

COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

Holding on to Our Future



Final Report of the Inquiry into the application of the
Aboriginal and Torres Strait Islander Child Placement
Principle in the removal and placement of Aboriginal
children and young people in South Australia

May 2024

Dedication to Aboriginal children and young people

The Inquiry dedicates this Final Report, its findings and recommendations to the many Aboriginal and Torres Strait Islander children growing up in care in South Australia for they are part of the future leaders and custodians of culture and country.

This Inquiry aspires to shape a better future for Aboriginal children, where the value attributed to family in the eye of the Aboriginal beholder is the value that is needed in law, policy and practice.

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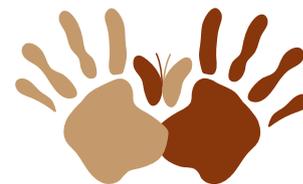
April Lawrie, Commissioner for Aboriginal
Children and Young People South Australia.

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COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

14 May 2024

The Honourable Blair Boyer MP
Minister for Education, Training and Skills
GPO Box 1563
Adelaide SA 5001

Dear Minister Boyer

On 30 June 2022, I launched the independent Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia. This Inquiry, which has taken close to two years to complete, is underpinned by the strong voice of the Aboriginal community.

I now have the pleasure to present to you *Holding on to Our Future*, the Final Report of the Inquiry pursuant to section 20(P) of the Children and Young People (Oversight and Advocacy Bodies) Act 2016.

Holding on to Our Future provides 48 findings and 32 recommendations for addressing the application of the Aboriginal and Torres Strait Islander Child Placement Principle to reduce the number of Aboriginal children in the child protection system and to ensure that Aboriginal children grow up safe and strong within family, community and culture.

Holding on to Our Future is preceded by the Inquiry's Preliminary Report tabled in Parliament on 22 November 2023 and is the first Inquiry in this State to privilege and preference the voices and experiences of Aboriginal children, their families and communities with respect to the child protection service system.

It has been an honour to have conducted the Inquiry and I hope this report, its findings and recommendations will create a legacy of enduring positive change for Aboriginal children and young people today, tomorrow and for future generations.

Regards

April Lawrie
Commissioner for Aboriginal Children and Young People

Acknowledgment of Country

The Inquiry would like to acknowledge the Kurna people as the true custodians of the lands and waters of the Adelaide region on which the Inquiry was administered.

The Inquiry acknowledges all custodians throughout South Australia for whom the Inquiry seeks to serve the best interests of their Aboriginal children and young people. In doing so, the Inquiry pays respect to Elders and families, both past and present, and pays reverence to today's Aboriginal children and young people as they emerge as our future leaders.

The Inquiry recognises Aboriginal People's existing and ongoing spiritual connection to the land and waters.

The Inquiry recognises the historical, contemporary, and ongoing impacts of the Stolen Generations and intergenerational trauma. Our trauma does not define our children or our future generations. It is our cultural resilience and optimism that ensures our children will flourish.

Note regarding language:

The Inquiry uses the term 'Aboriginal' to refer to people who identify as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander. This term is preferred by Aboriginal South Australians.

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In bringing community together, the Inquiry would like to thank the invaluable on-the-ground coordination provided by local Aboriginal community ambassadors across South Australia. Their contributions and support ensured the success of Aboriginal community forums.

The Inquiry especially thanks Garry Goldsmith and Melissa Clarke for facilitating the community meetings and sector forums, and gives gratitude to Shelly Ward and fellow Narrative Therapy staff of Nunkuwarrin Yunti.

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Aboriginal Advisory Group

It was integral that the Inquiry be guided by an Aboriginal Advisory Group.

The Inquiry thanks the Aboriginal Advisory Group for their cultural guidance, wisdom and knowledge sharing throughout the Inquiry.

The members of the Aboriginal Advisory Group were well-positioned to contribute to the direction of the Inquiry, which consisted of young people with lived experience, as well as respected Aboriginal leaders and Elders from within South Australia with diverse sector experience.

Brooke Oliver*, Christine Thyer, Jasmine Taylor-Harding*, Joanne Jones, Joody (Ann) Newchurch, Karen Glover, Phoenix James, Sandra Miller, Sharon Gollan, Shirley Young.

*Young people with lived experience in the Out-Of-Home Care system.

Disclaimer and content warning

Throughout this report, many statistics, numbers, case files and evidence are presented. The Inquiry urges its readers to be mindful that each of these represent an Aboriginal child, an Aboriginal family and their experiences.

This report contains information, case examples, quotes, data and other content that may be distressing to some readers. If you experience distress or find the information in this report confronting, we encourage you to seek support from family, friends and community.

**13YARN:
13 92 76**

**Kids Help Line:
1800 551 800**

**Lifeline:
13 11 14**

Terms of Reference

Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia

Being satisfied that the matter of the removal and placement of Aboriginal children and the application of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) raises an issue of particular significance to Aboriginal children and young people, is of a systemic nature and that is in the public interest to conduct an inquiry, by reason:

- that Aboriginal children are now, and have historically, been over-represented as a group of those in Out-of-Home Care in South Australia;
- that at present only about three in ten Aboriginal children who are removed are placed with Aboriginal family or kin;
- that reunification of Aboriginal children with their family or kin has declined in South Australia, and in comparison, with other jurisdictions, South Australia has the lowest rate of reunification of Aboriginal children;
- the aspirations reflected in the five pillars of the Aboriginal and Torres Strait Islander Child Placement Principle are not being fulfilled nor applied to all decisions affecting Aboriginal children;

I, the Commissioner for Aboriginal Children and Young People, have determined pursuant to s 20M of *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (the Act), to conduct an Inquiry into the policies, practices and procedures of State Authorities as they relate to the rights, development and wellbeing of Aboriginal children and young people, being:

To inquire into the recent past and current policies, practices and procedures of State Authorities relating to the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of

Aboriginal children in South Australia and how the wider ATSICPP formulated by the Secretariat for National Aboriginal and Islander Child Care (SNAICC) can be used to reform the child protection system.

The Inquiry will examine the application of the ATSICPP (including systemic barriers to its application) and its five pillars of:

- prevention
- participation
- placement
- partnership
- connection

as they relate to:

- a. removal of Aboriginal children (including the provision of support to family and kin prior to removal and for reunification)
- b. placement of Aboriginal children once removed (including connection with family, community and culture).

The Inquiry will report and make recommendations (including under s 20O of the Act) about reforms to the system with the object of reducing the removal of Aboriginal children from their families, increasing the rates at which Aboriginal children if removed are then placed with Aboriginal family or kin, and to improve the fulfillment of the objectives and the application of the *Aboriginal and Torres Strait Islander Child Placement Principle*, and any other relevant matters.

The Inquiry commenced on 30 June 2022. It will be completed by 31 December 2023 with the report to be delivered in early 2024.

The 'Aboriginal and Torres Strait Islander Child Placement Principle' incorporates both: the principle legislated in s 12 of the *Children and Young People (Safety) Act 2017*; and the principle formulated by SNAICC in its Family Matters Campaign which has been adopted by the South Australian Government as part of its 'Safe and Well' strategy.

Commissioner's Foreword

On commencing in the role of Commissioner for Aboriginal Children and Young People, I wanted the Aboriginal community to help shape the priorities for my work.

It was very clear to me after my first engagement with Aboriginal children and young people, and their families and communities that child removals were a significant issue that touched the lives of many within the Aboriginal community and that the sense of harm to children, and their loss and grief could not be ignored. I committed that once the role was legislated, that if I were in the role, I would conduct an own motion Inquiry into this matter.

Despite not receiving extra funding for this Inquiry, I was determined to undertake this important work through the use of resources within my core establishment. I was steadfast in not allowing setbacks to hinder or undermine this Inquiry. It has taken close to two years to complete the Inquiry with this Final Report, including a Preliminary Report tabled in Parliament in November 2023.

In conducting the Inquiry, the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) has provided the framework for examining the policies, procedures and practices in South Australia regarding Aboriginal child removals and placements. The Principle was developed by Aboriginal people to address the disproportionate rates of Aboriginal children and young people being placed in Out-Of-Home Care. It is a principle based in children's rights that is aligned with the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples.

Even before commencing the Inquiry, it was clear that Aboriginal children were significantly overrepresented in reports to the Department for Child Protection and in removals and placements in Out-Of-Home Care. South Australia has seen a 116.3% increase in Aboriginal Children in care between 2011 to 2021¹ and it has the second highest rate of Aboriginal children on long-term guardianship orders and the second lowest rate of reunification for Aboriginal children when compared with all other Australian states and territories.² Moreover, the rates at which Aboriginal children were being placed in the care of their Aboriginal families was declining, and that for many, their connections with family and culture had been severed. The signs that the system needed to change were already clear.

After the 2016 Child Protection Systems Royal Commission,³ Aboriginal people had hoped for transformation within the system, but the changes that have followed have been detrimental to outcomes for Aboriginal children and young people. New child protection legislation commencing in 2017 did not strengthen the need for the application of the Principle. Instead, the Principle has been included in the legislation as if it were separate to the notion of safety and wellbeing. This is not the case. Children's safety and wellbeing are at its core. Rates of entry into Out-Of-Home Care have increased year on year since this time.

The *Children and Young People (Safety) Act 2017* minimises the importance of wider family, culture and country in the lives of Aboriginal children and places emphasis on a Eurocentric model of seeing the child's rights in isolation from family and culture. It creates practices that equate 'safety' with the separation and removal of children from family and community.



Through this Inquiry I've heard from Aboriginal children, young people and families. Collectively, their stories tell of the trauma and hardship that Aboriginal people have and continue to endure. But these are also stories of strength, resilience and survival.

In the majority of cases, the underlying issues that have led to families' contact with the child protection service system have not been about the intentional harm of children. They are characterised by problems associated with poverty and intergenerational trauma, mental illness, domestic and family violence, homelessness and substance use. In responding to these issues, removals should be a last resort, but often problems have been allowed to escalate to a point where removals become the first step taken when intervening with these families. There is seemingly no capacity to respond early in a supportive way to reduce the risks that lead to what may have been entirely preventable removals of children. The current patterns of intervention and removal display a deeply unequal response to the needs of Aboriginal children who are separated from family in far higher ratios than non-Aboriginal children, receiving little or no support before removal, and who are much less likely to subsequently return home.

The statutory child protection agency, the Department for Child Protection has been the main focus of this Inquiry but it does not work in isolation. Other government agencies including health, schools, housing and the broader human services, child and family service system all have a role in improving outcomes for Aboriginal children and families.

We must acknowledge that we have built a system where the only option to respond to problems associated with disadvantage is to funnel families into child protection. This has to change. Meaningful change will only occur if as a State, we act on the lack of investment in early support that is desperately needed to shift system responses from removal, to preventing the need for any statutory involvement with effective and supportive service responses. This investment must elevate the capacity for Aboriginal Community Controlled Organisations to be able to provide this early support and move away from the Department for Child Protection being the only responder.

Throughout the Inquiry I have been encouraged by examples of good practice to support Aboriginal children and families, within both the Department for Child Protection and the broader service system. Unfortunately, this appears to be the exception rather than the norm. The current South Australian child protection service system is not sufficiently responsive to the needs and culture of Aboriginal children, it disadvantages them, using models of practice and services that are built on European ideals. For example, the Institutional care (Residential care) of children, of which South Australia is the highest user in the whole country, is a colonising model, not an Aboriginal model.

The child protection service system is not equipped to meet the cultural needs of Aboriginal people. The introduction of mandatory reporting, which is widely acknowledged to pull in more Aboriginal children and poorer families into an investigative system⁴ means that these families come to the attention of child protection services. This is in the context where there is an absence of any collective government responsibility to partner with the Aboriginal community to provide help and support.

Current assessment processes including Structured Decision-Making® tools, fail to take sufficient account of cultural strengths and protective factors and overlook the racist effect that Aboriginal children are routinely over-reported into child protection service systems.⁵ Racial discrimination is a violation of children's rights.

Child protection agencies are failing to take into account cultural differences, the impact of structural racism and do not routinely include Aboriginal cultural advice, or when this advice is sought it is after key decisions have been made about the children. This can lead to fraught interactions between Aboriginal families and non-Aboriginal staff who do not have cultural competence or experience to understand and respond effectively to the legacy of fear and trauma that underpins contact with the child protection service system. When an Aboriginal parent's previous contact with the child protection service system as a child becomes an increased risk factor in itself, when we know Aboriginal families are over-represented in this system because of discrimination, we know the system is not treating Aboriginal children or families fairly, and that new ways of responding to concerns about children's safety are needed.

The current legislation lacks balance and has shifted the emphasis too heavily towards immediate concerns over safety while disconnecting this from longer term outcomes for children. It has created a risk averse context where practitioners feel pressure to remove children without having to consider the longer-term consequences of such actions. Increasing removals of children is not a measure of success. Experience in Out-Of-Home Care does not provide children with an advantage in life. There is a growing body of evidence that shows the damaging and lifelong consequences for those children in state care.⁶ This is especially true for those children who have not been placed with family and where connections to family and culture have been fractured or lost.

Aboriginal people have had enough of watching an institutionally racist system that does not adequately apply the Principle or know how to consider safety within the broader context of a child's family, community and culture. A system that says it's there to help but contributes to harm. Aboriginal people have heard enough platitudes. If nothing changes, we'll continue the current trajectory with greater numbers of Aboriginal children being placed in state care.

One in 10 Aboriginal children in South Australia are in state care.⁷ It is likely then that most Aboriginal families will know family that has had a child removed by the State. The effect of this is Aboriginal families not trusting services and in times of necessity least likely to ask for help when they most need it.

No one knows the Aboriginal community better than the Aboriginal community itself. There are a range of roles and responsibilities that need to be released from the child protection service system and placed in the hands of community. Building culture and identity of the Aboriginal child is the responsibility of the Aboriginal community. As a matter of urgency, the Department for Child Protection needs to give power and responsibility back to the Aboriginal community and their role in scoping for and finding family in order to maintain children and young people's connection to family and culture.

In the longer term major structural reform to the system is required to shift the focus to support, and to shift power and responsibility to families and communities and the people who know and care for children. Aboriginal people are invested in the future of their children like no other. Aboriginal children and families are asking us to care about culture, care about how we belong and are connected to community and country. We want better for our people and our future.

It has become self-evident over the past decades that the system is unable to transform itself. It needs to be open to much better collaboration, partnerships and influence from outside its' own system. These changes need to be led and guided by Aboriginal leaders in partnership with other agencies.

Positioning the rights of the child to have their best interests placed at the centre of decision-making forces the system to broaden its focus, to understand and view the child within a wider set of relationships. This is not minimising risk but placing it in context. The context for Aboriginal children is living with the legacy of Colonisation and day-to-day the impact of interpersonal and institutional racism in which connection to family and culture plays a very important protective role in safeguarding children's emotional and psychological safety and wellbeing.⁸

The Principle has been guiding practice beyond the child protection portfolio. Wherever large populations of Aboriginal people are interfacing with government systems, it has become important to consider the application of the Principle in relation to outcomes for Aboriginal children.

The government has been told before that the investment in early intervention and support is insufficient and I will say it again. Failure to act means that struggling, vulnerable families will continue to encounter the child protection service system at increasing rates, and that Aboriginal children being removed from their families will mean the government will pay the cost one way or another, for matters that are preventable. The Aboriginal community will no longer tolerate this cost to continue to be at the expense of our children and future generations.

The community have spoken of the importance of placing the Aboriginal child and their family in front of the Aboriginal community. No longer is it viable that decision-making for Aboriginal children and families continue to be in the control of government. In order to make changes, we need to change the way in which decisions are made.



April Lawrie
Commissioner for
Aboriginal Children
and Young People
South Australia

Executive Summary

In South Australia today, the numbers of Aboriginal children being removed by the State are approaching levels akin to the Stolen Generations, that were driven from earlier laws and policies enforced in the Protection and Assimilation eras.⁹

When the Assimilation policies were abolished in 1962,¹⁰ Aboriginal community leaders spearheaded solutions within the realm of community and culture to combat the negative impact of government policy on Aboriginal child welfare outcomes. The *Aboriginal and Torres Strait Islander Child Placement Principle* (The Principle) was borne for this purpose.

The Principle's origins herald from the deep-seated knowledge and understanding that the Aboriginal community is best placed to make care decisions for Aboriginal children, not government. The initial function of the Principle guided Aboriginal decision-making in relation to the placement of the Aboriginal child into Aboriginal care;¹¹ it has since evolved into a holistic, culturally responsive standard for the child protection service system to implement across five elements pertaining to children and their families' needs for Prevention, Participation, Partnership, Placement and Connection.¹²

The Principle is an embodiment of two key internationally endorsed covenants: the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child. These covenants are explicit about the rights of children to grow up safely within their family, community and culture.

The Commissioner for Aboriginal Children and Young People, in exercising her powers to conduct systemic investigations, undertook this Inquiry to examine the application of the full Principle inclusive of its five elements, due to the concerning rates of Aboriginal child removals, extremely low rates of reunification with family of origin, and high levels of non-Aboriginal care for Aboriginal children in South Australia.¹³

In South Australia, Aboriginal children and young people constitute approximately 5.5% of the population of children under 18¹⁴ but represent 37.4% of all children in Out-Of-Home Care¹⁵. For all Aboriginal children in Out-Of-Home Care, only 38% are being cared for by their Aboriginal kin or a member of the Aboriginal community.

Total Children in Care in SA % Aboriginal vs. % Non-Aboriginal



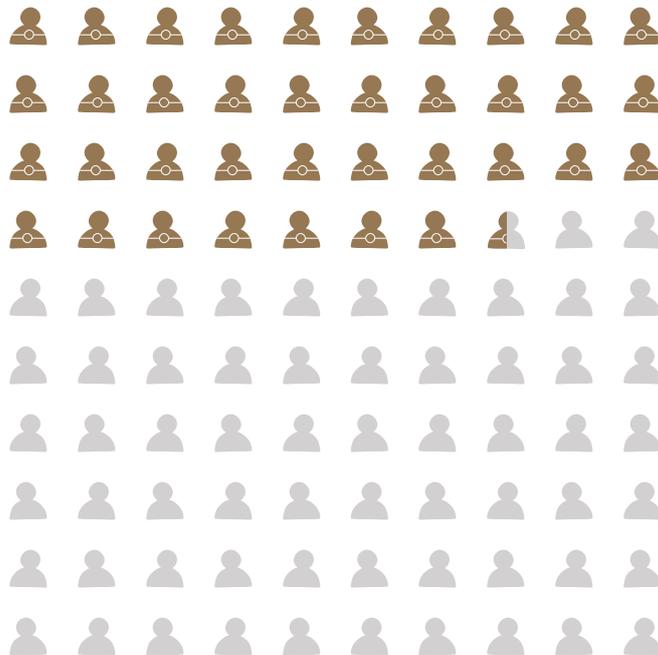
Aboriginal children make up just

5.5%

of all children in South Australia

Source: Child Development Council, South Australia (2024) *How are they faring? South Australia's 2023 Report Card for children and young people.* Government of South Australia.

