for those views to be given due weight throughout the decision-making process .	YES Does not stipulate how children's views will be responded to and taken into account in all processes	YES	YES	YES	YES Does not stipulate how children's views will be responded to and taken into account in all processes	YES	YES Does not stipulate how children's views will be responded to and taken into account in all processes	YES

GREEN – Legislation aligned **RED** – Legislation not aligned **GREY** – Limited / significantly qualified alignment

**Note: This table is up to date as at 6 August 2020. Relevant legislation: Children and Young People Act 2008 (ACT), Children and Young Persons (Care and Protection) Act 1998 (NSW), Care and Protection of Children Act 2007 (NT), Child Protection Act 1999 (Qld), Children and Young People (Safety) Act 2017 (SA), Children, Young Persons and Their Families Act 1997 (Tas), Children Youth and Families Act 2005 (Vic), and Children and Community Services Act 2004 (WA).*

The concept of intergenerational trauma and its impact is widely acknowledged and accepted in evidence around the world. It is defined as trauma memories passed over generations through different channels resulting in poorer physical, psychological and social outcomes (Delfabbro, Barber & Cooper 2000). In Australia, intergenerational trauma is widely misunderstood and has not been adequately addressed through law practice and policy (Davis 2019). For historically fraught and traumatising systems such as

child welfare, active efforts are required to address the impacts of intergenerational trauma. It is important that all staff, from frontline workers to policy officers to high-level executives, recognise the impact of past actions and policies on Aboriginal and Torres Strait Islander children and families today, rather than being judgmental about parenting practices – an approach that is far too frequently documented in recent reviews (Davis 2019; ACT Government 2019; White & Gooda 2017).

CULTURAL SUPPORT PLANS

Cultural support plans aim to develop or maintain a connection to family and culture through culturally appropriate strategies (Baidawi, Mendes & Saunders 2017).

In 2019, 78% of all Aboriginal and Torres Strait Islander children in out-of-home care, who were required to have a cultural plan, were reported as having such a plan (AIHW 2020a). However, this data is limited for several reasons. Firstly, the data excludes New South Wales, South Australia and Tasmania. Secondly, it is restricted to Aboriginal and Torres Strait Islander children who are required by legislation to have a cultural plan; excluding, for example, children on permanent care orders. Thirdly, the data is restricted to the completion of cultural plans and does not indicate the quality of a plan or its implementation. Finally, because there has been a lack of consistency in data provided by states and territories since the AIHW began reporting on this indicator in 2014, it is not possible to compare data across the last five years.

DATA GAPS

MEANINGFUL CULTURAL SUPPORT MEASURES

Current national data on cultural support planning has extensive limitations. Deficiencies in cultural support planning completion and quality have been raised in numerous reviews and inquiries into Aboriginal and Torres Strait Islander children in out-of-home care (Baidawi, Mendes & Saunders 2016, Commission for Children and Young People 2015). Significant new data development is required to capture a broader range of indicators relating to the process for creation and content of plans.

Recommendation: Adoption of more meaningful measures of the development, quality and implementation of cultural plans for Aboriginal and Torres Strait Islander children in out-of-home care, and measurement through a nationally consistent audit of cultural plans.

Case file audits and reviews often reveal that cultural planning and support is inadequate, with poor child and family participation (Davis 2019; ACT Government 2019). For example, the *Our Booris, Our Way* review found that in the preceding 12 months of the report, the child was provided with opportunities to participate in activities that foster knowledge and appreciation of their culture in only 43% of cases.

Family Matters has consistently called for the development of meaningful ways to measure the development, quality and implementation of cultural plans for Aboriginal and Torres Strait Islander children in out-of-home care (*The Family Matters Report 2017; The Family Matters Report 2018; The Family Matters Report 2019*). The Aboriginal and Torres Strait Islander Working Group under the *National Framework for*

Protecting Australia's Children 2009-20 has proposed that given the many and persistent challenges in developing consistent national administrative data that reflects the quality of cultural support planning, a nationally consistent audit process should be adopted. The audit proposes to measure whether cultural plans include: the input of children, family members and ACCOs; the child's cultural background, including clan and/or language group and a family genogram; and specific and detailed actions for the maintenance of a child's culture.