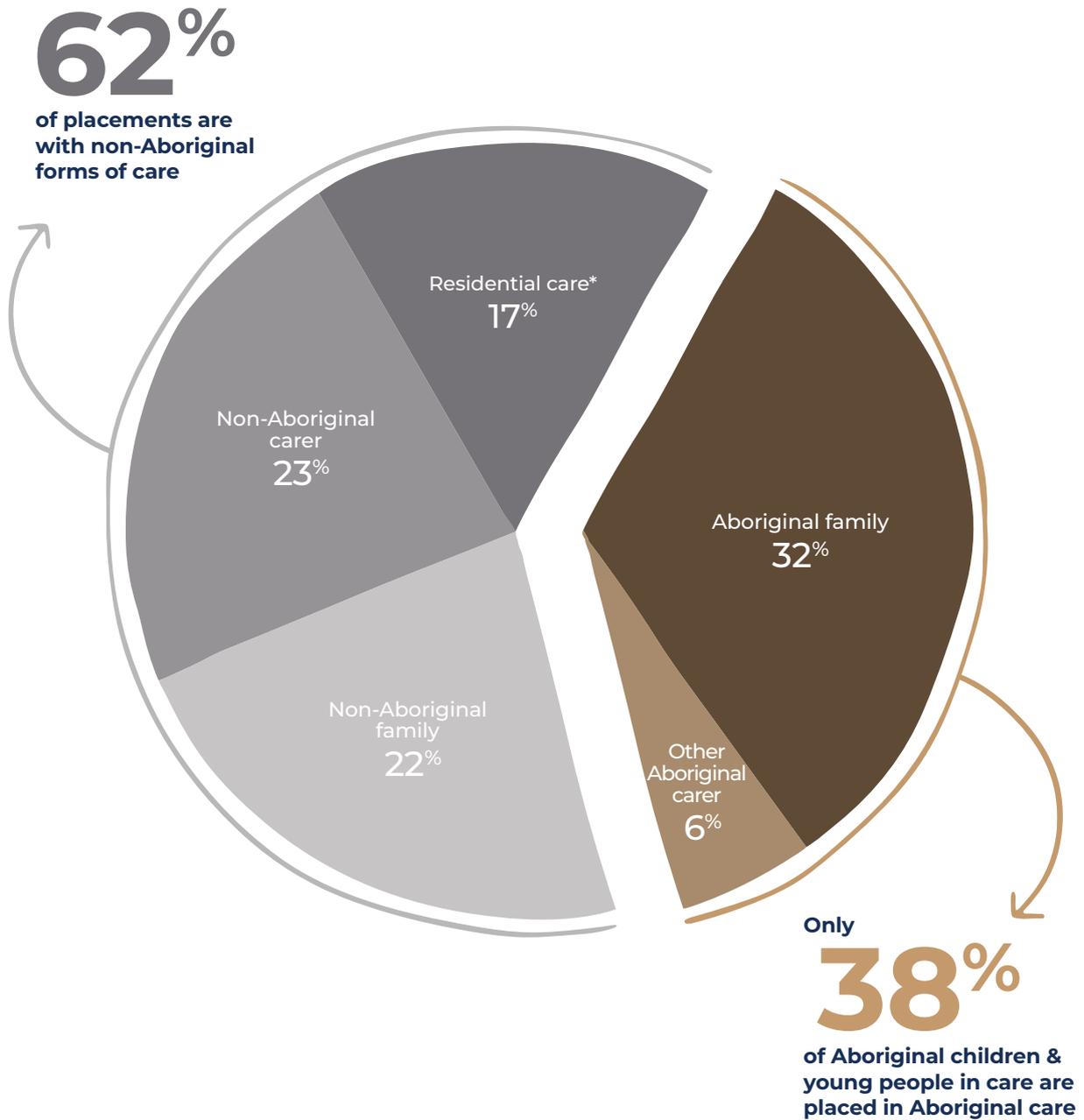
But they represent
37.4%
of all children in out-of-home care in South Australia



Source: Department for Child Protection (2023) *2022-23 Annual Report.* Government of South Australia.

* Each icon represents 1% of South Australian children & young people

Aboriginal Children in Care in SA by Placement Type (%)



* Note that no family group homes exist in South Australia

Source: Productivity Commission (2024) *Report on Government Services 2024*. Australian Federal Government.

For many Aboriginal children and their families coming into contact with the child protection service system, their circumstances are often characterised by issues connected to experiences of marginalisation and poverty, substance misuse, domestic and family violence, school exclusion, lack of health care, homelessness, untreated mental illness and intergenerational child protection contact; all matters that are best suited to a public health and community development approach to avoid the removal of children.

The child protection service system in South Australia is built on Eurocentric and paternalistic ideologies and practices.¹⁶ “The history of Aboriginal affairs policy in South Australia assumed policy on child welfare to shape the future and ‘influence’ the coming generations”.¹⁷ However this couldn’t be further from the truth. The end-results of this system are that one in two Aboriginal children are reported at least once, and one in 10 are in Out-Of-Home Care in a single calendar year.¹⁸ The repercussions of these policies have permeated throughout generations. This impact is on each child and has deep impacts on every single community. It underscores the fact that there is so little capacity for early supportive system responses to the challenges experienced by families that are entrenched in intergenerational cycles of disconnection from culture through child removal, that lead to the very issues used to justify child removals. Whether they be past or present policy and institutions intervening in the lives of Aboriginal children and their families, the reality is the service systems are designed, developed, and led by a workforce that is disconnected to the cultural context of the Aboriginal child. Far too often non-Aboriginal people are making decisions about Aboriginal children, families, and communities, when they don’t understand Aboriginal families or culture. This is observed in policies and practices that marginalise the voice and decision-making of Aboriginal families. For Aboriginal people, this reinforces the experience of colonialism.

Aboriginal Community Controlled Organisations know the Aboriginal child, their families and communities better than government. Therefore, the relevance and necessity for Aboriginal Community Controlled Organisations is pronounced more than ever. Aboriginal Community Controlled Organisations enable self-determination through the delivery of culturally safe and responsive support services, with authentic relationships and trust to improve outcomes in the best interests of Aboriginal children.

The critical role that Aboriginal Community Controlled Organisations play in child and family support services is discounted when the prevention sector is severely underfunded. The service system designed to respond to the needs of vulnerable children and their families is not resourced commensurate with the volume of families in need; despite the State Government being aware of this inadequate resourcing. The majority of the child protection service system’s funding continues to flow towards removal and placement of children in Out-Of-Home Care, not the prevention of removals, with over 80% of funding spent on Out-Of-Home Care compared to an average of just over 60% across the rest of the nation. The result of this imbalance of investment is a dramatic increase in the proportion of Aboriginal children being removed onto long-term orders.

The BetterStart Research team at the University of Adelaide provided data analysis to the Inquiry that showed one in 48 Aboriginal children who turned 10 years old in 2001 were placed on a Guardianship to 18 years order, fast forward two decades and this had increased to one in 11 Aboriginal children.¹⁹ Further, one in 70 Aboriginal children born in 2010 were placed on a Guardianship to 18 years order before their first birthday, fast forward 10 years and this has increased to one in 24 Aboriginal children.²⁰

The Out-Of-Home Care system captures a large proportion of Aboriginal children who are being unnecessarily removed and disconnected from their families, communities, and culture.²¹ Removal is not the only way to keep children safe and well. The State Government must acknowledge that if it only invests in Out-Of-Home Care then child removal is the only response we will see. The State Government's failure to harness local level Aboriginal community intelligence and knowledge of family and culture through genuine partnerships is a barrier to the effective application of the Principle.

The current *Children and Young Person (Safety) Act 2017* holds the safety of the child as the paramount consideration in decision-making, setting up the framework for policy and practice that minimises the importance of the child's longer-term wellbeing and best interests. For Aboriginal children, their best interests are best served by the proper application of the Principle in all decisions about their safety, development, and wellbeing.

The Inquiry undertook a process to build a comprehensive understanding of the systemic issues and barriers to the proper application of the Principle. There is an overwhelming disproportionality for Aboriginal children and their families at every key touch point of the child protection service system, indicating that in comparison to non-Aboriginal children, Aboriginal children are:

- over-reported
- over-investigated
- over-represented in removals and long-term Guardianship orders.

If nothing changes, in South Australia, 140 in every 1000 Aboriginal children will be in state care by 2031.²²

There are a number of significant challenges and issues unique to the experiences of Aboriginal children and their families when in contact with the child protection service system. These issues have determined a number of key findings and recommendations for change, to improve Aboriginal children's safety and wellbeing, to reduce the overrepresentation of Aboriginal children in Out-Of-Home Care and to ensure the proper application of the Principle to the standard of Active Efforts.

The Inquiry found an absence of accountability within the child protection service system for compliance with the Principle. Despite good intentions expressed through successive state strategies and national agreements including Closing the Gap, the intent has failed to translate into improved outcomes for Aboriginal children. The system requires a formal and ongoing accountability mechanism to provide oversight and ensure compliance with the Principle. The Inquiry recommends the introduction of a sixth element of Performance to the Principle to meet this need for cultural oversight and accountability.

Findings and Recommendations



Findings

Headline Findings

- 1** The Department for Child Protection has no defined strategy to improve outcomes for Aboriginal children and young people, or a culturally appropriate accountability and oversight mechanism for monitoring its performance in the application of the Aboriginal and Torres Strait Islander Child Placement Principle. As such, the cultural responsiveness of the Department is severely lacking.

- 2** There is insufficient funding to meet the demand identified for culturally appropriate, early intervention services for vulnerable Aboriginal children and their families.

- 3** The State is unnecessarily removing disproportionate and growing numbers of Aboriginal children from their families and communities, causing long term harm to their health, wellbeing and life chances, when they could be responding in a more child-family centred and culturally responsive way.

- 4** The Aboriginal and Torres Strait Islander Child Placement Principle has been taken out of the hands of the Aboriginal community. Aboriginal community voices were not included or deemed necessary in the drafting of the Principle in the current legislation and in policy.

- 5** The way decisions are managed and made regarding Aboriginal children's best interests needs to change. Better outcomes for Aboriginal children are achieved when Aboriginal people, families and communities lead decision-making.

- 6** Systemic racism and cultural bias contribute to the disproportionate rates of Aboriginal child removals and placement into non-Aboriginal care.

Prevention

7. The *Children and Young People (Safety) Act 2017* is framed around safety as the paramount consideration and widens the definition of harm to scope in welfare and wellbeing matters, resulting in unnecessary removals of Aboriginal children and young people.
8. The *Children and Young People (Safety) Act 2017* and the Department for Child Protection's policies do not satisfy universal human rights to culture and Aboriginal self-determination or the right of the child to have their Best Interests considered in all decisions that concern them. These rights underpin the Principle and the failure to implement them has undermined its application and detrimentally contribute to the overrepresentation of Aboriginal children entering Out-Of-Home Care.
9. Section 12 *Children and Young People (Safety) Act 2017* wrongfully implies that the placement principle displaces safety. This is a contradiction and an institutionally racist assumption. The placement principle is a rights-based principle ensuring Aboriginal children grow up *safely within* family, community and culture.
10. There are only two Aboriginal Community Controlled Organisations in South Australia that receive funding from the Department of Human Services to deliver Early Intervention services to Aboriginal families in need. Both funded organisations are metropolitan-based and deliver statewide services.
11. The *Children and Young People (Safety) Act 2017* does not empower the Department for Child Protection take preventative action. There is no coherent public health approach, policy or legislation for early intervention to address the causal factors and prevent unnecessary removals.
12. Less than 20% of the child protection service system funding is allocated to Early Intervention and Prevention. This is an unacceptably low investment and incommensurate to the needs of vulnerable children and families.
13. Family Group Conferencing is an internationally recognised model for keeping children safe in their families, communities and culture. The Department for Child Protection is the only state authority that can refer a child and their family for a Family Group Conference and is not effectively utilising Family Group Conferencing. Other state authorities recognise the importance of Family Group Conferences in Prevention and want legislative mechanisms to allow them to make referrals for Aboriginal children and their families.
14. The assessment of notifications received by the Child Abuse Report Line regarding Aboriginal children and young people does not use Aboriginal knowledge or expertise. The now dismantled Yaitya Tiramangkotti unit, which was managed by experienced Aboriginal workers, provided cultural oversight, ensuring culturally appropriate assessments and responses to notifications concerning Aboriginal children and their families.

-
15. The Structured Decision-Making® tools used by the Department for Child Protection are culturally biased towards Aboriginal children and families. They lead to unnecessary removals because they do not identify strengths-based cultural factors. Other child protection jurisdictions such as Queensland have abolished the use of Structured Decision-Making® due to this cultural bias.
 16. There is no defined model of care in place across the child protection service system that coherently responds to and supports pregnant Aboriginal women identified with Unborn Child Concerns in a culturally appropriate manner.
 17. Pregnant Aboriginal women with identified Unborn Child Concerns are not prioritised in the child protection service system as a population group with high needs requiring support services; instead the decision to remove the newborn at birth is the priority. The manner in which infant removals at birth occurs is reprehensible and is not an acceptable way to deal with Aboriginal women, children and families.
 20. The consultation with Principal Aboriginal Consultants appears to be a tick-box exercise and while embedded in policy, it is inconsistent in practice. Consultation with a Principal Aboriginal Consultant often occurs in lieu of consultation with the Aboriginal child and family. At the time the Inquiry commenced, there was a total of 10 Principal Aboriginal Consultants responsible for 37.4% of children in care, across multiple significant decisions in relation to each child. At the time of drafting this Report, an additional 10 Principal Aboriginal Consultants had been employed. Growing the volume of Principal Aboriginal Consultants is welcomed but the lack of influence and impact remains. The Principal Aboriginal Consultant roles, aside from requesting Family Group Conferencing, are not authorised to make significant decisions concerning Aboriginal children. Where consultation with a Principal Aboriginal Consultant occurs, their recommendations are often disregarded.
 21. The Department for Child Protection district offices do not have formal partnership arrangements or local Aboriginal community engagement mechanisms to garner Aboriginal advice external to the Department. The previous Aboriginal Family Care Program was a successful initiative that enabled strong partnerships, as it was delivered by a variety of local-level Aboriginal Community Controlled Organisations in their communities across South Australia. Each Aboriginal organisation was gazetted as a recognised consultative body for matters to do with local Aboriginal children and their families. It was mandatory for the district office to consult with the recognised Aboriginal organisation. The program was responsible for keeping Aboriginal children safe within community and culture, privileging the Aboriginal child and family's voice. Consultation was mandatory.

Partnership

18. There is no clear policy that details how the Department for Child Protection is working towards Aboriginal Community engagement. There is a lack of genuine partnership and engagement with the Aboriginal Community external to Aboriginal Community Controlled Organisation funding agreements.
19. The Department for Child Protection does not have a policy or formal mechanism to engage with the Aboriginal community to develop legislation, policies and practice to ensure optimal outcomes for Aboriginal children and families. At the time of drafting this Report, the South Australian Aboriginal Child and Family Peak Body is being established for this purpose.

22. At the time the Inquiry commenced, there was one Recognised Aboriginal and Torres Strait Islander Organisation, Aboriginal Family Support Services. At the time of drafting this Report, a second Aboriginal Community Controlled Organisation, KWY, has been Gazetted as a Recognised Aboriginal and Torres Strait Islander Organisation. It is culturally inappropriate and unproductive for two statewide services to advise on matters relating to local level Aboriginal communities that they are not connected to. This runs counter to the Principle and to Aboriginal self-determination for local Aboriginal communities.

23. The Recognised Aboriginal and Torres Strait Islander Organisation function under the *Children and Young People (Safety) Act 2017* is limited to consultation prior to placement of Aboriginal children and young people. This is an inadequate use of Aboriginal community knowledge and understanding of Aboriginal children and their families.

24. The *Children and Young People (Safety) Act 2017* provides for the delegation of powers. None of these powers have ever been delegated to an Aboriginal person, an Aboriginal entity or an Aboriginal Community Controlled Organisation.

Participation

25. The Department for Child Protection's policy for Aboriginal Family Led Decision Making is inadequate and does not sufficiently uphold the principle of Family Led Decision Making. In practice, Aboriginal families are routinely excluded from significant decision-making about their children.

26. The current legislation places the responsibility of convening a Family Group Conference with the Chief Executive of the Department for Child

Protection. This limits the access of children and families to opportunities for family led decision-making in South Australia. Family Group Conferencing requires independent facilitation to uphold the fidelity of the program in a culturally appropriate manner.

27. Aboriginal children and young people coming into contact with the child protection service system are not adequately involved or empowered to participate in decisions about their care.

Placement

28. The Department for Child Protection is inappropriately applying a broader definition of 'kinship' to kinship care. For Aboriginal children this does not guarantee an Aboriginal kinship placement in accordance with Aboriginal customary rules of kinship.

29. Family scoping to identify placements for Aboriginal children is wrongfully in the control of the Department for Child Protection. Government is not the knowledge base for Aboriginal families, genealogy and kinship systems, nor connected through engagement or relationships of trust to be able to fulfil this role.

30. Current efforts to locate Aboriginal family when placing Aboriginal children are often inadequate and do not occur in a timely manner, resulting in the placement of Aboriginal children with non-Aboriginal carers. The misplaced use of Eurocentric attachment theory results in Aboriginal children remaining in non-Aboriginal foster placements, even when Aboriginal family are subsequently identified.

31. The Department for Child Protection is non-compliant with the legislative requirement to consult with the Recognised Aboriginal and Torres



Strait Islander Organisation prior to the placement of Aboriginal children and young people, and is failing to act on recommendations made by the organisation.

32. The Recognised Organisation Consultation appears to be a tokenistic, tick-box exercise where the Department for Child Protection fails to consider the submissions made by the Recognised Aboriginal and Torres Strait Islander Organisation in relation to placements of Aboriginal children and young people.
33. The relevant carer approval policy includes the approval of kinship carers and subjects them to the legislation intended to minimise the risk to children posed by persons who *work or volunteer* with them (*Child Safety (Prohibited Persons) Act 2016*). Requiring kinship carers to undergo a Working with Children Check assessment and satisfy the Prohibited Persons Act can be a barrier to their carer approval status and kinship placement. This policy lacks sensitivity in responding to the needs of each particular child and carer and their pre-existing relationship.
34. The use of section 77 of the *Children and Young Person (Safety) Act 2017*, which provides that children can be placed with an unapproved carer is an underused provision in the Act, which would give Aboriginal children greater access to wider family and kinship care immediately.
35. There is no policy or practice for supporting informal care arrangements within the Department for Child Protection. Known successful informal care arrangements required the State to financially support the

placement without supervising the care arrangements, as this was the funded responsibility of an Aboriginal Community Controlled Organisation.

36. There is no distinct Aboriginal kinship care service system in South Australia that is legally independent of the Department for Child Protection.

Connection

37. The Department for Child Protection is not compliant with its annual reporting obligations under section 156 (1)(a) *Children and Young People (Safety) Act 2017*, regarding the extent of input from local Aboriginal and Torres Strait Islander communities and organisations in the development of cultural maintenance plans; the extent to which cultural maintenance plans are meeting the cultural needs of Aboriginal children; and the extent to which Aboriginal children have access to people from the same Aboriginal or Torres Strait Islander community as them.