CASE STUDY

PROMISING PRACTICE: HEALING PATHWAYS

Healing Pathways is an overarching program run by Burrun Dalai Aboriginal Corporation in New South Wales. It consists of a multidisciplinary approach that looks to understand the true impact of trauma on kids in out-of-home care and utilises strategies that will build strong foundations, enduring relationships and social success for them. Cultural connection is at the very core of the program.

It emphasises the foundations of seven pillars: trust, respect, courage, honesty, gratitude, hope and purpose. This leads to developing the building blocks to a strong community which involves connection to others and to ourselves with a focus on building relationships and incorporating a sense of safety and security right through to self-awareness and self-worth. Achieving social success for each child includes the ability to think smart, exhibit self-love and care, have strong spiritual and cultural health, co-operate with others and harness and practise empathy. This multidisciplinary approach will allow Aboriginal kids to transition into independence and grow in their communities, and every Healing Pathway is individualised for each child aiming to assist them to reach their full potential.

The Healing Pathways Program is contributed to, implemented and embraced by all parties involved in the child's life, and there is an app accompanying the program which enables each child to see their progress on the pathway and each team member to contribute and reward behaviour that is moving them towards their agreed goals.

Each child works towards achieving the social success skills as part of their Healing Pathway, and when they are achieving them consistently, across multiple environments, they attend a celebratory ceremony. This is where they earn and are presented with a Dreaming Circle which is a precious moment for each child to keep for the rest of their lives that represents their hard work, achievements, and that they are valued.



CASE STUDY

CULTURALLY APPROPRIATE COURT PROCESS: MARRAM-NGALA GANBU

Marram-Ngala Ganbu (which means 'we are one' in the Woiwurrung language) was launched in August 2016 at the Broadmeadows Children's Court in Melbourne as an innovative response to the over-representation of Aboriginal children and families in the child protection system in Victoria. The pilot program seeks to provide culturally appropriate and just responses for Koori families through a culturally appropriate court process that enables greater participation by family members and culturally informed decision-making. Since opening, the program has supported close to 400 Koori families through the court process. Marram-Ngala Ganbu is a hearing day at the Family Division of the Children's Court of Victoria developed via a Koori-led process that aims to better accommodate the needs of Koori families. It works differently from the mainstream Children's Court as three concepts are prioritised: Koori Centred, Child and Family Centred and Therapeutic Justice.

In 2019, an independent evaluation of the performance of Marram-Ngala Ganbu against its stated aims found sufficient evidence that the program is achieving its intended short- to medium-term outcomes, and there are early indicators that it is on track to deliver the desired long-term outcomes. For children and young people, the evaluation found that Koori young people have reported positive experiences about their involvement in Marram-Ngala Ganbu (short-term outcome) and that there are early indicators that Marram-Ngala Ganbu is contributing to young people feeling more connected to their family, culture and community (long-term outcome). Similarly, Koori families have reported a range of positive experiences about the process (short-to-medium outcome) and have been more likely to follow court orders (medium-term outcome). There are also early indicators that Koori families have increased cultural connections, that more Koori children are being placed in Aboriginal kinship care, and that families are more likely to stay together as a result of the program (Arabena et al. 2019).