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38. The consultation on the development of cultural maintenance plans for Aboriginal children is not occurring in accordance with the Regulations. The consultation should occur with an Aboriginal or Torres Strait Islander Organisation, or member of the Aboriginal or Torres Strait Islander community to which the child belongs; instead, where consultation does occur, it occurs with a Principal Aboriginal Consultant.
 39. Government does not understand what is required to meet Aboriginal children and young people's cultural needs. Government cannot facilitate the connection of culture; it is for the Aboriginal community to fulfil this responsibility.
 40. There are Aboriginal children in residential care who are continually self-placing with their family of origin without consideration of reunification.
 41. There is no external cultural oversight and quality assurance for the Aboriginal Cultural Identity Support Tool and cultural maintenance planning.
 42. There is a lack of compliance with the appointment of cultural mentors for Aboriginal children in care, in accordance with the Aboriginal Cultural Identity Support Tool. It is for the Aboriginal child's family to identify and appoint an appropriate cultural mentor.
 43. The Department for Child Protection applies a generic and superficial approach to cultural maintenance. The Aboriginal Cultural Identity Support Tool is not effectively understood and utilised to nurture or maintain cultural identity and connections to family, community and country for Aboriginal children in care. Aboriginal children and young people in care are often disconnected from their cultures. For Aboriginal children in residential care, disconnection is exacerbated.
 44. The Department for Child Protection's practice in identifying Aboriginal children and families does not uphold the definition of an Aboriginal child in the *Children and Young Person (Safety) Act 2017*. The practice of only requiring self-identification runs the risk of responding to a young person as Aboriginal when there may not be any connection or heritage.
 45. Contact is not treated as a rights-based need of the Aboriginal child. This is not consistent with international standards as applied by the Federal Circuit Family Court of Australia. Instead contact is dealt with by administrative arrangements of the Department for Child Protection.
 46. Contact is not adequately facilitated for Aboriginal children and young people, and they are not afforded the right to have contact with their siblings, family, communities and culture.
 47. Reunification is rarely considered after a long-term guardianship order is made severing connection to family and culture when placement is made to non-Aboriginal carers. In the case of young children, the principles of intervention support permanence planning as early as possible, thereby subordinating the application and impact of the *Aboriginal and Torres Strait Islander Child Placement Principle*.
 48. Current efforts by the Department for Child Protection to reunify Aboriginal children with their families are inadequate. The Department for Child Protection appears to be using the reunification process to investigate and gather information to support applications for long term guardianship orders. The reunification process is not centred around the supports needed by families to succeed and often sets them up to fail. Families feel misled and the focus is on planning for permanency as opposed to reunification.

Recommendations

Headline Recommendations

- 1** The *Children and Young People (Safety) Act 2017* be amended to insert the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle and that they be applied as the paramount consideration for Aboriginal children when considering their safety, wellbeing and best interests. The principle should be applied to the standard of Active Efforts in all significant decisions. Active Efforts must be purposeful, thorough and timely.
- 2** A sixth element of Performance to be included to the adopted Aboriginal and Torres Strait Islander Child Placement Principle for South Australia. The implementation of Performance to the standard of Active Efforts is demonstrated by accurate reporting and compliance of all elements, including comprehensive measures embedded within practice and case management systems.
- 3** Legislate a mandatory annual reporting requirement that the Chief Executive report on the implementation of Active Efforts for the Aboriginal and Torres Strait Islander Child Placement Principle and on matters of funding directly invested in Active Efforts measures across the child protection service system.
- 4** The Department for Child Protection to work in partnership with the Aboriginal community through the newly established Aboriginal child and family peak body to develop its own Aboriginal strategy aimed at improving outcomes for Aboriginal children and young people.
- 5** The *Children and Young People (Safety) Act 2017* be amended to include that the Youth Court should satisfy itself that the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle have been applied to the standard of Active Efforts before making an order under the Act. If it is not so satisfied, the Youth Court should have the power to make specific orders requiring the Chief Executive of the Department for Child Protection to comply with the obligation to implement the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of Active Efforts.

Prevention

6. The *Children and Young People (Safety) Act 2017* be amended to require the Chief Executive of the Department for Child Protection to give consideration to enabling Federal Circuit and Family Court of Australia proceedings to be taken by the Aboriginal family with whom the child is to be placed, before making an application for a guardianship order.
7. Restore 'best interests' as the paramount consideration within the *Children and Young People (Safety) Act 2017* and that for Aboriginal and Torres Strait Islander children their best interests are determined in the context of the application of the five pillars of the Aboriginal and Torres Strait Islander Child Placement Principle as a paramount consideration.
8. Sustainable and adequate funding commensurate to need must be allocated to local-level Aboriginal Community Controlled Organisations to enable the delivery of culturally safe and appropriate Early Intervention and Intensive Family Support Services as defined at the local level.
9. The *Children and Young People (Safety) Act 2017* be amended to provide that where there are Aboriginal child wellbeing concerns the family may self-refer to culturally safe services through the Child and Family Support Services pathway, and that where mandated reporters and the Chief Executive of the Department for Child Protection have concerns about the wellbeing of Aboriginal children, they must refer the matter to Child and Family Support Services pathway for culturally safe assessment and referral.
10. The Department for Child Protection reinstate the Yaitya Tirramangkotti team in the Call Centre to draw upon Aboriginal knowledge and expertise in managing, assessing and responding to notifications concerning Aboriginal children and their families. The Yaitya Tirramangkotti team to consist of a supervisor, a senior practitioner and a minimum of eight social workers and Aboriginal Family Practitioners. The Yaitya Tirramangkotti team to be the culturally safe mechanism to ensure the early intervention support system and the statutory system apply Active Efforts to prevent pathway to removal. This includes giving the Yaitya Tirramangkotti team delegation to refer to Family Group Conferencing.
11. The Department for Child Protection abolish the use of Structured Decision Making[®]. There is no place for racially biased assessment tools in government services. An assessment tool to replace Structured Decision Making[®] should be developed in partnership with the Aboriginal community through the South Australian Peak Body for Aboriginal Children and Families and leading Aboriginal child protection experts.
12. Amend section 59 of the *Children and Young People (Safety) Act 2017* so that the onus lays with the applicant to prove on the balance of probabilities that the orders they seek should be made.
13. The Department for Child Protection's practice of uninformed removals at birth is condemned and it must cease immediately.

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14. SA Health, through its various Local Health Networks prioritise the establishment of step-down facilities with family focussed, tailored support and coordinated services specifically for Aboriginal women identified with Unborn Child Concerns.
 15. SA Health develop a model of care for Unborn Child Concern which includes Aboriginal Case Coordinator roles in birthing hospitals to focus specifically on complex case management of Unborn Child Concerns.

Partnership

16. The *Children and Young People (Safety) Act 2017* require that at least one local level Recognised Aboriginal or Torres Strait Islander Organisation for each regional community with proven strong community knowledge and connections be gazetted and fully funded to perform legislated functions in line with recommendation 18.
17. The *Children and Young People (Safety) Act 2017* should be amended to specifically provide for the delegation of the Chief Executive's powers to local-level Aboriginal Community Controlled Organisations. Current decision-making models are based on Eurocentric models of family life and relationships. The government must change the way decisions are made about Aboriginal children and shift power and decision-making back to Aboriginal families, communities and Aboriginal Community Controlled Organisations.
18. The *Children and Young People (Safety) Act 2017* be amended to broaden the function of Recognised Aboriginal and Torres Strait Islander Organisations to provide that they assist Aboriginal families and their children at all significant decision-making points about the child's wellbeing or safety including by:
 - a. providing cultural advice to the Department for Child Protection, the Youth Court, other state authorities and where necessary South Australian Civil and Administrative Tribunal on:
 - i. safety and wellbeing assessments
 - ii. family support needs for prevention of removals
 - iii. care options for children without orders
 - iv. placements for children where a removal is necessary.
 - b. undertaking family scoping for:
 - i. identification of family and kin to be involved in decision-making
 - ii. identification of family, kin and community placement options
 - c. development of cultural maintenance plans
 - d. attendance at reviews conducted under section 85 of the Act
 - e. attendance at Family Group Conferences
 - f. contributing to the design of relevant policies and programs
 - g. appointment of an Aboriginal cultural support person or child advocate to ensure the participation of children and young people in significant decisions or to advocate on their behalf.
 - h. reporting to the Court about the efforts that have been made by the Chief Executive of the Department for Child Protection to comply with the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of Active Efforts before a guardianship order is made.

Participation

19. The Department for Child Protection's current policy for Aboriginal Family Led Decision Making must be replaced by a new policy that must be developed in partnership with Aboriginal communities and Aboriginal Community Controlled Organisations.
20. As a matter of urgency, it must be mandated that a referral to a Family Group Conference be made before the Department for Child Protection can apply to the Court for any guardianship orders for Aboriginal children.
21. The *Children and Young People (Safety) Act 2017* be amended to mandate that if the Chief Executive of the Department for Child Protection, the Court or a state authority suspects that an Aboriginal child or young person is at risk or there are concerns for their wellbeing, then the Chief Executive of the Department for Child Protection, the Court or the state authority must make a referral for a Family Group Conference at the earliest possible opportunity; and it is to be facilitated by an external, independent, Aboriginal-led program prior to any significant decisions being made about the Aboriginal child.
22. The following sections of the *Children and Young People (Safety) Act 2017* be amended to mirror the requirement of the Court and the South Australian Civil and Administrative Tribunal to provide reasonable opportunity for children and young people to personally present their views unless they are not capable of doing so:
 - a. Section 85: Annual reviews
 - b. Section 157: Internal reviews
 - c. Section 95: Review by Contact Arrangements Review Panel
23. That the legislated functions of Recognised Aboriginal and Torres Strait Islander Organisations be expanded within the *Children and Young People (Safety) Act 2017*, in line with recommendation 18, to include appointment of an Aboriginal cultural support person or child advocate to ensure the participation of children and young people in all significant decisions and to advocate on their behalf generally and where the Act provides they have right to be heard or to have a decision reviewed.

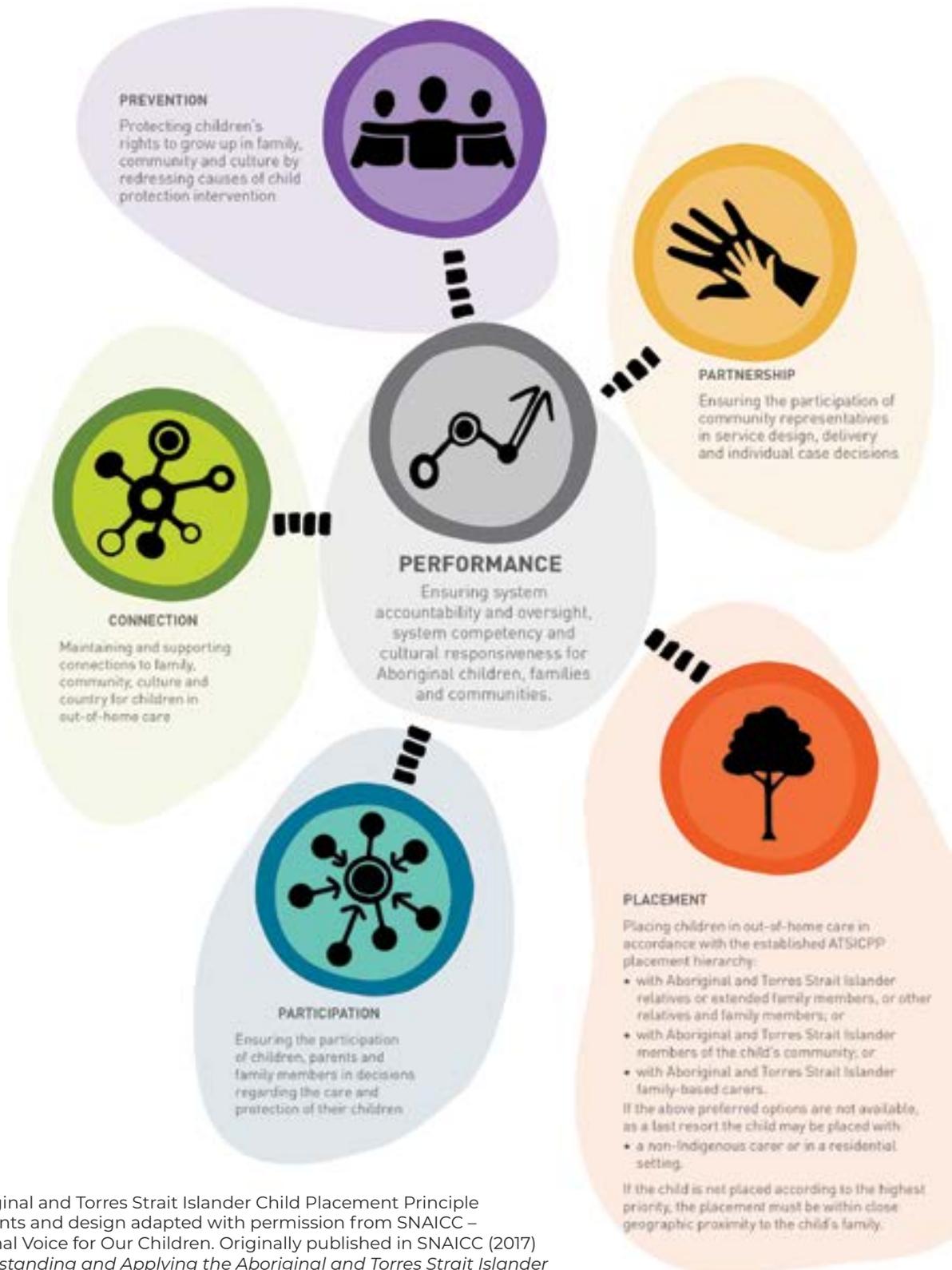
Placement

24. That the legislated functions of Recognised Aboriginal and Torres Strait Islander Organisations be expanded within the *Children and Young People (Safety) Act 2017*, in line with recommendation 18, to include family scoping for identification of family and community placement options for Aboriginal children.
25. Reinstate the Aboriginal Family Care Program and amend the *Children and Young People (Safety) Act 2017* to set out the functions of an Aboriginal Family Care Program, inclusive of Recognised Aboriginal and Torres Strait Islander Organisation functions, and allocate funding to meet contemporary arrangements in line with recommendation 16 and 18.
26. Design, develop and implement a new approach specific to Aboriginal Kinship Care, in partnership with the Aboriginal community and the Aboriginal community-controlled sector. The profile of Aboriginal Kinship carers and their needs are different and Aboriginal kinship care should be developed as a distinct service type with its own legal, policy, financial and practice systems that recognise the difference and full potential of this type of care.

Connection

27. The *Children and Young People (Safety) Act 2017* and *Children and Young People (Safety) Regulations 2017* be amended to expand the functions of Recognised Aboriginal and Torres Strait Islander Organisations to include the development of cultural maintenance plans for Aboriginal children, in line with recommendation 18.
28. That the *Children and Young People (Safety) Act 2017* be amended to:
 - a. remove the power conferred to the Chief Executive of the Department for Child Protection in section 93 and give powers to the Youth Court to make orders in relation to contact with family, and
 - b. abolish the Contact Arrangements Review Panel.
29. The *Children and Young People (Safety) Act 2017* be amended to require that the Court and Chief Executive of the Department for Child Protection must have regard to Aboriginal attachment styles and Aboriginal child rearing practices, when making decisions about reunification and long-term orders.
30. The *Children and Young People (Safety) Act 2017* be amended to provide for regular consideration of the viability of reunification at annual reviews after children have been placed under long term guardianship orders.
31. The Review of Care arrangements for Aboriginal children in care should be conducted by Independent Reviewing Officers, external to the Department for Child Protection with powers to report back to the courts if the Aboriginal child's reunification, contact, cultural safety and cultural needs are not being met.
32. The *Children and Young People (Safety) Act 2017* be amended to give the Court power to make reunification orders, that such orders require reviews every two months and to make consequential orders at reviews. The Court should have discretion to extend orders if substantial progress has been demonstrated.

Headline Recommendation 2: Performance element



Aboriginal and Torres Strait Islander Child Placement Principle elements and design adapted with permission from SNAICC – National Voice for Our Children. Originally published in SNAICC (2017) *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy, and Program Development*. Original design by Mazart Design Studio.

Introduction

In June 2022, the Commissioner for Aboriginal Children and Young People, April Lawrie, commenced an Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia.

This is the first Aboriginal led, own motion Inquiry in Australia with Royal Commission powers to examine the application of the Principle. This Inquiry is committed to social justice and the rights of the Aboriginal child to grow up safely within family, community and culture.

An array of evidence has been gathered along with the voices of Aboriginal people on their experiences of Aboriginal child removals in their communities. Aboriginal people have defined the way forward to cultivate a better future for Aboriginal children, their families and their communities.

The Principle is the pivotal Aboriginal policy in contemporary child protection practice. This Inquiry aims to examine the extent to which the Principle is understood and implemented across the child protection service system. The Inquiry addresses systemic issues at the legislative, system, policy, program and practice level to understand the spiralling rates of Aboriginal child removals in South Australia. The proper and effective application of the Principle offers pathways towards more equitable outcomes for Aboriginal children, their families and their communities and implements their rights to their family community and culture.

The implementation of the Principle requires more than mere lip service. To reverse Aboriginal Out-Of-Home Care Rates, child protection services must adhere to the principle to the standard of 'Active Efforts,' demonstrating genuine commitment and meaningful engagement with Aboriginal families and communities in a timely, purposeful and thorough manner.

In South Australia, the disproportionate overrepresentation of Aboriginal children in the child protection service system is a concerning trend that persists at every level, from notification and investigation to removal and Out-Of-Home Care Rates. Compared to their non-Aboriginal counterparts, Aboriginal children experience significantly higher rates of contact with child protection services commencing from pregnancy and throughout their childhood.

Experiences of poverty and intergenerational child protection contact are two of the most common characteristics of families with children in Out-Of-Home Care. This reflects the inadequacy of government funding and resourcing for Early Intervention and Intensive Family Support Services particularly for vulnerable Aboriginal families experiencing higher rates of disadvantage than non-Aboriginal families. Structural and policy reform is required across all key areas of disadvantage to counter the current upward trends of Aboriginal children in care, with an urgent need for the effective implementation of the Principle and the element of prevention in particular.

The release of the Report of the Royal Commission into the state's child protection systems in 2016²³ and the subsequent enactment of new child protection legislation in 2017, were two significant developments in child protection in South Australia. While these developments were intended to improve outcomes for all children, the reality has been far from ideal, particularly for Aboriginal children. Instead of achieving positive outcomes, these reforms have had detrimental consequences. The

new legislation inadvertently exacerbated the existing disparities, amplifying the rates of Aboriginal child removals and their overrepresentation in key contact points of the child protection service system.

The Inquiry received evidence that in 2020–21, 1 out of every 2 Aboriginal children were subject to at least one child protection notification, compared to 1 in every 12 non-Aboriginal children²⁴. For unborn child concerns, one in every three Aboriginal children were subject to an unborn child notification, compared to 1 in 33 non-Aboriginal children²⁵. In the last financial year, the Department removed 105 babies from their mothers within a month of being born. Around one third of these infant removals were Aboriginal babies and most occurred before they were one week old.²⁶

The *Department for Child Protection's Annual Report 2022–2023* shows that Aboriginal children comprised 37.4% of children in care during the reporting period²⁷, despite Aboriginal children and young people representing only 5.5% of the State's population between the ages of 0 to 17 years²⁸. This demonstrates that Aboriginal children and young people are subject to child protection orders at a rate twelve times higher than their non-Aboriginal counterparts. Further, despite the aim of child protection service systems to prioritise reunification of children with parents wherever possible, at the national level just 16.4% of Aboriginal children were reunified with their birth families in the 2020–21 reporting period. In South Australia, it is even lower at 3.8% in 2022–2023,²⁹ dropping from 6.1% the previous year.³⁰

In confronting the crisis of Aboriginal child removals, the Inquiry was compelled to reckon with the enduring legacy of colonialism and its profound impacts on Aboriginal communities. The overrepresentation of Aboriginal children in state care reflects a deeply entrenched cycle of marginalisation and dispossession, severing vital cultural and familial ties in the process. Policies such as the forced removal of

Aboriginal children from their families during the Stolen Generations have left lasting scars on Aboriginal families and communities, contributing to intergenerational trauma and systemic disadvantage.