ABORIGINAL AND TORRES STRAIT ISLANDER LANGUAGES

Aboriginal and Torres Strait Islander languages should be respected, taught and preserved, as their unique value is fundamental to improving whole of life outcomes for Aboriginal and Torres Strait Islander children. Utilising the first languages of children and families empowers them to understand systems and participate in decision-making processes. Reclaiming and sharing language is also part of the way that communities reinvigorate cultural practices and connections that have been damaged by discriminatory government policies (Salmon et al. 2019). The link between recognition and use of first language and cultural knowledge and student identity, wellbeing and education outcomes is well documented in international and Australian research and evidence (Biddle & Swee 2012; Marmion, Obata & Troy 2014; Standing Committee on Aboriginal and Torres Strait Islander Affairs 2012; Bougie & Senecal 2010; Berger 2009; Simpson, Caffery & McConvell 2009; Fiddler 2015; Lowe 2015). Research shows that learning a concept in a child's first language supports second language learning and achieves better academic results in both languages. The *National Agreement on Closing the Gap* acknowledges the importance of language, setting a target for a sustained increase in the number and strength of Aboriginal and Torres Strait Islander languages being spoken by 2031. Understanding and recognising the strength of Aboriginal and Torres Strait Islander languages is essential in the child welfare context, ensuring children and families understand the systems they are subject to and fostering connection to culture.

4.4 OVERSIGHT AND ACCOUNTABILITY

ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S COMMISSIONERS

Aboriginal and Torres Strait Islander children have unique rights and needs that require additional protections and government accountability. It is widely acknowledged and recognised that the historical legacies of colonialism, interventionist policies and discriminatory practices continue to impact and affect Aboriginal and Torres Strait Islander children today. Further, the cultural connections and needs of Aboriginal and Torres Strait Islander children are often overlooked and misunderstood by mainstream institutions. This has now been acknowledged by the *National Agreement on Closing the Gap* which commits to transforming mainstream institutions.

The necessity of targeted oversight and advocacy for Aboriginal and Torres Strait Islander children has been particularly acute throughout the COVID-19 pandemic. SNAICC consultations with over 50 Aboriginal and Torres Strait Islander organisations revealed that the restrictions disproportionately impacted Aboriginal and Torres Strait Islander children and families.

For example, the Australian Government’s recognition that Aboriginal and Torres Strait Islander people aged 50 or over being at the same level of risk from COVID-19 as non-Indigenous people over the age of 70 caused great unease and anxiety for a large portion of the working population and their children. In remote areas, lack of updated telecommunications infrastructure and access to the internet severely impacted on the ability of Aboriginal and Torres Strait Islander children and families to adapt to social distancing measures, such as home schooling. Despite these disproportionate impacts, there was no systemic, comprehensive and targeted policy response to meet the unique short- and long-term needs of Aboriginal and Torres Strait Islander children and families.

Dedicated Aboriginal and Torres Strait Islander children’s commissioners play a vital role in providing a voice for Aboriginal and Torres Strait Islander children and ensuring a dedicated focus to advancing their rights.

NATIONAL CHILDREN’S COMMISSIONER

There has been no progress in the appointment of a **national commissioner for Aboriginal and Torres Strait Islander children and young people**. A national commissioner for Aboriginal and Torres Strait Islander children would comply with the United Nations benchmark guidelines for the national human rights institutions known as the Paris Principles. To achieve this, the role of the national commissioner must:

- be established by legislation to ensure its 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.

STATE AND TERRITORY ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN’S COMMISSIONERS

Community representatives in many jurisdictions have long called for dedicated commissioners to be established but have had limited success to date. Aboriginal and Torres Strait Islander commissioners with powers and functions that comply with the Paris Principles should be established in every state and territory. State and territory commissioner roles currently in place should be reviewed against the Paris Principles and updated to ensure sufficient functions, powers and consistency.

On 12 May 2020, Natalie Lewis was appointed as Commissioner for the Queensland Family and Children Commission (QFCC), with a focus on providing critical oversight of the systemic and structural issues disproportionately affecting Aboriginal and Torres Strait Islander children in Queensland. This role is established by the Family and Child Commission Act 2014, which requires two commissioners be appointed to the QFCC, at least one of whom must be an Aboriginal person or Torres Strait Islander. Both commissioners have statutory responsibilities to ensure the interests of Aboriginal people and Torres Strait Islanders are adequately and fairly represented, and to respect and promote the role of Aboriginal and Torres Strait Islander service providers.

South Australia appointed April Lawrie as Commissioner for Aboriginal Children and Young People in 2018. While this is a positive step, there are concerns relating to the extent of her powers and lack of legislative role. Although the education minister has committed to embedding the commissioner’s role in legislation, the commissioner has noted that the legislation should be introduced sooner to allow her to “bring about the true change that our Aboriginal children and young people deserve” (Richards 2019).

In Victoria, Justin Mohamed commenced as the new Commissioner for Aboriginal Children and Young People on Monday 28 May 2018. Although his role is not enshrined in legislation, and functions and powers are not clearly defined, it is significantly resourced and empowered to perform certain functions.

TABLE 4 Status of commissioners for Aboriginal and Torres Strait Islander children and young people across Australia

JURISDICTION*	NAME	TITLE	Year of inception of role
VICTORIA	Justin Mohamed	Commissioner for Aboriginal Children and Young People	2013
SOUTH AUSTRALIA	April Lawrie	Commissioner for Aboriginal Children and Young People	2018
QUEENSLAND	Natalie Lewis	Commissioner of the Queensland Family and Children Commission	2020

*Note: All other states and territories have a broader commissioner and/or child advocate role for all children. In WA the Commissioner has a mandate to give “priority and special regard to Aboriginal children and young people”, but is not an Aboriginal person, and in the NT, there is an identified position for a Deputy Commissioner who is an Aboriginal person.

New South Wales recently announced the creation of the position Deputy Children’s Guardian for Aboriginal Children and Young People within the Office of the Children’s Guardian. A children’s guardian is distinct from a children’s commissioner: whereas a children’s commissioner works to improve and ensure better services for *all* children, a children’s guardian works solely to help improve the services for children in the care of a department. While this is a promising step towards greater oversight and accountability, the nature of it being a *deputy* role is limiting and the role falls short of the call for a dedicated Aboriginal children’s commissioner which has a greater scope and powers to advocate for Aboriginal and Torres Strait Islander children. Further, the announcement was made in response to the *Family is Culture* report that called for a commissioner, and thus the proposed deputy guardian represents a diminished implementation of the recommendation.

ESTABLISHING, RESOURCING AND CONSULTING PEAK BODIES

The establishment of peak bodies is an important mechanism to provide advocacy, oversight and accountability for systems that impact Aboriginal and Torres Strait Islander children and their families. Peaks operate in Queensland and New South Wales, with a dedicated focus on the child protection and family services sector, and at the national level through SNAICC – National Voice for our Children. As noted previously, however, the New South Wales peak has recently lost 50% of its funding. Significant policy participation roles are also resourced in Victoria through the Victorian Aboriginal Child Care Agency (VACCA) and the Victorian Aboriginal Children & Young People’s Alliance. While there is no state-wide peak in Western Australia, the recently established Noongar Family Safety and Wellbeing Council works to provide a strong voice for Noongar children and families and advocate on their behalf.

It is important to note, however, that the establishment and resourcing of peak bodies does not constitute meaningful participation if these bodies are not appropriately consulted in the development of laws and policies that affect Aboriginal and Torres Strait Islander children, families and communities. For example, in late 2018, the NSW Government, in a regressive step, passed significant child protection legislative amendments without meaningful consultations with Aboriginal and Torres Strait organisations and communities in the state.





CONCLUSION AND RECOMMENDATIONS

Successive Family Matters reports have shown that we have yet to turn the tide on over-representation of Aboriginal and Torres Strait Islander children in out-of-home care – in fact, overall, the data represents that the situation is getting progressively worse.

The Family Matters campaign believes that the solutions lie in the strengths and cultural authority of our families and communities to lead supports and responses to advance the safety and wellbeing of our children. The crisis of child protection intervention will only be acted on at the pace required if the Commonwealth and state and territory governments commit to work together and in partnership with Aboriginal and Torres Strait Islander peoples through a dedicated strategy to achieve the Closing the Gap out-of-home care reduction target, with implementation plans at national and state and territory levels.