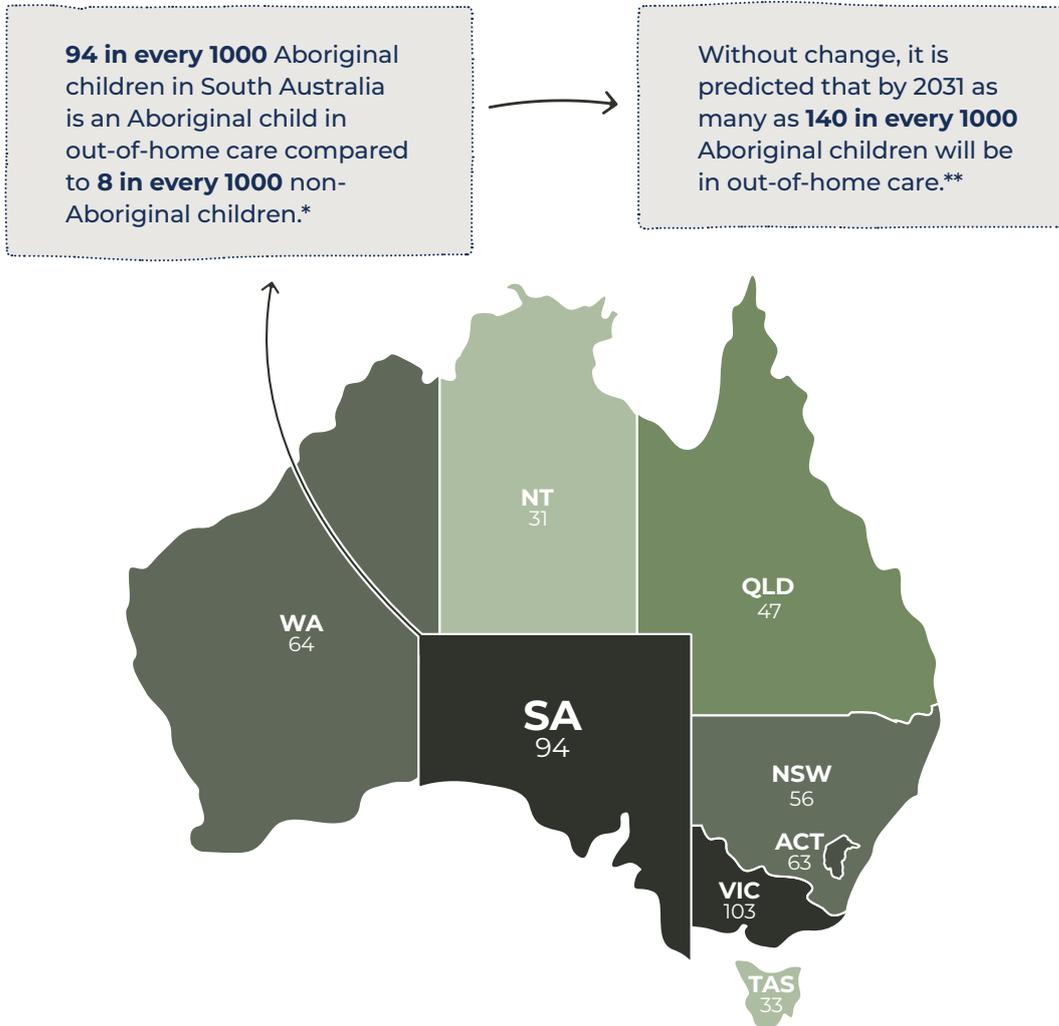
The legacy of the Protection and Assimilation eras is entrenched within the policies and practice of the contemporary child protection service system. Notwithstanding the 2008 National Apology, systemic racism underpinning this legacy remains uninterrupted. This is reflected in the gross overrepresentation of Aboriginal children in Out-Of-Home Care and the lack of cultural lens applied at significant decision-making points, where non-Aboriginal people hold the power and control. Any opportunity to impart power and control to the Aboriginal family or community is met with resistance. Hope lies within our Aboriginal Community Controlled Organisations and their ability to provide culturally safe services to Aboriginal families and communities.

Despite national initiatives like the Family Matters campaign and the Closing the Gap agreement, the trajectory of Aboriginal child removals in South Australia paints a grim picture of continued government failure. For too long government systems have been empowered to make decisions for Aboriginal children, their families and communities. Aboriginal people know the answers sit within the Aboriginal communities who are connected to the Aboriginal child and their family and the Aboriginal Community Controlled sector that serves them.

A disturbing trajectory looms on the horizon, casting a shadow over the future of Aboriginal communities: the escalation of Aboriginal children being removed from their families and placed under the care of the Department of Child Protection. If current trends persist a staggering 140 out of every 1000 Aboriginal children in South Australia will be in statutory care by 2031.^{31,32} This alarming statistic serves as a call for urgent action.

The Principle is the beacon of hope for

Rate of Aboriginal Children (0–17 Years) in Out-of-Home Care Per 1000 Children



Australia National Average



Aboriginal 57 vs **Non-Aboriginal** 5

New Zealand National Average***



Tamariki Maori 4 vs **Non-Maori** 2

* Source: Productivity Commission (2024) Report on Government Services 2024. Australian Federal Government.

** Source: South Australia Guardian for Children and Young People, 2020, Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021, Office of the Guardian for Children and Young People, Adelaide.

*** Source: Estimates based on Oranga Tamariki (NZ Ministry for Children) and NZ population data 2021–2023.



Aboriginal children and their families. It is the one key Aboriginal policy, developed by Aboriginal people, embodying culturally responsive approaches to safeguarding Aboriginal children within community and culture. The implementation of the Principle in South Australia has fallen short of its transformative potential, with systemic barriers impeding meaningful engagement with Aboriginal families, communities and organisations.

Government policy speaks of partnership, collaboration and co-design, however Aboriginal voices remain marginalised in decision-making processes at the systemic and family level, perpetuating a cycle of paternalism within child protection service systems.

At the heart of the matter lays the failure to uphold the standards enshrined in the Principle.

Only through a comprehensive and holistic approach, grounded in principles of self-determination, cultural empowerment, and social justice, can we hope to address the root causes of this epidemic and pave the way for a future where every Aboriginal child can thrive connected to their family, community, and cultural heritage.

As we confront the challenges ahead, we must heed the lessons of history and centre the voices and experiences of Aboriginal children and families in shaping the policies and practices that will ultimately determine their future. Genuine self-determination must be reflected in all areas of decision-making.

Methodology

Inquiry Process



The Inquiry examined evidence through several key inputs to better understand the experiences of the child protection service system as it relates to Aboriginal children, families and communities.

The Inquiry's Terms of Reference focused upon two definitions of the Principle and have been broken down into a series of topics and key issues for inquiry, of which each input was coded against. The key topics and the associated element of the Principle are:

1. The assessment of and response to notifications (*prevention*)
2. Support provided to families prior to children being removed and placed into Out-Of-Home Care (*prevention*)
3. Availability of effective and culturally appropriate support services (*prevention*)
4. Composition of the child protection workforce and their cultural knowledge and capability, including recruitment processes and reflective practices (*partnership*)
5. Consultation with a Recognised Aboriginal Torres Strait Islander Organisation before a child is placed in Out-Of-Home Care (*partnership*)
6. Engagement with the Aboriginal workforce, the Aboriginal community and Aboriginal Community Controlled Organisations (*partnership*)
7. Opportunities for children to be reunified and/or maintain their connection to their family (including siblings in care), community, culture and country (*connection*)
8. Identification of suitable family or community members as placement options (*placement*)
9. Convening of a family group conference (*participation*)
10. Opportunities for children and extended family and community members to lead or participate in decision making in relation to the child/ren, including placement decisions and cultural maintenance planning (*participation*)

Submissions

The Inquiry opened for public submissions between 1 July 2022 – 12 May 2023.

A total of 44 submissions were received: 21 from individuals and 23 from organisations, including kinship carers, non-Aboriginal carers, parents, young people, Aboriginal Community Controlled Organisations, government departments, non-government organisations and peak bodies (see Appendix A).

Community and Stakeholder Engagement

Extensive consultation was conducted across Aboriginal communities in South Australia and significant stakeholder engagement in metropolitan Adelaide with government, non-government and Aboriginal Community Controlled Organisation sectors.

A total of 14 Aboriginal Community forums were held between August 2022 and May 2023. Aboriginal Community Ambassadors were engaged in each location to raise awareness of the Inquiry and the upcoming forum, and to ensure local Aboriginal families, communities and organisations were empowered to attend and contribute their experiences.

In each community, participants were provided the opportunity to share their experiences and story in private sessions. In four remote locations, it was considered appropriate to only hold private sessions.

A total of 16 stakeholder forums and meetings were held with government agencies and non-government service providers, including the Department for Child Protection, Department of Human Services, SA Health, Department for Education, Aboriginal Community Controlled and non-Government organisations.

Literature Review

Arney Chong Consulting were engaged to undertake literature reviews for each of the key topics drawn from the Terms of Reference.

Documentary Analysis

The Inquiry received 890 policies, procedures and other documents from the Department for Child Protection, Department of Human Services, Department for Health and Wellbeing and SA Police. These documents were analysed against best practice standards as identified by SNAICC, the National Voice for Aboriginal and Torres Strait Islander children and families, and their various Guides to the Implementation of the Principle.

Case File Reviews

The Inquiry undertook a review of 30 case files with the purpose of identifying systemic issues in the application of the Principle. The Inquiry reviewed cases for the first 30 orders made for Aboriginal children and young people in 2022. Those case files were subject to in-depth review by the Inquiry in relation to compliance with the Principle, measured against key criteria for each element of the ATSICPP. Those reviews also highlighted other relevant practice factors and key issues which emerged.

Data analysis

Data used in this analysis is from the Better Evidence Better Outcomes Linked Data (BEBOLD) platform, a comprehensive whole-of-population de-identified linked data platform. BEBOLD contains de-identified data on ~500,000 young people in South Australia born from 1991 onwards and their parents and spans more than 30 different government administrative data sources.

Data collected in these government systems is often for the day-to-day running of services and programs. Therefore, much of the available data is deficit-based and gives little insight into strength, resilience, and success stories. There is more work to be done to support data collection that recognises the strength and unique cultural perspectives, knowledge, and practices of Aboriginal and Torres Strait Islander people.

Hearings

A total of 27 witnesses provided oral evidence across 19 hearings which have been made public and are available at the Commissioner for Aboriginal Children and Young People's website (www.cacyp.com.au).

400+

Aboriginal Voices Heard

- Children
- Young People
- Families
- Carers
- Community Members
- Workforce



4 Workshops with
Aboriginal Children
& Young People

29 Private
Sessions

16
Stakeholder
Workshops
Held

- Aboriginal Community Controlled Organisations
- Non-Government Sector
- Department for Child Protection
- Department of Human Services
- SA Health
- Department for Education
- Guardian for Children & Young People



500+

Sector
Stakeholders
Consulted

30
Case File
Reviews

44
Written
Submissions

- Aboriginal Community Controlled Organisations
- Government & Oversight Bodies
- Non-Government Sector
- Individuals

890
Documents Reviewed



Analysis of 10 Distinct Government Data Sources

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18

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14

Community Forums Held Across SA

- 1 APY Lands – 1-4 May 2023
- 2 Oodnadatta – 15 November 2022
- 3 Coober Pedy – 14 November 2022
- 4 Yalata – 14 July 2023
- 5 Ceduna – 8 November 2022
- 6 Port Lincoln – 2 November 2022
- 7 Whyalla – 1 December 2022
- 8 Port Augusta – 30 November 2022
- 9 Port Pirie – 20 September 2022
- 10 Kadina – 14 December 2022
- 11 Gawler – 12 September 2022
- 12 Northern Metro (Salisbury) – 15 December 2022
- 13 Western Metro (Port Adelaide) – 17 October 2022
- 14 Southern Metro (Christie Downs) – 15 September 2022
- 15 Victor Harbor – 7 December 2022
- 16 Murray Bridge – 24 August 2022
- 17 Mount Gambier – 4 August 2022
- 18 Berri – 6 September 2022

● Private sessions

The Aboriginal and Torres Strait Islander Child Placement Principle

As the Stolen Generations policies and Protectionist era ended, Aboriginal community leaders were steadfast in developing solutions to protect the rights of Aboriginal children to remain immersed in and connected to their families, communities and culture.

In 1978 the South Australia Aboriginal Child Care Agency was formed, led by Uncle Brian Butler, who was a formidable Aboriginal leader and advocate for the rights of Aboriginal children and families. Uncle Brian would often say that the Aboriginal Child Placement Principle was much more than policy, it was about holding on to our future.

In 1983, the Aboriginal Child Placement Principle was formally adopted in policy by the Department for Community Welfare in South Australia.³³ Its purpose was to address the disproportionate representation of Aboriginal and Torres Strait Islander children being adopted or placed in Out-Of-Home Care with non-Aboriginal carers. The Principle holds that every attempt should be made to place a child within his or her family in accordance with a placement hierarchy. If removal becomes a serious consideration the Aboriginal community must be consulted and if the child is to be placed away from home, preference must be given to place with a member of the child extended family, member of the child's Aboriginal community, other Aboriginal families living in close proximity. The policy was included in the *Adoption Act* in 1988 and in 1993, embedded in the then *Child Protection Act*.³⁴ In progressive iterations of the Principle in legislation, the emphasis has been on the application of the placement hierarchy.

In response to the ongoing and increasing rate of removals of Aboriginal children the Aboriginal Child Placement Principle has evolved at a national policy level for the prevention of removals and ensure that other critical elements of an Aboriginal child's right to grow up safely with family, community and culture are integrated into the original principle. The Family Matters Campaign promotes the expanded and full principle now known as the *Aboriginal and Torres Strait Islander Child Placement Principle* (the Principle).³⁵ It is a critical feature of the first *Indigenous Action Plan* in the *National Framework for Protecting Australia's Children (Safe and Supported)*.

The Principle aims to enable systemic change to address the needs of Aboriginal children and families. It is a rights-based principle aligned to that fulfills governmental obligations contained in the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples. Notably, it ensures the rights of children to be protected from harm including through preventative social programs,³⁶ their enjoyment of their cultures in community with their cultural groups, and the rights of Aboriginal children, families and communities to participate in decisions that impact upon them.³⁷ It is based on the presumption that removal of Aboriginal children from their families should be a measure of last resort, with priority being instead given to the capacity for communities towards self-determination and the knowledge and experience of Aboriginal people to make the best decisions concerning their children.³⁸ It is focused on keeping children within their families and communities to ensure that the link between family, community and culture is maintained if a child is removed from their family.

The application of the Principle has been inconsistent and misunderstood by governments across Australia, resulting in the South Australian Department for Child Protection applying some of the elements some of the time, and primarily around the decisions about placement of an Aboriginal child. Thus, despite the Principle being embedded in legislation, there has been no measurable decrease in the number of Aboriginal children coming into contact with the child protection service system.

“When this important child placement principle is reduced to a simple placement hierarchy, and the other four elements are not meaningfully woven into the placement of children, Aboriginal children and their families are at risk of being further disadvantaged. Agreement to the Principle but failure to measure the effectiveness of its implementation needs to be urgently addressed”.³⁹

The Principle is structured around five core elements, which are summarised below.⁴⁰ These five core elements should be applied to the standard of Active Efforts. The evidence before the Inquiry has been measured against these five elements.

Active Efforts

The concept of Active Efforts was developed in the United States as the ‘gold standard’ for child protection practice with First Nations people in the late 1970s.⁴¹ It requires purposeful, timely and thorough action by child protection agencies, and deliberately places the responsibility for addressing the child protection concerns with government rather than permitting government to take a passive stance. The embedding of Active Efforts in policies and practice requires that child protection agencies do much more than provide families with information about services and expect that they then engage with those services. It shifts the focus from

one of surveillance and compliance to one where families are actively supported to meet the collective responsibility for children.

In her evidence to the Inquiry, Professor Cindy Blackstock spoke of the Canadian experience which shares a history of colonisation not dissimilar to that of Australia with intergenerational trauma suffered by First Nations communities.⁴² Professor Blackstock stated that to bring about change, there is a need to widen the lens and look at child protection as a symptom, not as the problem. The provision of holistic services with an emphasis in training professional staff such as physicians to work in remote communities has been successful in bringing about change. She also spoke of the need to change the way systems are funded and ensuring that there is rigorous accountability of the funding spent to ensure that it is targeted to bring about measurable change, with the child protection system needing to take responsibility for the harm that has been caused. It is not appropriate to hold families responsible for neglect when the child protection system has perpetuated that neglect through continued failure to invest in community-controlled support and early intervention.

Active Efforts is not a term that is currently legislated in the Act. In her evidence Dr Jacynta Krakouer said the importance of Active Efforts rests in the prevention realm and ensuring that Aboriginal families don’t come into contact with child protection in the first place.⁴³ The Inquiry also heard that the academic literature is clear that a best practice standard for the application of the prevention element of Principle to the standard of Active Efforts is anti-poverty practice, as well as referring families on for trauma treatment and trauma assessment to address intergenerational trauma that may be impacting, family wellbeing and functioning.⁴⁴ The Queensland Aboriginal



Torres Strait Islander Child Protection Peak Guide to the Application of Active Efforts also supports this approach.⁴⁵

Prevention

The prevention element of the Principle aims to protect the rights of Aboriginal children to be raised among their own family, culture and community, by ensuring that families have access to the required services and supports that respond to the social determinants that give rise to child protection concerns, and allow them to care safely for their children. It prioritises early intervention pathways and the targeted provision of intensive and holistic support services, to ensure that vulnerable families are provided with the opportunity to address familial issues prior to government intervention. The prevention element recognises and respects the broad definition of 'family' within Aboriginal culture, which embraces a collective approach to parenting extending beyond the Eurocentric cultural ideal of a two-parent nuclear family.

Partnership

Aboriginal communities comprise Aboriginal individuals, families and organisations that relate to each other in a complex network of communal and cultural obligations. The partnership element of the Principle highlights the critical importance of involving Aboriginal communities in all aspects of child protection decision-making. This includes but is not limited to prevention and early intervention; intake and assessment; care and placement decisions and involvement in the judicial process.

The partnership element requires that there be genuine and meaningful engagement with Aboriginal communities, including the empowerment of communities to design and implement policy and service models. It is crucial that community are consulted about decisions that relate to individual children and are active in ensuring that Aboriginal children remain safe with family community and culture.

Participation

The participation of Aboriginal children and families in decisions which affect them is a key component of the Principle. The participation element acknowledges that Aboriginal family members and communities have the best knowledge of their own caring strengths and have a right to be involved in decisions relating to best interests of their children. The participation element is underpinned by the need for professionals in the child protection jurisdiction to have high levels of cultural competency and the ability to engage with families in a culturally responsive and safe manner. Another key component of the participation element is the involvement of Aboriginal children in decision-making, including ensuring the adequate representation of children and the availability of and access to child advocacy services.

Placement

The placement element endorses a hierarchical model for placement of Aboriginal children in Out-Of-Home Care, to ensure that the highest possible level of connection is maintained for a child to their Aboriginal family, community and culture. This placement element calls for placement options for Aboriginal children to be prioritised as follows:

1. with Aboriginal relatives or extended family, or other relatives or extended family members; or
2. with other members of the child's Aboriginal community; or
3. with Aboriginal family-based carers.