As *The National Framework for Protecting Australia's Children 2009 – 2020* comes to an end this year, it is clear that our nation has regressed significantly in the achievement of its goal that “Indigenous children are supported and safe in strong, thriving families and communities to reduce the over-representation of Indigenous children in child protection systems” (COAG 2009, p. 28).

The new commitments of the new National Agreement on Closing the Gap to build genuine partnership with Aboriginal and Torres Strait Islander peoples and strengthen Aboriginal and Torres Strait Islander service delivery, system design and oversight, align strongly with the Family Matters building blocks. Also, this year, federal and state and territory governments have committed to a new 10-year plan to advance child safety and wellbeing, co-designed with Aboriginal and Torres Strait Islander people. These new commitments present an opportunity that must be transformed into genuine and comprehensive action, that is fully resourced to ensure our children are safe and well with the opportunity to thrive.

Our key recommendations are provided in alignment with the Family Matters building blocks for change. Implementing these recommendations will move us closer to protecting the rights of Aboriginal and Torres Strait Islander children and empowering our families and communities to care for and protect future generations.

WE RECOMMEND:

1. **Develop a comprehensive national Aboriginal and Torres Strait Islander children's strategy that is aligned to achieve the Closing the Gap target to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031, by addressing the causes of child removal. The Family Matters Roadmap, which has been developed through extensive review of the evidence and consultation with leading Aboriginal and Torres Strait Islander experts, provides a vision and clear strategies for achieving fundamental change to systems, policy and practice.**

The *National Framework for Protecting Australia's Children* has proved inadequate to achieve substantial change for our children. In March 2020, Community Services Ministers across Australia committed to co-design of the successor plan to the National Framework with Aboriginal and Torres Strait Islander people. This must occur and result in a dedicated strategy for Aboriginal and Torres Strait Islander children, with Aboriginal and Torres Strait Islander governance to provide self-determination in its design and accountability for its implementation.



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

2. Increase investment in universal and targeted early intervention and prevention, including family support and reunification services, and including funding to community-controlled services at a rate equivalent to the representation of Aboriginal and Torres Strait Islander children in child protection services.

As we reach the end of the National Framework in 2020, proportional investment in prevention and early intervention has not risen despite the Framework's goal to increase the focus on preventing child protection intervention. A clear strategy and target are critical to drive investment, including in evidence-based and culturally safe early childhood education and care, maternal and child health, trauma, healing, 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 cost and societal benefits of prevention and early intervention that are born out in the evidence.

3. Invest to increase the coverage and capacity of Aboriginal and Torres Strait Islander community-controlled integrated early years services through a new specific funding model and program designed to meet the needs of our children and families.

In February 2020, the Prime Minister committed to the development of a *National Aboriginal and Torres Strait Islander Early Childhood Strategy* in partnership with Aboriginal and Torres Strait Islander people. This commitment must be followed through with a detailed strategy and investments that support Closing the Gap targets, including the goal to increase the proportion of Aboriginal and Torres Strait Islander children developmentally on track against the Australian Early Development Census.

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 current subsidy-based and market-driven models of child care designed to provide child-minding 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 ECEC 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.



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

4. Prioritise and increase investment in Aboriginal and Torres Strait Islander service design and delivery by community-controlled organisations in line with self-determination and the aspirations of communities.

In 2020 all Australian governments have committed through the new *National Agreement on Closing the Gap* to building the Aboriginal and Torres Strait Islander community-controlled sector. 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, and half of states and territories continue to lack transparency, not reporting their level of investment in our organisations.

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 mainstream 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.

5. Establish and support independent Aboriginal and Torres Strait Islander family-led decision-making models in every state and territory, 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 Indigenous cultural perspectives and worldviews to the fore in decision-making, ensuring respect for Indigenous 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 process 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 a safe space and opportunity to discuss issues and work collaboratively towards family-led solutions.

6. Expand the delegation of authority to Aboriginal and Torres Strait Islander organisations for statutory child protection functions across Australia.

Increasing self-determination for Aboriginal and Torres Strait Islander peoples in child protection requires that our communities and organisations be able to 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 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. Delegated 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 strengths and potential of delegating child protection authority to our organisations, commitments and progress across the rest of the country are minimal, with only Queensland working to develop a model.

- 7. End the policy and practice of adopting Aboriginal and Torres Strait Islander children from out-of-home care and engage with Aboriginal and Torres Strait Islander peoples to create an alternative system of promoting stability and permanency for children, instead of using permanent legal orders. Where permanent care orders are used, legislate a requirement that an Aboriginal and Torres Strait Islander organisation must approve the making of the order.**

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.

- 8. Establish national standards to ensure family support and child protection legislation, policy and practices are in adherence to all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle, including:**

- a. nationally consistent standards for Aboriginal and Torres Strait Islander Child Placement Principle implementation and linked jurisdictional reporting requirements under the successor plan to the *National Framework for Protecting Australia's Children*
- 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.



9. The establishment and resourcing of peak bodies that support and enable participation of Aboriginal and Torres Strait Islander people in policy and service design and in the oversight of systems impacting children.

If genuine self-determination and Aboriginal and Torres Strait Islander-led co-design are to emerge, then 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.

10. The establishment of a commissioner for Aboriginal and Torres Strait Islander children nationally and in every state and territory.

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 would 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, known as the Paris Principles. To achieve this, the roles must:

- be established by legislation to ensure their 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.

11. The establishment of 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.

If genuine self-determination and Aboriginal and Torres Strait Islander-led co-design are to emerge, then 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.

12. Change the counting rules for out-of-home care to continue to include children on permanent care orders in the count.

The exclusion of children who have been permanently removed from their families from the count of children in out-of-home care makes large numbers of our children who are often most at risk of losing their family and cultural connections invisible in the system. This recent change to counting rules reduces government transparency and accountability for protecting the rights of our children. 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.

APPENDICES

APPENDIX I: PROJECTION OF OVER-REPRESENTATION IN OUT-OF-HOME CARE BY STATE AND TERRITORY DISPROPORTIONALITY BY STATE/TERRITORY

FIGURE A1 Percentage increase of Aboriginal and Torres Strait Islander and non-Indigenous children in out-of-home care by jurisdiction 2011-19