It is only in circumstances where the placement hierarchy is not complied with, that Aboriginal children are placed in residential care or non-Aboriginal family-based care. In those care arrangements, connection with family, community and culture must be maintained. Active engagement with a child's family and other community representatives is essential to ensuring that all possible higher-order placement options are scoped and considered. This requires an appropriate mechanism to gather community level knowledge appropriate to that child, their family, their community, and their culture. It is also critical that children's Aboriginal and/or Torres Strait Islander status is identified as soon as possible, so that such placement options are able to be explored.

Connection

The connection element of the Principle is to ensure that in the event of placement of Aboriginal children in Out-Of-Home Care, they are actively supported to maintain connection to their family, community and culture. This objective requires the development and resourcing of cultural care plans for every Aboriginal child in Out-Of-Home Care, developed in partnership with their family and community. Further, there must be accountability mechanisms in place to monitor the requirement of state authorities to support Aboriginal children and young people to maintain their cultural connections on an ongoing basis. Reunification of Aboriginal children with their families and kin must also be prioritised. This extends to continued scoping of the viability of reunification, in partnership with family, kin and community, even after the making of long-term Guardianship orders.

Prevention

The application of the Principle in most jurisdictions across Australia has focused primarily on the placement of Aboriginal children once removed, whilst failing to address the prevention element which aims to minimise such removals in the first place.

Principle: Its aim is to protect Aboriginal children's rights to grow up in family, community and culture by redressing causes of child protection intervention.⁴⁶

Protecting the rights of Aboriginal children to be brought up in families requires the implementation of appropriate legislative and policy frameworks; it requires targeted and intensive supports to promote healing and family functioning, and address specific parental issues including trauma, substance misuse, homelessness, lack of access to health care, mental health issues, family violence and poverty. It also requires a full range of culturally safe early childhood, education, health and other social services, as well as alternative intake and referral pathways to early intervention, prior to families engaging with child protection service systems.⁴⁷

In his oral evidence to the Inquiry the Deputy Chief Executive of the Department for Child Protection, Adam Reilly, acknowledged that "the system has evolved into something that was not the intention. What we see now is a complete lack of intervention, engagement, and support at the right part of the trajectory for families when it's more needed. Without serious intervention in that space, that will continue to grow with massive costs which will more greatly reduce the ability to fund appropriate services further upstream".⁴⁸

Public health approach

The Inquiry heard from several experts who called for a public health approach in which all systems operate in alignment to address the social determinants that result in contact with the child protection service system.

Professor Katina D'Onise in her evidence to the Inquiry, said the Public Health "aim is to keep people well"⁴⁹ and to understand population health issues, like Aboriginal child removals, it is necessary to examine the distal causes and treat them.⁵⁰ Professor D'Onise further explained that the Stolen Generations is a large societal driver of poor health outcomes for Aboriginal people.⁵¹ Public health is an important approach to care and protection, but there needs to be a prevention service system that supports this, and one that Aboriginal people trust.⁵²

A public health approach prioritises prevention at all stages of risk, whereas currently the governments investment and focus is clearly on crisis response and the removal of children, not crisis prevention or support.

While the Safe and Well strategy⁵³ attempts to implement a public health approach and achieve positive outcomes for Aboriginal and Torres Strait Islander children and families it is clear the resourcing is outstripped by need when it comes to the underfunded prevention and early intervention system.

The Inquiry heard evidence from Professor Cindy Blackstock about the Canadian experience, which has a similar history of colonisation to Australia; with comparable outcomes of intergenerational trauma resulting in complex social determinants of family violence, poverty, drug and alcohol dependency, and mental health problems, leading to the over-representation of First Nations people having their children removed by the state.⁵⁴ Professor Blackstock provided evidence that there is a significant cost to the public purse of governments

failing to address the social determinants that result in the removal of children. If those costs are not met at the prevention stage of child protection, they will need to be met through the criminal justice system or further involvement with the child protection service system.

Dr Fiona Arney stated in her evidence to the Inquiry that “there is not the public health system for responding to intergenerational trauma and violence and chronic harm that we see that would be the preventative system. And so even when we do have an early intervention system, what people envisage when they see early intervention, which versus what is actually required for families are very different things”.⁵⁵

*“So, while we’re focused on child safety, we also need to be focused on improving the well-being and outcomes of the carers of our children too. And I would say it’s very clear that the way our system is currently set up, by and large, does not have the capacity or the mechanisms to do that”.*⁵⁶

A public health model that views the high numbers of Aboriginal children in the child protection service system as a pandemic, would shift the focus solely from safety to longer term outcomes and to one that seeks to help and ensure that children and families are provided the intensive supports. This shift has been implemented and shown to change the trajectory in other jurisdictions including Scotland and Leeds in the UK.⁵⁷

The evidence provided by Professor Leah Bromfield, Director and Chair of Australian Centre for Child Protection, was clear about the need for the child protection service system to refocus and be redesigned around a helping response. Based on her extensive research she finds that “most families don’t deny the problems in the family, which has led to the circumstances that fall into our definitions of abuse and neglect...most family will engage with services if you offer services. So why are we going through

these statutory powers of the state to get to that?”.⁵⁸

However, the neoliberal state locates the impacts of colonisation, removal and cultural dislocation as being the responsibility of individuals rather than systems. It “places the onus on Aboriginal communities and parents to overcome entrenched, intergenerational disadvantage caused by state processes”; and instead of parents being supported, they are punished through the removal of their children.⁵⁹

Disadvantaged families

Aboriginal populations experience greater levels of social and economic disadvantage, making Aboriginal people highly visible to systems; thereby increasing the level of government interface with vulnerable families, and higher risk of interventions that lead to child removals.⁶⁰

In order to support Aboriginal families, social policy must address the determinants of health including poverty, homelessness, workforce exclusion, racism and justice involvement, and provide culturally safe, therapeutically focused parenting support which promotes healing and addresses the impacts of intergenerational trauma.⁶¹

The data analysis commissioned for the Inquiry examined the background characteristics of families with children in care in South Australia in 2016 and found that Aboriginal families are two and a half times more likely to be affected by multiple characteristics at one given time.⁶² The data shows that:

- 96% had at least one indicator of poverty.
- 54% had at least one indicator of poor mental health.
- 43% had at least one indicator of substance misuse.
- 35% had at least one indicator of domestic and family violence.

-
- 69% had experienced intergenerational child protection contact.

The most common pattern showed 19% of Aboriginal children's parents experiencing both poverty and intergenerational child protection contact. Dr Rhiannon Pilkington from BetterStart Health and Development Research (BetterStart) at the University of Adelaide, in her evidence to the Inquiry, stated that the data "...begs the question around the role of poverty in both perceived and actual child protection risk".⁶³ The second most common pattern of overlapping complexities was parents experiencing all five characteristics of disadvantage.⁶⁴

The case file review identified 17 out of 30 cases where the child and their family had intergenerational child protection contact. 23 cases out of 30 were characterised by poverty and in 11 cases, the child and their family experienced a combination of poverty, poor mental health, substance misuse, domestic and family violence and intergenerational child protection contact.

To further analyse the reasoning around the disproportionality between Aboriginal and non-Aboriginal children, BetterStart mapped the background characteristics between both populations.

Dr Pilkington gave evidence that the data demonstrated "there continues to be an increased risk of Aboriginal children being investigated, substantiated and removed into Out-Of-Home Care once they're within the system, and it's very difficult for us to explain why that difference persists".⁶⁵

"Whichever part of the child protection system we look at, from the first notification of a child all the way through to when children are removed – the comparison of the experiences of Aboriginal and Torres Strait Islander children compared to non-Aboriginal children is confronting and alarming".⁶⁶

This data points to the presence of cultural bias and systemic racism within the child protection service system. Dr Pilkington went on to explain in her evidence that

"when we've talked to Aboriginal families, Aboriginal workers, even within the system, they have said to us racism is inherent in the way our systems work all the way from who gets notified to who gets removed".⁶⁷ Dr Pilkington's observations are consistent with the experiences conveyed to the Inquiry by the Aboriginal community throughout community forums, private sessions and individual submissions.

The issue of cultural competency within the child protection service system workforce is discussed further in Performance chapter. This chapter further explores the policies, tools and structures that contribute to systemic racism within the service system.

Best interests of the child

The United Nations Convention of the Rights of the Child provides that the best interests of the child is a primary consideration to applied in all actions concerning children.⁶⁸ When it was introduced, the *Children and Young People (Safety) Act 2017* dispensed with the best interests of the child and now provides that the primary consideration for the child is safety.⁶⁹ This approach does not address the need to balance the harmful effects of long-term separation and the impacts of the care system with the immediate safety of the child. For Aboriginal children in particular, the evidence is clear that removal from family community and culture is damaging to their well-being and life outcomes.⁷⁰ When combined with structural and inherent biases which view Aboriginality as a risk factor, this has resulted in the increasing and disproportionate removals of Aboriginal children and young people from their families.

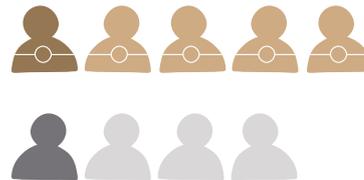
Overall, the Act creates an operational environment where the method by which safety is achieved is to remove the child. It reinforces a forensic and incident-based approach which does not consider cumulative harm and how this might best be dealt with other than by removal.⁷¹

For Children in Out-Of-Home Care



Poverty and **intergenerational child protection contact** are the **most prevalent characteristics present** for children entering the child protection system.

In 2016, around **1 in 5** Aboriginal children and **1 in 4** non-Aboriginal children in out-of-home care came from families with only these **two characteristics**.



The 5 Most Prevalent Characteristics for the Families of Aboriginal Children in Out-of-Home Care in 2016 were:



14% of Aboriginal children in out-of-home care came from families **experiencing all five characteristics** compared to **6%** of non-Aboriginal children.

Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Case File Reviews

30 case files were selected to examine the application of the ATSI CPP in practice.



11 cases (37%) had Aboriginal children and their families experiencing a combination of:

- Poverty
- Poor Mental Health
- Substance Misuse
- Domestic & Family Violence
- Intergenerational Child Protection Contact

23 cases (77%) had Aboriginal children and their families experiencing poverty.

17 cases (57%) had Aboriginal children and their families with intergenerational child protection contact

Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Rather than simply focussing on immediate child safety concerns, the system needs to shift to a focus on wellbeing and the best interests of the child.

The Inquiry heard from child protection experts, both Aboriginal and non-Aboriginal, about the need for system reform starting with legislation that gets the settings right and puts the Aboriginal child's best interests at the centre of decision making, inextricably bound to culture as the core protection from harm.⁷² Associate Professor Paul Gray stated in his evidence that optimising the best interests of Aboriginal children in child protection means recognising that "every area of human development which defines the child's best interests has a cultural component...the concept of best interest (is) often a lynchpin of our systems and yet... they do not properly, in my view, reflect the cultural rights of children".⁷³

Too often the response to concerns for the wellbeing and safety of Aboriginal children is removal by the State. The Inquiry has heard of struggling families looking to DCP for help, only to have their children removed. These families did not know that a family led solution is possible through the Family Court. Where Aboriginal kinship care is an option the Family Court can enable more flexible arrangements for children to be reached that secure the child's cultural attachment relationships. The Family Court must consider the safety of children and their cultural needs in the context of their best interests, but access to the Family Court is only possible where there are no guardianship orders. To enable self-determination and prevent removal, in line with the Principle Aboriginal families should be given the opportunity by the Department to reach their own arrangements before the State steps in.

Recommendation

6. The *Children and Young People (Safety) Act 2017* be amended to require the Chief Executive of the Department for Child Protection to give consideration to enabling Federal Circuit and Family Court of Australia proceedings to be taken by the Aboriginal family with whom the child is to be placed, before making an application for a guardianship order.

Independent consultant social worker Paul Nixon told the Inquiry that the worst outcomes for Aboriginal children come from removal and that supporting the child to stay with family optimises their best interests.⁷⁴ His views are supported by the literature and the longitudinal study on children in child protection.⁷⁵ In his evidence to the Inquiry, Mr Nixon spoke on the growing body of evidence that shows that out of home care is often not a safe place for a child due to disconnection from family, relationship breakdowns, attachments breaking and/or children being harmed in care.⁷⁶

Immediate and long-term negative outcomes for both children, families and government are recognised within the growing evidence that Mr Nixon speaks on. Mr Nixon places emphasis on both the human cost and the public health cost to care arrangements, in particular residential care in which South Australia has the highest reliance on in the Nation.⁷⁷

Findings

7. The *Children and Young People (Safety) Act 2017* is framed around safety as the paramount consideration and widens the definition of harm to scope in welfare and wellbeing matters, resulting in unnecessary removals of Aboriginal children and young people.
8. The *Children and Young People (Safety) Act 2017* and the Department for Child Protection's policies do not satisfy universal human rights to culture and Aboriginal self-determination or the right of the child to have their Best Interests considered in all decisions that concern them. These rights underpin the Principle and the failure to implement them has undermined its application and detrimentally contribute to the overrepresentation of Aboriginal children entering Out-Of-Home Care.
9. Section 12 *Children and Young People (Safety) Act 2017* wrongfully implies that the placement principle displaces safety. This is a contradiction and an institutionally racist assumption. The placement principle is a rights-based principle ensuring Aboriginal children grow up safely within family, community and culture.



Recommendation

7. Restore 'best interests' as the paramount consideration within the *Children and Young People (Safety) Act 2017* and that for Aboriginal and Torres Strait Islander children their best interests are determined in the context of the application of the five pillars of the Aboriginal and Torres Strait Islander Child Placement Principle as a paramount consideration.

Early Intervention

All States and Territories recently contributed to the development of *Safe and Supported, the National Framework for Protecting Australia's Children 2021–2031*.⁷⁸ Under this framework, the *Aboriginal and Torres Strait Islander First Action Plan 2023–2026* was created.⁷⁹ Actions under this plan include investment in the Aboriginal Community Controlled sector to increase the availability and accessibility of early, quality, culturally safe, trauma-responsive supports for Aboriginal and Torres Strait Islander children and families,⁸⁰ and actively work across portfolios impacting Aboriginal and Torres Strait Islander children and families to address the social determinants of safety and wellbeing.⁸¹ These actions are intended to contribute to improvement of outcomes under the Closing the Gap Agreement 2020 to reduce over-representation of children in Out-Of-Home Care.

The South Australian Government's strategy for vulnerable children '*Safe and Well*' (2019),⁸² recognises the value of early intervention and pledges to support families at risk of entering the child protection system by providing earlier, intensive, targeted investment for families with multiple complex needs to prevent children entering the system.⁸³ For Aboriginal families these services must be culturally safe and responsive with a focus on addressing intergenerational trauma.⁸⁴

In the case file review for the Inquiry, there were 16 out of 30 cases where the family were referred by the Department's to support services prior to the removal of the child. In nine of those 16 cases the referral was to an Aboriginal Community Controlled Organisation.

Finding

10. There are only two Aboriginal Community Controlled Organisations in South Australia that receive funding from the Department of Human Services to deliver Early Intervention services to Aboriginal families in need. Both funded organisations are metropolitan-based and deliver statewide services.

One of key themes that emerged during the Inquiry is that there is a significant lack of early intervention support for vulnerable families to access prior to a notification being made to the Department. The Aboriginal Community indicated to the Inquiry that child protection notifications were being made, particularly from the Health and Education sectors, when what was needed was a family support response. Community spoke of many experiences that once a notification was made families would get caught up in the child protection service system and were on an imminent path to child removal.

“Families need support and notifications bring removals, not support”

– Port Pirie Aboriginal Community forum

Similar experiences were shared by staff within SA Health and the Department for Education, where lack of services lead to reports to the Department for Child Protection in the hope that support will be offered. The requirements for mandatory reporting were also seen as a barrier to referral into the Department of Human Services via Pathways as opposed to the Child Abuse Report Line.

“How can I better support the family instead of calling out a deficit?”

– SA Health Forum

In the Department for Child Protection workforce forums conducted during the Inquiry, participants identified early intervention as the ‘missing step’ prior to notifications being made and observed that demand for those services exceeds supply. Jackie Bray, Chief Executive of the Department for Child Protection, in her oral evidence agreed with that assessment.⁸⁵ Departmental staff also noted that notifications were being made for a protection response when what is actually needed is family support.

In her evidence to the Inquiry, Professor Leah Bromfield observed that there are structural failures in the system which does not provide pathways for early intervention prevention and that the limitation inherent in the Department as the standalone statutory service, doesn’t systemically have the power to lean in on its preventative arm because that lever sits within the Department of Human Services.⁸⁶

Finding

11. The *Children and Young People (Safety) Act 2017* does not empower the Department for Child Protection to take preventative action. There is no coherent public health approach, policy or legislation for Early Intervention to address the causal factors and prevent unnecessary removals.

Investment into Early Intervention

A key finding of the *2016 Royal Commission into the SA Child Protection System* (the Nyland Report) was that the child protection system needed to change its focus from removal to early prevention of removal. A system redesign was recommended to ensure that early intervention efforts were supported by proper investment and that legislation and policy contained clear diversionary pathways.⁸⁷ There have been reforms in early intervention design and delivery undertaken by Department of Human Services in accordance with some of the recommendations made in the Nyland Report, accompanied by increased investment in non-government and the Aboriginal Community Controlled early intervention service providers. Despite these reforms, the investment has not been commensurate with demand and the rates of Aboriginal children entering Out-Of-Home Care have continued to increase.

In its 2023 Family Matters Report, SNAICC provided its report card on jurisdictional progress on the implementation of the Principle. It noted that South Australia had the second lowest proportion of expenditure on family support and Intensive Family Services (9.8%) and a relatively low proportion of investment in Aboriginal Community Controlled Organisations for family support and IFS (6.9%).⁸⁸

The Early Intervention and Research Directorate within the Department of Human Services undertook research to identify the number of families in need of these services. It was found that in 2019–2020 approximately 8,500 families and 12,500 children were at high risk of ongoing and increasing access with the child protection service system.⁸⁹ Of these children, 3,800 were Aboriginal children, representing 31% of the total identified cohort of children at risk.⁹⁰

In 2022–2023, Child and Family Service System Pathways matched 562 Aboriginal households with a service – this represents 48% of total Aboriginal households referred; 52% of Aboriginal households referred were not matched with a service. Of the families who were service matched, approximately 65% engaged with services (this estimate is based on 2021–2022 data).⁹¹ Approximately 61% of referrals for Aboriginal households are closed with an improved safety outcome as assessed by the practitioner.⁹²

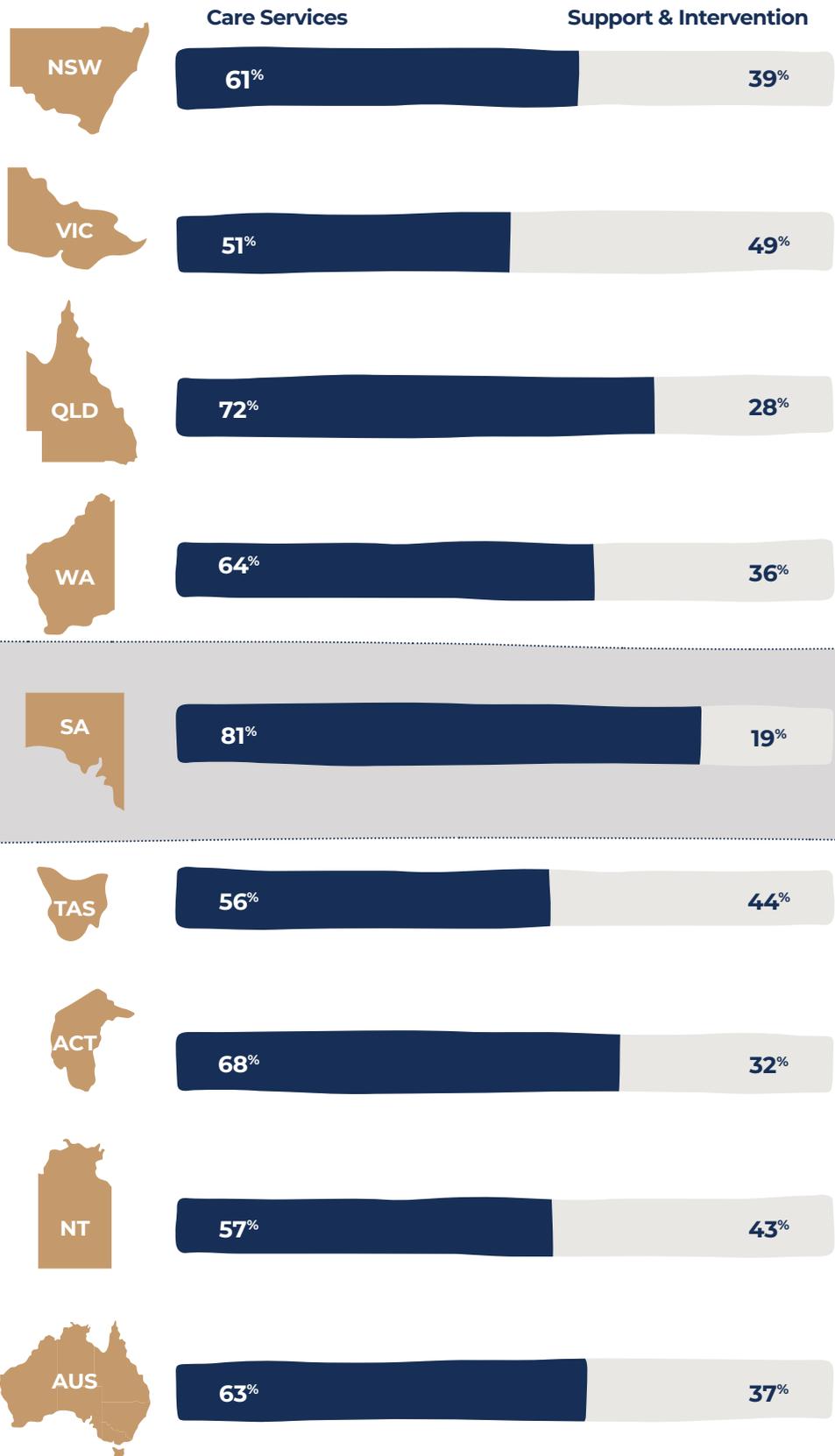
The service providers are not known for 2022–2023 but the 2021–2022 data shows that 311 Aboriginal households were provided services, as opposed to being referred, of which Safer Family Services, within the Department of Human Services, serviced 153, non-government organisations services 75 and Aboriginal Community Controlled Organisations serviced 83.⁹³

Kerry Beck, Director of Safer Family Services at the Department of Human Services reported in her evidence to the Inquiry that the Intensive Family Support Service system only had the capacity to accept 40% of referrals for families identified at high risk, and as a result were required to triage those referrals to families most in need.⁹⁴ Katherine Hawkins, Executive Director for Inclusion and Reform at the Department of Human Services, acknowledged in her evidence to the Inquiry that “the need at all three tiers of the Child and Family Service System far outweighs the current service system capacity”.⁹⁵

Compared to all other states, South Australia spends significantly more on care services compared to support and intervention measures.⁹⁶ In 2022–2023, the South Australian government spent \$813.8 million on child protection services.⁹⁷ A combined \$74 million was spent on Family Support Services and Intensive Family Support Services.⁹⁸ The Department’s *2022–2023 Annual Report* identified expenditure of:

- \$4.6 million on Tier 1 Services for programs focused on providing supports to families at imminent risk.

Jurisdictional Comparison of Real Expenditure on Care Services vs Support & Intervention 2022–23



Compared to all other states, South Australia is spending significantly more on care services (81%), compared to support and intervention measures (19%).

Source: Productivity Commission (2024) *Report on Government Services 2024*. Australian Federal Government.

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- \$28.7 million on Tier 2 Services that provide targeted support for 6–9 months to families with children aged 0–18 years with multiple and complex needs, who have been identified as high to very high risk.
 - \$10.7 million on Tier 3 programs that provide low-intensity support to vulnerable children and families with medium to low-level risk concerns.⁹⁹

The government recently announced a further \$35.7 million over five years to increase targeted intensive family support services for vulnerable families, prioritising those living in the northern metropolitan region.¹⁰⁰

“All the money we get given when we go into the system, why can’t it go to our families to help keep us together and to make things better”

– CREATE youth engagement forum

Despite the data clearly indicating the level of need for support services for vulnerable families, funding for Aboriginal families has not flowed commensurate with this need.

Finding

12. Less than 20% of the child protection service system funding is allocated to Early Intervention and Prevention. This is an unacceptably low investment and incommensurate to the needs of vulnerable children and families.

Recommendation

8. Sustainable and adequate funding commensurate to need must be allocated to local-level Aboriginal Community Controlled Organisations to enable the delivery of culturally safe and appropriate Early Intervention and Intensive Family Support Services as defined at the local level.

Referral pathways for family support services

Due to funding issues and capacity constraints, families are unable to seek and obtain support and services that would assist them in addressing child protection concerns and enable them to prevent the removal of their children.¹⁰¹

There are also limited opportunities for families to self-refer, especially for the most intensive family support service, Tier 1. Tier 1 Service providers can only accept referrals from The Department, meaning that issues need to have escalated to a level where notifications are screened in for investigations by The Department before support is available to those families. The Department only can refer families to Tier 1 services after investigation, where it has been determined that the family is at imminent risk of their child/ren being placed in care, and that safety concerns could be addressed by an intensive family support service.¹⁰² Tier 2 services can receive referrals from The Department and other state agencies including Department for Education and SA Health.¹⁰³ It is possible to self-refer to Tier 3 services via a new Helpline.

The Alexander Review provided a critique of the 'double handling' of referrals that occurs between the Department for Child Protection and the Department of Human Services, stating that "two different assessment approaches, relying on two different evidence bases that are known to arrive at different outcomes reflects a questionable use of resources and a level of over-engineering".¹⁰⁴ This critique points to the need for better partnerships and integration between services, to coordinate help at the right level. The passing of families between the Department for Child Protection and the Department of Human Services is highly problematic. The Department undertakes an assessment through the use of Structured Decision-Making®, triggered by a notification, to

determine whether the risk level meets the intake threshold. The Department then refers the family to the Department of Human Services for support, who also assess the family's needs and determine whether the risk is too high for them to manage; a referral for the family is made back to the Department who assess again. High needs families are being overly screened and assessed, without any help.¹⁰⁵

The Department of Human Services acknowledged in oral evidence to the Inquiry that the current referral pathways do not facilitate early access to targeted family supports due to the need for notifications to go to The Department only to be referred back to the pre-statutory service to get support.¹⁰⁶

The Nyland Report recommended the implementation of the Child Assessment and Referral Network model as a mechanism to turn the focus towards prevention in the event that a report to the Child Abuse Report Line was made or contemplated.¹⁰⁷ The recommended model positioned the Child Assessment and Referral Network as the assessor in the alternative referral pathway.

The Inquiry's Preliminary Report recommended the use of the Child Assessment and Referral Network model for Aboriginal child wellbeing concerns.

In her evidence, Katherine Hawkins from the Department of Human Services stated that the Child Assessment and Referral Network "was effectively split into three separate service components. So, what we now have is that the referral part (Pathways), the case management part (Intensive Family Service), and then the third part, which was Multi-Agency Networks, is what is now referred to as the Child and Family Support Networks and we have those across the state".¹⁰⁸

The Pathways service should be the entry point for government agencies seeking support for Aboriginal children and families and for self-referrals.

Recommendation

9. The *Children and Young People (Safety) Act 2017* be amended to provide that where there are Aboriginal child wellbeing concerns the family may self-refer to culturally safe services through the Child and Family Support Services pathway, and that where mandated reporters and the Chief Executive of the Department for Child Protection have concerns about the wellbeing of Aboriginal children, they must refer the matter to Child and Family Support Services pathway for culturally safe assessment and referral.

Patterns of contact for Aboriginal children

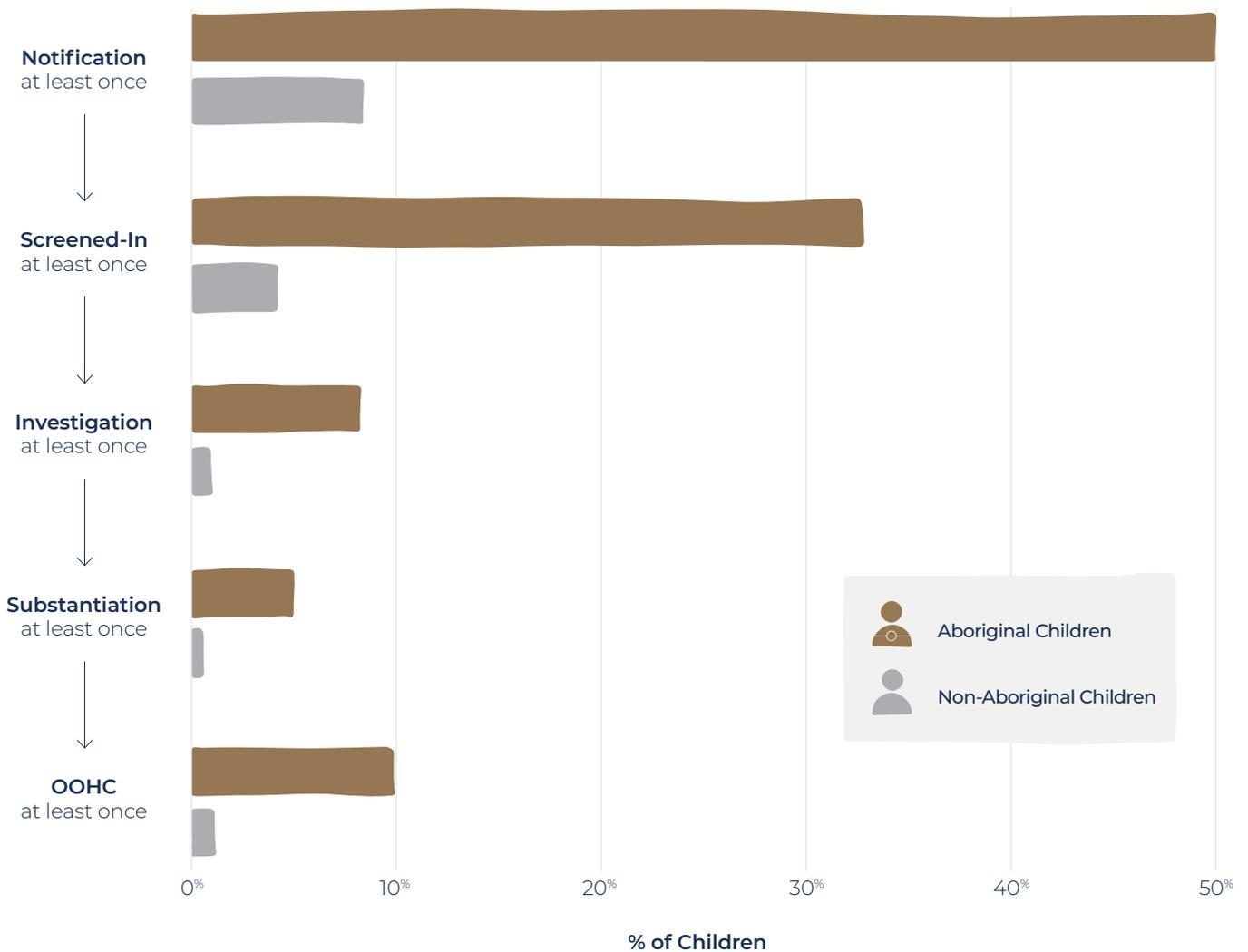
The data analysis found that during the 2020–2021 financial year, 1 in 12 non-Aboriginal children were subject to a notification to the child protection service system. Alarming, for Aboriginal children, that increased to a staggering 1 in 2 children being subject to a notification.¹⁰⁹ The disparity becomes even more striking for notifications that progress to an investigation, with 1 in 12 Aboriginal children being subject to at least one child protection investigation, compared to 1 in 125 non-Aboriginal children.¹¹⁰ Data shows that the younger the age at notification, the higher the likelihood of a child transitioning through every stage of the child protection service system.¹¹¹

The disproportionality continues through the next stages of the child protection service system where analysis determined 1 in 20 Aboriginal children were subject to a substantiation of the allegations of risk compared to 1 in 250 non-Aboriginal children.¹¹² The analysis identified 1 in 100 non-Aboriginal children residing in Out-Of-Home Care during 2020–2021, compared to 1 in 10 Aboriginal children.¹¹³

In her evidence to the Inquiry, Dr Pilkington, stated that Aboriginal children are “more likely to be screened in, more likely to be investigated, more likely to be substantiated, more likely to be removed. And then once they’re in the system, they’re less likely to be reunified than their non-Indigenous peers”.¹¹⁴

Aboriginal vs. Non-Aboriginal children experiencing each form of child protection contact (%) in 2020

Across all forms of contact with the child protection system, a substantially higher proportion of **Aboriginal children** are notified, screened-in, investigated, substantiated and removed into out-of-home care compared to **non-Aboriginal children**.



Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Notifications

The *Children and Young People (Safety) Act 2017* (the Act) prescribes that the reporting of suspicion that a child or young person may be at risk, be undertaken through Child Abuse Report Line.¹¹⁵ All reports made to the Child Abuse Report Line must be assessed.¹¹⁶ The Department's workers use a structured decision-making tool to make an assessment and determine the appropriate response to notifications. The Department's *Manual of Practice: DCP Call Centre chapter* outlines the process and types of assessment outcomes which include being screened in for investigation, there is no mandatory requirement to consult with Aboriginal people, including Principal Aboriginal Consultants at this point of assessment.

Once a notification is received, a decision is made to determine what response is required. If the notification is screened in, the Structured Decision-Making®: Screening Response Tool is used to determine the response to the notification.¹¹⁷ The Department's *Screening and Response Priority Assessment Policy and Procedures Manual* observes that assessment of notifications is a significant decision for the purposes of the Principle and "engagement with notifiers and services should focus on asking questions to obtain information to understand the family voice as much as possible including how culture features in family functioning".¹¹⁸ There is no requirement to consult with internal Aboriginal family practitioners or Principal Aboriginal consultants. There is no opportunity to refer to Family Group Conferencing or to allow Aboriginal Family Led Decision-Making to occur at this point and through this enable an application to be made to the Family Court. There is no guidance to help the Child Abuse Report Line practitioner develop any understanding of how culture features in family functioning from the notifier or services and how it fits into any assessment of risk.

Finding

13. Family Group Conferencing is an internationally recognised model for keeping children safe in their families, communities and culture. The Department for Child Protection is the only state authority that can refer a child and their family for a Family Group Conference and is not effectively utilising Family Group Conferencing. Other state authorities recognise the importance of Family Group Conferences in Prevention and want legislative mechanisms to allow them to make referrals for Aboriginal children and families.

The Department has previously recognised the protective effect of culture in early decision making through the Yaitya Tirramangkotti (Yaitya) unit. Yaitya was designed to have Aboriginal people lead assessments of notifications for Aboriginal children. Yaitya was a team of a majority Aboriginal practitioners, who would also work with the district centres to ensure a culturally appropriate response.¹¹⁹

The main functions of Yaitya included:

- receiving, recording and assessing all notifications regarding Aboriginal children.
- ensuring the cultural appropriateness of all safety assessments and tier classifications on notifications regarding Aboriginal children.
- advising which district centre should respond with consideration to family and kinship matters and the child's location.
- making specific recommendations concerning the investigation or service response to the family with consideration to the family's clan group, appropriate community support and other agency involvement.
- identifying department staff with sufficient knowledge of the family and community who can work alongside non-Aboriginal staff during the initial response to the family; and

- providing a collaborative approach to these notifications by providing advice, consultation, liaison, and recommendations both with departmental and other professional staff, and with Aboriginal groups and families on child protection issues.¹²⁰

Yaitya Tirramangkotti has since been dismantled and no culturally appropriate process exists at intake for the application of a cultural lens.

The Inquiry's engagement with the Aboriginal community highlighted a lack of cultural awareness and sensitivity within the Department's workforce. Community also discussed that the child protection service system's approach to assessing and responding to notifications lacked balance, was deficit focussed and that families were not being assessed on their strengths.

In forums with Departmental staff, the Inquiry heard that there was a lack of cultural and trauma-informed lens when receiving notifications, with several participants lamenting the loss of Yaitya Tirramangkotti and indicating a desire to see it return.

Finding

14. The assessment of notifications received by the Child Abuse Report Line regarding Aboriginal children and young people does not use Aboriginal knowledge or expertise. The now dismantled Yaitya Tirramangkotti unit, which was managed by experienced Aboriginal workers, provided cultural oversight, ensuring culturally appropriate assessments and responses to notifications concerning Aboriginal children and their families.

The Deputy Chief Executive of the Department acknowledged in his evidence that the issue of assumptions and subconscious bias play a role in the assessment of notifications.¹²¹

In his evidence to the Inquiry, Associate Professor Paul Gray referred to academic research “that they [non-Aboriginal practitioners] don’t often appreciate Indigenous views of child rearing and family, that they rely on tools and approaches that lack validity with our kids and families, all while presenting that idea of kind of neutrality and scientific legitimacy”.¹²²

Structured decision making

The Inquiry heard that Structured Decision-Making® tools escalate the risk of removal of Aboriginal children. The tool skews the decision-making response based on factors such as previous child protection contact or a care experience and does not take a strengths-based approach that centralises the protective effect of Aboriginal families and culture.¹²³

In 2022, in response to evidence and greater consideration to family and cultural factors, the Queensland Department of Children, Youth Justice, and Multicultural Affairs stopped use of the Family Risk Evaluation, Family Risk Re-Evaluation, and Family Reunification Assessments attached to Structured Decision-Making®. Dr Tracy Westerman, a leading Aboriginal clinical Psychologist and researcher across the globe, told the Inquiry of the racial bias in the Structured Decision-Making® tool and it’s inappropriate use when assessing risk for Aboriginal children.¹²⁴ The New South Wales government has accepted that Structured Decision-Making® does not demonstrate equitable outcomes for Aboriginal children and is currently reviewing its use with Aboriginal communities.¹²⁵

Finding

15. The Structured Decision-Making® tools used by the Department for Child Protection are culturally biased towards Aboriginal children and families. They lead to unnecessary removals because they do not identify strengths-based cultural factors. Other child protection jurisdictions such as Queensland have abolished the use of Structured Decision-Making® due to this cultural bias.