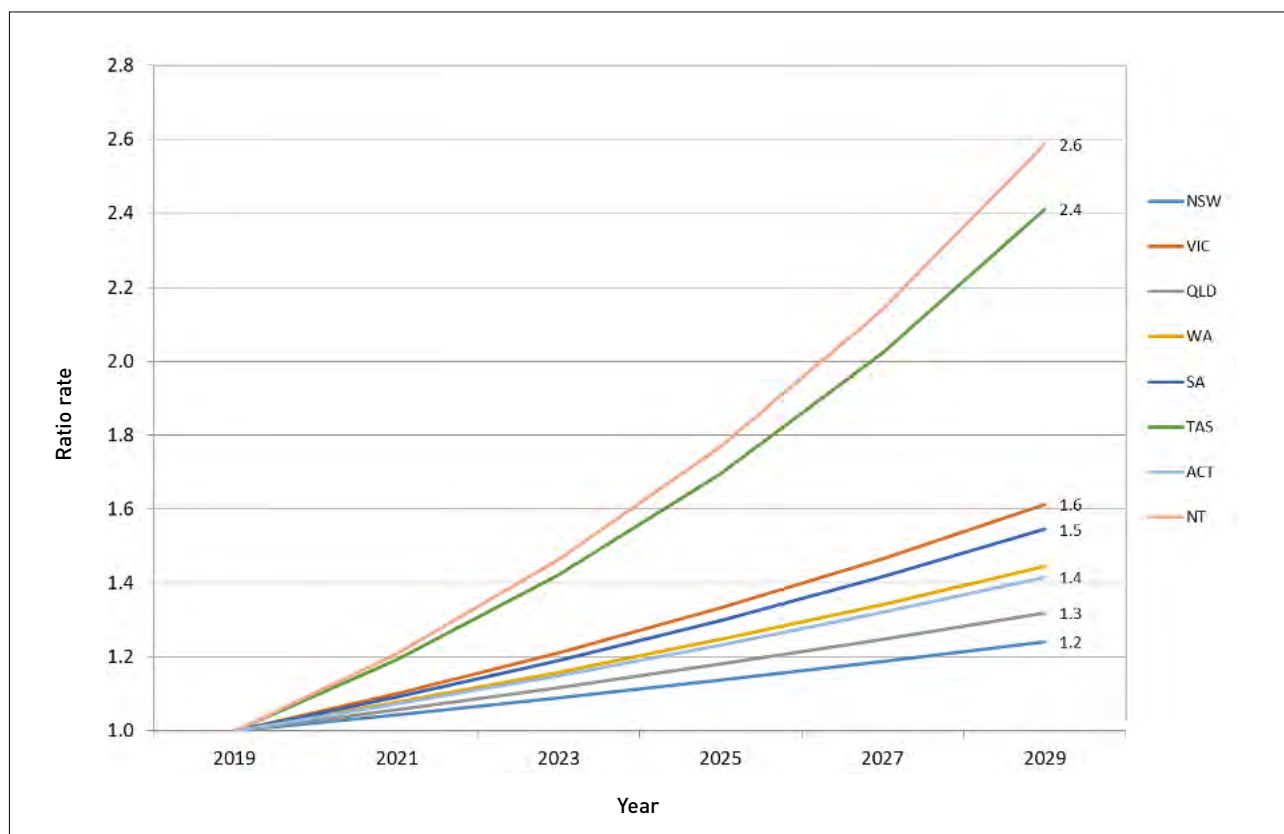


Figure A1 shows the percentage increase of the out-of-home care population in each of the states and territories from 30 June 2011 to 30 June 2019, with the blue bars indicating increases of the Aboriginal and Torres Strait Islander population and the orange bars that of non-Indigenous population.

In all jurisdictions, the percentage increase in the Aboriginal and Torres Strait Islander out-of-home care population exceeds that of the non-Indigenous out-of-home care population. In the Northern Territory, the non-Indigenous out-of-home care population actually shrank by more than 18% while the Aboriginal and Torres Strait Islander out-of-home care population increased by about 90%. Victoria exhibits the largest

percentage increase among the jurisdictions, with the Aboriginal and Torres Strait Islander out-of-home care population nearly tripling. In Western Australia, South Australia, Tasmania, Australian Capital Territory, and Northern Territory, the Aboriginal and Torres Strait Islander out-of-home care population more than doubled or nearly doubled. Queensland and New South Wales exhibit the smallest percentage increase in the Aboriginal and Torres Strait Islander out-of-home care population among the jurisdictions. However, New South Wales has the largest increase in number of children (an increase of 3,072 children) and thus contributed the most to the national increase (an increase of 9,157 children).

FIGURE A2 Projections of rate ratios of Aboriginal and Torres Strait Islander and non-Indigenous children in out-of-home care by jurisdiction 2019-29



Changes in the out-of-home care population relative to changes in the general population of children by territory.

In view of the fact that the Aboriginal and Torres Strait Islander population of children age birth to 17 in all jurisdictions increased by only 6.2% from 2010-11 to 2018-19, on average – ranging from 0.8% in the Australian Capital Territory to 9.3% in Victoria – the percentage increase of the Aboriginal and Torres Strait Islander out-of-home care population is highly disproportionate to the percentage increase of the Aboriginal and Torres Strait Islander general population of children. This disproportionality is most pronounced in the Australian Capital Territory, where the Aboriginal and Torres Strait Islander general population increased by only 0.8% while the Aboriginal and Torres Strait Islander out-of-home care population increased by 92.4%, giving a ratio of 121.1 times. In Northern Territory, the percentage increase in the Aboriginal and Torres Strait Islander out-of-home care population is almost 31.9 times that of the percentage increase in the Aboriginal and Torres Strait Islander general population. The disproportionality across other jurisdictions is 21.0 times in South Australia, 20.9 in Victoria, 20.6 times in Tasmania, 14.1 times in Western Australia, 5.8 times in New South Wales, and 5.3 times in Queensland.