Dr Tracy Westerman noted in her evidence to the Inquiry that the use of culturally inappropriate tools contributes to the escalation in Aboriginal child removals.¹²⁶ Dr Westerman told the Inquiry that if the tools are used by a non-Aboriginal person and an Aboriginal person, the same tool will yield different results.¹²⁷ It is Dr Westerman's expert experience that "assessment is critical...because I always say that assessment explains the why of overrepresentation. Why are we seeing so many kids in care? Why are we seeing such escalation? The why then informs the what to do about it, so that if you have different assessment tools, then you have different treatment interventions".¹²⁸

*"The problem is that we are a very paternalistic system where we look more to non-Indigenous expertise than we do to Indigenous and so there is this difference then the default always has to be the cultural expertise."*¹²⁹

In her evidence to the Inquiry, the Chief Executive of the Department acknowledged that she had received advice from Aboriginal Practice Directorate that the Structured Decision-Making® tools were not culturally appropriate and that these tools would be reviewed.¹³⁰ The Deputy Chief Executive of the Department acknowledged that "without that lens of cultural proficiency over the assessment it's a self-fulfilling prophecy, everything will appear as a deficit".¹³¹

The use of assessment tools that are not culturally appropriate, will inhibit child centred decision making due to the inherent racism and bias built into those tools. When the only response available is a statutory intervention, there is little support for other pathways or services being used to address concerns. There is a clear need for assessment and practice in child protection which is theoretically grounded and culturally informed.¹³²

Throughout the Department's workforce forums for the Inquiry, staff raised questions around the appropriateness of the Structured Decision-Making® tools, including criteria that warrants a 24-hour response and their suitability when working with Aboriginal families. The Department's staff expressed concern that there was no scope within the tools used in assessments to use a strengths-based approach or to consider Aboriginal child-rearing practices or cultural strengths.

The Alexander Review noted that in 2012, the Department removed the family strength and needs assessment tool from the Structured Decision-Making® and that without this aspect of the tool, practitioners are assessing safety and risk and making case plans without taking into account the family's strengths and needs.¹³³

The Department's policy for Structured Decision Making® recommends consultation with a Principal Aboriginal Consultant throughout the assessment process to determine if a safety threat applies.¹³⁴ The Inquiry heard that where consultation with Principal Aboriginal Consultants occurs, their advice is provided without first consulting with the family which is counter to Family Led Decision-Making. Yaitya Tirramangkotti was successful in this regard, by ensuring a cultural lens across assessments of notifications with direct consultation with the Aboriginal family.

Recommendations

10. The Department for Child Protection reinstate the Yaitya Tirramangkotti team in the Call Centre to draw upon Aboriginal knowledge and expertise in managing, assessing and responding to notifications concerning Aboriginal children and their families. The Yaitya Tirramangkotti team to consist of a supervisor, a senior practitioner and a minimum of eight social workers and Aboriginal Family Practitioners. The Yaitya Tirramangkotti team to be the culturally safe mechanism to ensure the early intervention support system and the statutory system apply Active Efforts to prevent pathway to removal. This includes giving the Yaitya Tirramangkotti team delegations to refer to Family Group Conferencing.
11. The Department for Child Protection abolish the use of Structured Decision Making[®]. There is no place for racially biased assessment tools in government services. An assessment tool to replace Structured Decision Making[®] should be developed in partnership with the Aboriginal community through the South Australian Peak Body for Aboriginal Children and Families and leading Aboriginal child protection experts.

Responding to notifications

The Department's website notes that the total number of reported notifications in the 2022–2023 financial year was 92,951, of which 22,759 related to Aboriginal children and young people.¹³⁵ The number of reported notifications for Aboriginal children has increased by 61.4% since 2017–2018 when the number of reported notifications was 14,093.¹³⁶ The number of notifications that were screened in was 39,515, of which 11,020

related to Aboriginal children and young people.¹³⁷ Most frequently notifications were made to the Department by schools, preschools, police and health services, who accounted for approximately 70% of all reports.¹³⁸

Submissions to the Inquiry identified concerns about the Department not responding to notifications until it was too late, with intervention not occurring until issues have escalated to the point where a child is no longer safe, at which point the Department's response was removal rather than providing support to the family.¹³⁹

Several submissions focused on infant removals and the concern that too many children were being removed at birth without giving the parents and extended family a chance to demonstrate their ability to care for a child.¹⁴⁰

As part of the Inquiry's case file review, it was analysed that the average time between the Department's intervention commencing and the removal of the child was 94.7 days, ranging from 0 to 495 days. The average number of intakes that were screened in by the Department across the 30 case files was 14.7 per child. The maximum number of intakes that a child was subject to was 70, with the minimum being one. Throughout the case files, where support services were not provided to the family early, the situation escalated to the point of removal, which in most cases, was preventable.

The most concerning case file, case 23, involved an Unborn Child Concern with 35 intakes, 69 notifications and seven substantiations of harm over a four-year period before removal. The Department made eight in-house referrals to Kanggarendi in first two years of the child's life. It wasn't until a referral to the Department of Human Services Safer Kids, Families Together program was made almost four years after the initial Unborn Child Concern report that the Department removed the child. There were opportunities to provide the family with culturally safe and appropriate intervention and support to prevent removal, however there were no recorded referrals made to Aboriginal Community Controlled Organisations throughout the case.

The Structured Decision Making[®] tool determines if the Department responds to notifications. In responding to notifications, the Act provides that the Department may investigate a matter, refer a matter to a state authority or decline to take further action.¹⁴¹ In declining to take action, the Chief Executive must be satisfied that the notification is vexatious, frivolous or trivial, that the matter has been previously dealt with or there is no good reason to

take action.¹⁴² When it is determined that the matter requires investigation the Department's policy provides for safety planning as an option for managing child safety concerns during investigation.¹⁴³ However, the Inquiry heard that in many matters, the Department exercises its power to remove¹⁴⁴ to provide time to make an application to the Youth Court for Guardianship Orders¹⁴⁵ and conducts its investigation once the child is placed in an emergency care arrangement. This is counterproductive to the Principle.

The Inquiry heard through the Aboriginal community and stakeholder forums that there is a need to focus on the strengths of families when responding to notifications, as well as recognition that timeframes for removal and working with families to address concerns are often too short, noting it takes time to build trust and create change. There was also some recognition of a need to increase focus on Aboriginal Family Led Decision-Making and, where necessary, community involvement at the point of responding to notifications.

The Act also provides a non-mandatory option for the Chief Executive of the Department to convene a Family Group Conference providing the child and family an opportunity to make informed decisions as to the arrangements for the care of the child.¹⁴⁶ The Act requires that in making arrangements for the care of a child, a Family Group Conference must be considered in every case.¹⁴⁷ Participation of family in decision-making at early stages of statutory intervention is an essential component of Active Efforts for prevention. Family Group Conferencing is discussed in more detail in the Participation chapter.

Surveillance and lack of transparency

Another theme that emerged in discussion with the Aboriginal community is the power imbalance that exists in interactions between families and the Department. Community discussed that families often have a lack of understanding about their rights and child protection processes, and this leads to families feeling disempowered in their interactions with the system. Families often felt talked down to, over-surveilled, bullied, gas-lit and manipulated, highlighting what they perceived as a misuse of power, including through workers ignoring or misleading families or withholding information.

When questioned around the surveillance that Aboriginal people receive and feel from the child protection service system, the Chief Executive of the Department responded that she is aware of this stating "I'm only reciting things that have been said to me that they feel that the Department is waiting for them to trip up...and if you think about quite often these are young families that have experienced trauma, some of them may have even been in contact with the system themselves...are we going to let this happen again to another generation..."¹⁴⁸

The Inquiry heard evidence from Dr Yvonne Clark, an Aboriginal Psychologist that Aboriginal families live in fear and feel that "asking for support is seen as a weakness" by the Department.¹⁴⁹ Dr Clark went on to explain that the fear can cause Aboriginal families to appease the child protection system by code-switching or taking on Eurocentric practices to ensure they are not noticed by the Department.¹⁵⁰

Despite this significant power imbalance, and the normal judicial conventions of proof, the Act currently places the burden of proof on the objector rather than the applicant. This further disadvantages and disempowers families with limited, if any, access to resources, more so for those Aboriginal families who experience poverty. These families generally lack knowledge of systems to produce independent evidence to establish that they are no-longer a risk to the child and can protect the child from harm, even where the prima facie evidence of risk may be questionable.

Recommendation

12. Amend section 59 of the *Children and Young People (Safety) Act 2017* so that the onus lays with the applicant to prove on the balance of probabilities that the orders they seek should be made.

Unborn Child Concerns and High-Risk Infants

The rates of Unborn Child Concerns have increased year on year. In the last five years, the proportion of Aboriginal and Torres Strait Islander births subject to at least one unborn (pre-birth) child concern has increased from a quarter to a third. In 2020–2021, the data analysed by BetterStart shows that 1 in 3 Aboriginal pregnant women had been subject to an Unborn Child Concern notification. For non-Aboriginal women, those rates were 1 in 33.¹⁵¹ This demonstrates that Aboriginal families are 10 times more likely to be subject to an Unborn Child Concern notification to the Department for Child Protection than non-Aboriginal families.

The case file review identified that 19 out of 30 cases had been the subject of an Unborn Child Concern notifications. In 10 of those 19 cases there was no referral to support or early intervention services by the Department prior to the removal of the child. Four of those 10 cases involved a previous child protection history and removal of older children of the parents.

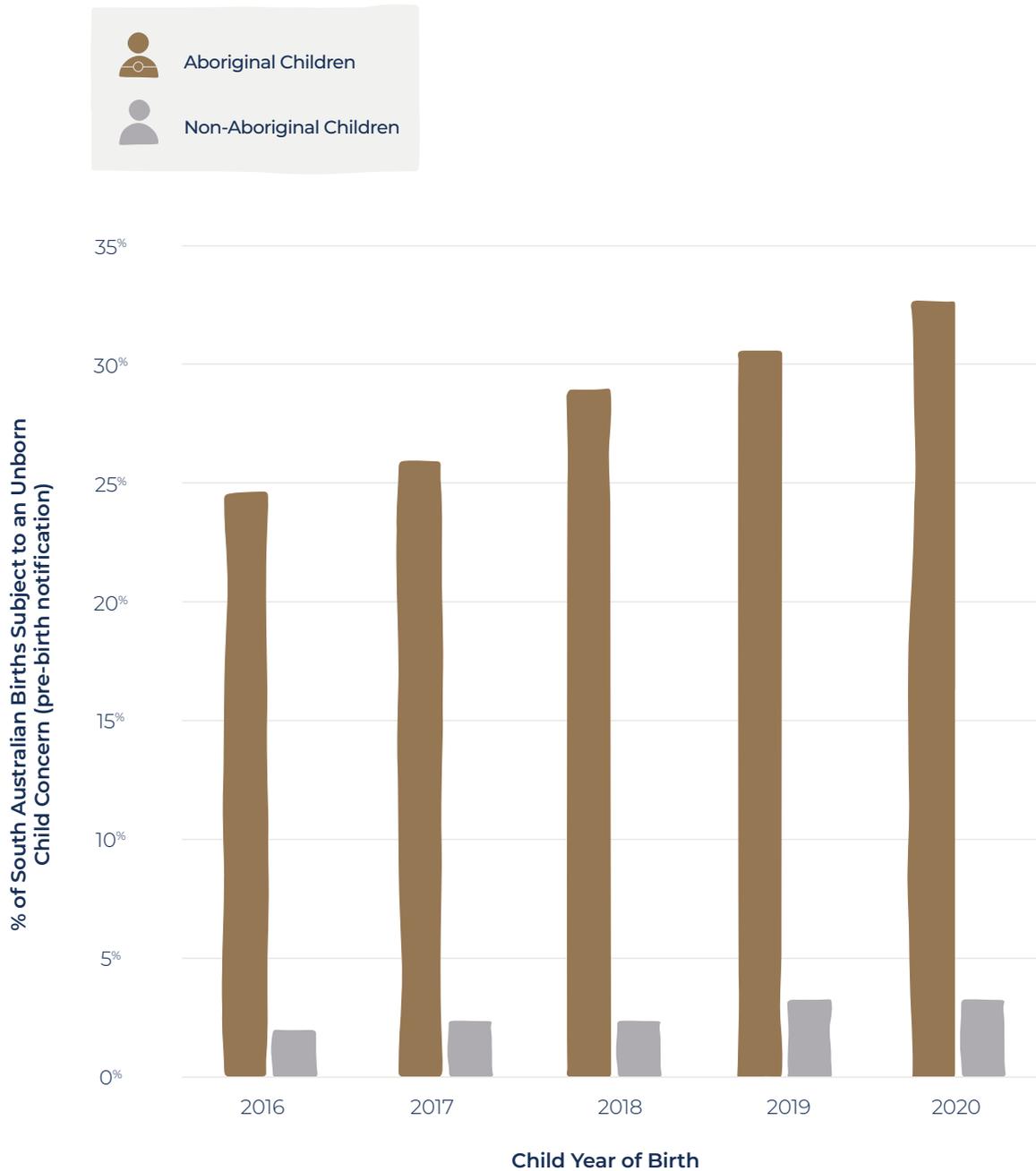
Data analysed by BetterStart on the characteristics of disadvantage for children subject to Unborn Child Concerns showed that the rates of disadvantage for Aboriginal children in that cohort are similar to those reflected by the data for all Aboriginal children in Out-Of-Home Care.¹⁵² However, there is a significant disparity in the percentage of children subject to Unborn Child Concerns whose parents have had intergenerational child protection contact, with those rates increasing dramatically to 82%.¹⁵³

*“we built a system whereby every generation we are simply entrenching further statutory intervention and further levels of disadvantage that leads to more mental health problems, more substance use issues, in our future generations... there’s no other way I can think about it ...when I look at those unborn child concerns”.*¹⁵⁴

The Child Abuse Report Line assesses Unborn Child Concern and determines if an intake is required. If a supervisor determines intake is required, the case will be allocated to a social worker. This Inquiry has heard that the appropriate response to any child protection concerns involves a mandatory Family Group Conference, where culturally appropriate service provision can be applied, and the child can remain with family and community if needed without statutory intervention.

Prior to the birth of a child in South Australia, the child protection intervention with families is on a voluntary basis with no capacity to require that the family engages with services. Where concerns regarding unborn children arise, the Department records these as Unborn Child Concerns. It is important to note that the Act does not provide for mandatory reporting of Unborn Child Concerns; it applies to suspicions formed in the course of employment and it does not prevent a person from also reporting or referring the matter elsewhere.¹⁵⁵ This provides a real opportunity to develop a diversionary pathway away from statutory removal.

Aboriginal vs. Non-Aboriginal children who were subject to an Unborn Child Concern (pre-birth notification) report (%) by child year of birth



Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

The Department's *Manual of Practice* reads that the purpose of intervention before the birth of a child is to help families to understand the child protection concerns, prevent and reduce the over representation of Aboriginal children entering care, determine what support can be offered to the expectant parent/s of the unborn child, identify kinship supports able and willing to support the unborn child and parents after birth, assess whether further intervention will be required to ensure the safety of the unborn child after birth, and to minimise the trauma experienced by the family if a removal at birth is assessed as likely.¹⁵⁶

The Department recently introduced a pilot program to refer Aboriginal Unborn Child Concerns for Family Group Conferencing.¹⁵⁷ Evidence from Relationships Australia South Australia suggests that some Family Group Conferencing for Unborn Child Concerns had occurred before.¹⁵⁸ The Department's policy states that Family Group Conferences for Unborn Child Concerns, which are currently only available for Aboriginal families, provides expectant mothers and their families an opportunity to address child protection concerns prior to the birth of their infant or for parents and their family to make decisions about care arrangements once the infants are born. A referral for Family Group Conferencing should be made as early as possible during the pregnancy to allow the family optimal time to lead decision-making.¹⁵⁹

The Inquiry heard from both Relationships Australia South Australia and the Aboriginal Family Support Service that despite allowing for the referral of Aboriginal families with Unborn Child Concerns to Family Group Conferencing, there have been fewer than expected. The low numbers of Family Group Conferences and high numbers of Aboriginal infant removals at birth evidences poor implementation of policy that supports prevention.

Research highlights that pregnant women are open, highly motivated and capable of change for better outcomes for their unborn children. However, they may reasonably

fear that disclosing their particular circumstances such as drug or alcohol use, family and domestic violence, homelessness or mental health concerns could place them under scrutiny of child protection services, and they could be stigmatised or considered undeserving as mothers.¹⁶⁰

In the context of Aboriginal communities, there are often complex reasons why Aboriginal women are reluctant or fearful of engaging in the health system. Some of those issues identified during the Inquiry were:

- That Aboriginal women and parents are scared of being notified to the Department.
- Aboriginal women and parents feel a sense of being surveilled and monitored by the Department.
- That if women and babies are vulnerable and need extended stays in hospital, it is often more dangerous for them to stay in hospital than to leave, as this will result in them receiving more notifications to the Department and increase the risk of their child being removed.¹⁶¹

"I think observing the missed appointments is still a valid thing to generate a conversation, but it doesn't automatically mean an expectant mother is not being protective of her unborn foetus".¹⁶²

The Inquiry heard that a pregnant woman's non-attendance at antenatal appointments is seen as a child protection risk factor and is often included in the report details when making a notification by health professionals, despite the fact that there is no legal requirement to attend those appointments. Heather Baron for the Department of Health and Wellbeing acknowledged in her evidence that whilst not illegal, there are policies and guidelines within the health system regarding non-attendance at medical appointments more broadly which are intended to ensure good health care and that people are receiving the treatment they need.¹⁶³

The SA Health Collaborative Case Management of High-Risk Infants policy commits to protecting children from harm and ensures that reporting of Unborn Child Concerns and High-Risk Infants is undertaken.¹⁶⁴ The policy states that where very high risk is identified, and removal of the infant at birth is planned to occur, it must be documented in the mother's care plan and advice from the Department should be sought, particularly any cultural considerations for the pregnant Aboriginal woman.¹⁶⁵ In recognition that current practices and policies are not fulfilling their aims to prevent removals, the Department for Health and Wellbeing are reviewing their Collaborative Case Management of High-Risk Infants policy.¹⁶⁶

SA Health staff noted that there is capacity to support families before a child is born, and to draw upon the family's strengths. SA Health staff recognised the importance of the Aboriginal Maternal and Infant Care program, and Aboriginal Childhood Health and Development teams which have produced positive outcomes for Aboriginal families.

The Inquiry heard evidence regarding a program developed by the South Australian Health and Medical Research Institute providing early intervention and support to Aboriginal pregnant women.¹⁶⁷ In her evidence, Karen Glover described how the Department attempted to seek information about research participants to use within their investigations and how potential involvement of the Department was seen as a barrier to women's engagement with the research initiative.¹⁶⁸

"we're trying to do something strengths-based and child protection is like the eagle hovering in the air and the women are the mouse on the ground trying to help themselves".¹⁶⁹

Several stakeholder forums identified issues of lack of funding and resources to support vulnerable mothers. The Inquiry heard of the need for services to be assertive, flexible, trauma responsive and relationship-based to successfully work with families during pregnancy to address concerns.

"...I think it's well recognised that there's probably insufficient resources for high-risk women in the preventative and early intervention space. We know DHS provide a range of Intensive Family Support Services, but they can't meet the need... it's difficult to refer people on to other services..."¹⁷⁰

The Department for Child Protection has acknowledged the need to improve supports provided to expectant mothers and newborns identified as being at risk of child protection contact. The Department has worked with SA Health Local Health Networks to build the capacity for specialised responses and pilot new ways of working and has invested \$1.1million per annum in 10 new Department for Child Protection High-Risk Infant Worker positions to build capacity.¹⁷¹ A Memorandum of Administrative Arrangement has been executed with the Southern and the Northern Adelaide Local Health Networks, and is progressing with the Women's and Children's Health Network. These arrangements enable the Department's High-Risk Infant Workers to work with SA Health staff at birthing hospitals, with a particular focus on supporting improved outcomes for Aboriginal unborn children and high-risk infants.¹⁷²

Removals at birth

In a recent study examining the experiences of 13 Australian parents who had been prenatally reported and/or experienced infant removal, many parents did not receive information about child removal from child protection services, instead receiving this information from advocate groups, NGOs, hospitals and legal services.¹⁷³ Parents also identified that child protection casework during this period was focused on historical information about risks, rather than what was currently happening for the parents; including a failure to recognise changes that parents had made.¹⁷⁴

The Department for Child Protection and the Department for Health and Wellbeing admit there is a problem with the high numbers of removals of Aboriginal children at birth.¹⁷⁵

The Inquiry heard that there are minimal opportunities for Family Led Decision-Making prior to a removal at birth, which impedes a holistic focus on long term best interests of the child. The Inquiry heard that it is common for removals at birth to be planned without any information or prior warning provided to the pregnant Aboriginal woman. In her evidence to the Inquiry, the Chief Executive of the Department for Child Protection referred to this practice as “startling evidence” and stated, “these are not acceptable we need to do more”.¹⁷⁶

The Inquiry heard evidence that there are structures that support information sharing between the Department and SA Health. The sharing of information about vulnerable families was promoted by SA Health staff, with a view that such sharing would promote the multi-agency collaboration to support and mitigate risks with case planning early before a child is born.