Figure A2 shows the ratios of Aboriginal and Torres Strait Islander and non-Indigenous out-of-home care population projections across the states and territories, using the normalised Aboriginal and Torres Strait

Islander and non-Indigenous populations in 2019 as a starting point. Once again, the projected Aboriginal and Torres Strait Islander and non-Indigenous out-of-home care populations in each jurisdiction were calculated using the average annual population growth rate in each jurisdiction from 2010-11 to 2018-19. The ratios indicate the disparate and widening gaps between Aboriginal and Torres Strait Islander and non-Indigenous out-of-home care populations. A value of one indicates that the ratio of Aboriginal and Torres Strait Islander and non-Indigenous populations would be maintained at the 2019 level if nothing were done to change the observed growth rate. In this estimation, if nothing is done to change the current trend – the disparity in rate ratio of Aboriginal and Torres Strait Islander and non-Indigenous populations in the Northern Territory will be 2.6 times as serious as it was in 2019. While a 10-year projection is a long-term estimate that may not come to pass, it does serve as a stark reminder of how serious and urgent the problem is and how each year-delay in remedying the disparity compounds the problem. In Tasmania, the rate ratio in 2029 is projected to reach more than 2.4 times the 2019 level if the observed pattern of growth does not change. In the other jurisdictions, the projected rate ratios range from 1.2 in New South Wales to 1.6 in Victoria. Regardless of the magnitude, the message is clear: in order to stop the growing disparity in rates of out-of-home care between Aboriginal and Torres Strait Islander and non-Indigenous children changes need to happen in each and every jurisdiction.

APPENDIX II: METHOD FOR THE PROJECTION SCENARIO

The projections of out-of-home care population shown in Figure 6 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 (that is, 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 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 out-of-home care, assuming that each population will continue to grow at the APGR based on the years 2010-11 to 2018-19. Lower and upper limits of the projected populations were estimated using the minimum and maximum APGR of the respective 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 1,000 (that is, there are far more non-Indigenous children in the Australian population, so growth rates were standardised to a base population of 1,000 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 must be interpreted with caution. Due to the simplified nature of the projections, the figures shown in the example may not come to pass.

APPENDIX III: CAVEATS FOR THE PROJECTION SCENARIO

Caveats as a result of the model restrictions:

- To avoid problems due to changes in the counting rules. Only data from recent years (2010-11 to 2017-18) were used to obtain the APGR for out-of-home care populations. Therefore, the figures we present are merely gross estimates and may change as data are improved and extended.
- States and territories exhibit very different trends and legislation differs significantly between states and territories. An example is the introduction of a new policy in New South Wales, which led to a sharp increase in discharges of children to guardianship from out-of-home care as part of the *Safe Home For Life* legislative reforms (AIHW 2016).
- In New South Wales and Victoria, children on third-party parental responsibility order (or equivalent orders) have been excluded from the counts of children in out-of-home care. In order to create a consistent time series of out-of-home care population, on consultation with AIHW

(private communication by email), we have added the number of children on third-party parental responsibility order to the count of children in out-of-home care for New South Wales (2014-15 onward) and Victoria (2017-19).

- 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 used in pathway scenarios does also 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: METHOD FOR THE REPORT CARD TABLE

The Report Card table on page X 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 Aboriginal and Torres Strait Islander community-sector led and have been developed with review and input of state Family Matters jurisdictional representatives and peak Aboriginal and Torres Strait Islander agencies. 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 are not provided by jurisdiction 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 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 (AEDC).

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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