The Inquiry heard during the stakeholder forums that information sharing between departments included whether the client had previous statutory care history under the Department for Child Protection, which is determined to be a risk factor in and of itself. The Inquiry further heard that when a pregnant woman is flagged within the health system as having had previous contact with the Department for Child Protection, that meetings are held with staff about the management of the woman's case in her absence and without her knowledge.

*“when you look at another risk factor of previous child protection involvement, if that disproportionately affects Aboriginal people, it maintains that risk factor”.*¹⁷⁷
– Amy Cleland

The Inquiry heard that this practice should cease, and specific parenting programs need to be developed for all prospective parents who have been in care. In her evidence to the Inquiry, Katherine Hawkins from the Department for Human Services advised that a Tier 1 prevention service focuses on intergenerational impact of Out-Of-Home Care.¹⁷⁸

The Inquiry heard from SA Health about the lack of communication with midwives and AMIC workers when the Department plans to remove newborn babies from their families within the hospital setting, with no time allowed for the development of safety plans, conversations with families and management of the grief and loss experienced by new mothers. Staff advised that they are told that the mother is a ‘flight risk’ as a reason for there being no preparation or discussion with mothers prior to the urgent removals, resulting in significant stress and distress of mother and the staff working with them.

Recommendation

13. The Department for Child Protection's practice of uninformed removals at birth is condemned and it must cease immediately.

A concern expressed in the SA Health forum workshops was the limited referral pathways for specialised services, and the limited staffing levels across Aboriginal Health teams. Staff spoke of high-risk infant removals where there is no evidence of any services being offered to families to support and prevent intervention, or to scaffold families with kin and extended family.

"Every pregnant woman needs a critical team around them just as they would for dialysis".

– SA Health Forum

In her evidence, Heather Barron from Department for Health and Wellbeing, acknowledged that there is no standardised approach across maternity hospitals and that SA Health Local Health Networks need to do more, stating that "certainly we recognise the need and working towards strengthening the response that Health makes, that it's not just report, and we've done our job, but that there's report and support. So that if a notification is made...it doesn't mean that...DCP or other agencies are going to do anything... to pick up that the risk for that woman...I think we've got a long way to go".¹⁷⁹



Findings

16. There is no defined model of care in place across the child protection service system that coherently responds to and supports pregnant Aboriginal women identified with Unborn Child Concerns in a culturally appropriate manner.
17. Pregnant Aboriginal women with identified Unborn Child Concerns are not prioritised in the child protection service system as a population group with high needs requiring support services; instead the decision to remove the newborn at birth is the priority. The manner in which infant removals at birth occurs is reprehensible and is not an acceptable way to deal with Aboriginal women, children and families.

Recommendations

14. SA Health, through its various Local Health Networks prioritise the establishment of step-down facilities with family focussed, tailored support and coordinated services specifically for Aboriginal women identified with Unborn Child Concerns.
15. SA Health develop a model of care for Unborn Child Concern which includes Aboriginal Case Coordinator roles in birthing hospitals to focus specifically on complex case management of Unborn Child Concerns.

Partnership

The partnership element requires genuine and meaningful partnerships with Aboriginal communities at all stages of decision-making to achieve self-determination.¹⁸⁰

This involves the empowerment of Aboriginal communities in the design of systems, legislation, policy and practice; including but not limited to prevention and early intervention, intake and assessment, care and placement decisions and involvement in the judicial process.¹⁸¹

Aboriginal communities comprise of Aboriginal individuals, families and organisations that relate to each other in a complex network of communal and cultural obligations. It is crucial that community are consulted about decisions that relate to individual children and are active in ensuring that Aboriginal children remain safe with family, community and culture, without compromising Aboriginal ways of knowing, doing and being.

Genuine partnerships between Aboriginal organisations and non-Aboriginal organisations in child and family services can support self-determination when they extend beyond tokenistic consultation and enable Aboriginal communities to make decisions about children and young people's wellbeing and to design and implement policy and programs.¹⁸²

Aboriginal engagement

The principle of self-determination is crucial to the child protection service system, however the lack of engagement with the Aboriginal workforce, the Aboriginal community and with Aboriginal Community Controlled sector has been consistently highlighted throughout the literature and the Inquiry as an area of significant concern in child protection and justice responses to Aboriginal people.¹⁸³

Despite cultural awareness training, Aboriginal culture may be misunderstood, ignored or misinterpreted by the non-Aboriginal sector.¹⁸⁴ The richness of Aboriginal cultures is best understood and embraced by Aboriginal workers and organisations who are able to uphold children's and families' rights to culture, while providing culturally led, solution-focused, empowering responses.¹⁸⁵ The Aboriginal workforce are considered essential in making important decisions or changing the direction of services provided to Aboriginal children and young people, often providing different views compared to the Department's proposed actions.¹⁸⁶ Partnership models of practice, such as bicultural practice within family support services for Aboriginal children and their families, have also been associated with increased rates of staff retention, family engagement, worker satisfaction, and reduced rates of child removal.¹⁸⁷

Whilst there is no legislative requirement for the Department to consult with Aboriginal staff regarding significant decisions and case direction for Aboriginal children and young people, the primary resource for Aboriginal engagement within the Department is consultation with Principal Aboriginal Consultants.

Findings

18. There is no clear policy that details how the Department for Child Protection is working towards Aboriginal community engagement. There is a lack of genuine partnership and engagement with the Aboriginal community external to Aboriginal Community Controlled Organisation funding agreements.
19. The Department for Child Protection does not have a policy or formal mechanism to engage with the Aboriginal community to develop legislation, policies and practice to ensure optimal outcomes for Aboriginal children and families. At the time of drafting this Report, the South Australian Aboriginal Child and Family Peak Body is being established for this purpose.

The Department's *Manual of Practice* states that consultation with a Principal Aboriginal Consultant is recommended at multiple decision points for Aboriginal children in care, although this is often not mandatory. In the cases where consultation must occur, this is caveated by time constraints, for example if the delay involved in consultation would prejudice the child's safety.¹⁸⁸ This creates an environment where Case Managers can navigate decision-making for Aboriginal children and families without seeking any cultural advice.

At the time the Inquiry commenced, there were a total of 10 Principal Aboriginal Consultant positions, all based centrally in metropolitan Adelaide, with responsibility for all regions in SA. This has since increased to 20 Principal Aboriginal Consultant positions, with seven based in regional office locations, and the remainder in local metropolitan regional offices.¹⁸⁹ In line with the Department's policies, this suggests that the

role of the Principal Aboriginal Consultant, a grand total of 20 roles are expected to be consulted across multiple decision-making areas for 37.4% of children and young people in Out-Of-Home Care.

Principal Aboriginal Consultants can play a critical role in supporting decision-making and improved outcomes for Aboriginal children and families, however issues relating to Principal Aboriginal Consultants' capacity to service demand, coupled with concerns about how Principal Aboriginal Consultants are consulted and engaged in decision making. Sector stakeholders reflected on a lack of consistency in how Principal Aboriginal Consultants were engaged across the Department's offices, often being involved at particular decision-making points, and not used continuously. Several examples were provided where engagement with Principal Aboriginal Consultants occurred too late or only at crisis points.

“We probably don’t consult early enough and PACS are excluded from providing cultural advice and direction which can prevent children coming into care”
– Aboriginal DCP staff forum

“Our PACs are great, but there aren’t many of them, they can’t keep up”
– DCP Senior Practitioners forum

“10 more PACS to be employed, but what good if they have no influence?”
– Aboriginal DCP staff forum

A consistent theme to emerge from the sector stakeholder engagement was that Principal Aboriginal Consultant engagement had become a tick-box exercise and that the Principal Aboriginal Consultants lack of decision-making authority meant their advice could be treated as optional. Several of the Department’s workers reflected on cases where decisions had already been made, with offices seeking affirmation from the Principal Aboriginal Consultants, rather than advice.

Finding

20. The consultation with Principal Aboriginal Consultants appears to be a tick-box exercise and while embedded in policy, it is inconsistent in practice. Consultation with a Principal Aboriginal Consultant often occurs in lieu of consultation with the Aboriginal child and family. At the time the Inquiry commenced, there was a total of 10 Principal Aboriginal Consultants responsible for 37.4% of children in care, across multiple significant decisions in relation to each child. At the time of drafting this Report, an additional 10 Principal Aboriginal Consultants had been employed. Growing the volume of Principal Aboriginal Consultants is welcomed but the lack of influence and impact remains. The Principal Aboriginal Consultant roles, aside from requesting Family Group Conferencing, are not authorised to make significant decisions concerning Aboriginal children. Where consultation with a Principal Aboriginal Consultant occurs, their advice is often not implemented.

Additionally, throughout the community consultations, it was often stated that the social workers lacked understanding around when and how to engage with Principal Aboriginal Consultants. Community members stated that often the Principal Aboriginal Consultants were not brought in to consult with at all levels of decision-making, and often consulted with as a last resort.

The case file review raised several questions regarding the consistency and quality of engagement and consultation with the Principal Aboriginal Consultants. Although Principal Aboriginal Consultants were engaged at least once in all cases, written records of Principal Aboriginal Consultant consultation were absent in several cases. It was also unclear if the Principal Aboriginal Consultant's advice or recommendations were taken into account or followed, noting that Principal Aboriginal Consultant involvement was often documented as purely acceptance of the Case Manager's predetermined action or response.

Whether the advice came from a Principal Aboriginal Consultant, the Recognised Aboriginal and Torres Strait Islander Organisation or external Aboriginal staff, the case file reviews found that the advice of Aboriginal people was regularly ignored, and not implemented or recorded.

"PACs need more power, respect, and authority, their advice is treated as optional."

– Gawler Aboriginal Community forum

Kate Wright, Senior Manager Therapeutic Services, Aboriginal Family Support Services, highlighted the variability in the record of Principal Aboriginal Consultant consult when reviewing the Recognised Organisation Consultation form:

"It will ask for the advice or the has there been a consultation with a PAC... Again you see quite a significant variation between sometimes just the box being ticked yes, sometimes PAC not identified by name but PAC supports the placement with no further detail, and sometimes you get quite a detailed amount of information including who the PAC was, when the consultation was, what their advice was".¹⁹⁰

Where there are Aboriginal people involved within the child protection service system, either as part of the statutory system workforce or connected to the system by way of "partnership", their cultural advice and insights are frequently ignored, and the system creates an environment where their contribution is undermined. While the Department's staff expressed their understanding of the value of Aboriginal workers within the system during workshops, these sentiments were at odds with what Aboriginal staff felt and expressed to the Inquiry.

This directly mirrors the experiences of Aboriginal families who encounter the child protection service system. Adam Reilly, Deputy Chief Executive for the Department, described the experience of the Department's Aboriginal workforce as follows:

"At the moment our Aboriginal staff network report feeling isolated, not connected, not having a strong voice, similar to what we hear from our families."¹⁹¹

The views expressed by Aboriginal staff are in conflict with the sentiments shared through the Department's workforce forums, where staff praised the contribution of the Aboriginal workforce when working with Aboriginal children, families and community. A consistent theme to emerge from the Inquiry's engagement with the Department's was that the involvement of the Aboriginal workforce, through their depth of knowledge, lived experience and connection to community, strengthens decision-making and improve outcomes for Aboriginal children and families.

In reflecting on the contribution of the Department's Aboriginal workforce, the Department's staff highlighted the need to grow the Aboriginal workforce in response to what was seen as limited resources internally to provide cultural advice. Some of the reasons for this included staff capacity, availability and time pressures or constraints in times of "emergency".

Sector stakeholders reflected on the pressures and expectations on the Aboriginal workforce, particularly the tensions between workplace and community expectations and the role of the Department in current and ongoing child removals, impacted on the recruitment and retention of Aboriginal workers. The Aboriginal workforce spoke about not feeling supported or recognised by the organisation, discussing the impacts of cultural fatigue, isolation and pressure associated with being a sole Aboriginal worker in a team, leading to burnout.

Community discussed the importance of having a strong and supported Aboriginal workforce to work with Aboriginal families and community, however the lack of Aboriginal workers meant that families and community were often dealing with non-Aboriginal workers who could not effectively engage, or who they did not feel comfortable engaging with, leaving families feeling unsupported.

Community also discussed that the lack of Aboriginal workers, combined with the overrepresentation of Aboriginal children in the child protection service system, meant that Aboriginal workers in the system were often stretched to capacity, shouldering the burden of community and system expectations, putting them at-risk of burnout.

The Department's organisational policies for working with Aboriginal families and community are not translating into practice, resulting in culturally inappropriate practice. The Department's staff reinforced this observation in forums, with numerous comments reflecting how workers can be fearful of working with Aboriginal families and fearful of being culturally inappropriate by saying or doing the wrong thing.

The review of current education and training materials held by the Department's Learning and Development team aimed at "*raising the Cultural Proficiency of staff across the organisation*"¹⁹² uncovered examples perpetuating the 'fear' of engaging with Aboriginal families.

The PowerPoint slide below, dated June 2022,¹⁹³ is taken from training on the Principle and the Aboriginal Cultural Identity Support Tool developed for practitioners new to the Department. This approach to their training about working with Aboriginal families perpetuates myths, and the fear of Aboriginal people which is deeply offensive. This demonstrates the Department's lack of understanding of how to appropriately engage with Aboriginal families and communities.



Workforce composition

The current data of the Department's Workforce states that of the grand total of 2,716 workers, there are only 136 (5.0%) who identify as Aboriginal, and this figure has remained around the 5% mark for the past few years.¹⁹⁴ The Alexander Review proposed that the workforce should reflect the cultural needs of the clients, so if 37.6% of the care population are Aboriginal¹⁹⁵, 37.6% of the workforce working with children in care should be Aboriginal.

DCP Workforce (excluding administrative staff)

Number	Total employed	Aboriginal employees	Non-Aboriginal employees	Aboriginal employees	Non-Aboriginal employees
DCP Executive	6	1	5	17%	83%
DCP Directors	13	1	12	8%	92%
DCP Regional Directors	4	0	4	0%	100%
DCP Psychologists	29	0	29	0%	100%
DCP Senior Practitioners	110	1	109	1%	99%
DCP Supervisors	190	5	185	3%	97%
DCP Social Workers / Case Managers	567	20	547	4%	96%
Other 'Allied Health Professional'	186	60*	126	32%	68%
DCP Office Managers	32	1	31	3%	97%
TOTAL	1137	89	1048	8%	92%

*Note: includes 27 Aboriginal Family Practitioners, 20 Principal Aboriginal Consultants and Taikurtirna Warri-apinthe Practitioners)

The Inquiry sought information from the Department on specific areas in which the Aboriginal workforce operate within, specifically in notifications, decision-making positions and development of legislation, policy and practice. Data revealed the lack of Aboriginal workforce in decision-making roles.

In her evidence to the Inquiry, the Chief Executive of the Department, stated that two out six Aboriginal people are employed under South Australian Executive Service tenured contracts; these are the Deputy Chief Executive and Director Aboriginal Practice.¹⁹⁶ Of the four Regional Director roles, none are occupied by Aboriginal people at the time of writing this Report.

There is a notable absence of Aboriginal leadership and governance across the statutory child protection system. The continued absence of Aboriginal leadership and governance has meant that decisions regarding legislative or policy development, the design and use of system tools, workforce practice and program delivery, lack any cultural oversight or direction. This has created a statutory child protection environment that is not only culturally unsafe for Aboriginal children, families and community, but for the Aboriginal workforce within it. Inadequate levels of staff training have been identified as a contributing factor to the absence of culturally safe practices.¹⁹⁷

In his evidence to the Inquiry, the Deputy Chief Executive acknowledged the importance of a strong Aboriginal workforce within the Department, stating that “if you ensure that each level in that structure has the cultural proficiency because you have Aboriginal people all the way through the decision-making, the experience can be significantly different in a positive way for families”.¹⁹⁸

A clear message that emerged from the Inquiry’s engagement with the Department’s workforce was the varied levels of cultural awareness and competence across the child protection workforce, acknowledging that more could be done to

improve this and strengthen understandings of Aboriginal family and kinship structures, cultural norms and practices, and the history and impacts of past practices. This was reinforced by several statements made during the Department’s evidence to the Inquiry, as Adam Reilly, Deputy Chief Executive for the Department, affirmed:

“So for me a big part of this is education, not just for our practitioners, that’s critical, but really detailed understanding of the history on this continent, all the way through from settlement, arrival or Invasion, depending what language people are comfortable with, I say Invasion, through the massacres, through the dispossession, through the Stolen Generation and all of the trauma that’s impacted Aboriginal people throughout various generations. Understanding that, is at the very least, I think incumbent on us if we’re going to become so actively involved and enter into people’s personal lives the way that we do”.¹⁹⁹

To change the experiences of Aboriginal children and families, the Department’s submission into the Inquiry acknowledged the need for transformational change:

“While it is useful to highlight progress made at a departmental level as a demonstration of our commitment, fundamentally we acknowledge that in order to change the experiences of Aboriginal children and families, transformational change is required and that this change will only be achieved where Aboriginal people lead all aspects of decision-making and service delivery across the child protection system, where there is complementary investment in the ACCO sector, the workforce and related infrastructure, and where there is adequate investment in early, targeted and culturally safe supports for Aboriginal children and families”.²⁰⁰

Throughout Community forums conducted for the Inquiry, Aboriginal community expressed their concerns and lived experience around the lack of cultural

competence in non-Aboriginal staff across the child protection workforce, specifically around awareness of Aboriginal culture, Aboriginal ways of knowing, doing and being and the capability to work in partnership with Aboriginal families and communities. Several community members mentioned the inconsistencies in practice from different regional staff and offices, stating that “relationship-based practice” is not a focus within the practice of social workers.

Additionally, the lack of Aboriginal leadership and workforce within the Department meant that Aboriginal families and community were often dealing with non-Aboriginal workers and reported that they did not feel supported or comfortable engaging with the Department. The Inquiry heard that Aboriginal people often experienced disempowerment by the Department and felt an overwhelming lack of empathy.

The Inquiry also heard about the Aboriginal community’s concerns regarding how graduate social workers are given strong decision-making powers with a lack of life experience, including parenting, child-rearing and any experience working with Aboriginal people, either personal or professional.

The Department’s Chief Executive and Deputy Chief Executive conceded that work needed to be done to ensure that Aboriginal cultural knowledge and authority had influence within the system stating that cultural knowledge insight and values cannot be learnt, and Aboriginal staff should have a stronger voice.²⁰¹

A child protection system that does not adequately support a culturally competent workforce will not be adequately equipped or resourced to comply with the Principle and adequately engage families in decision-making processes. There is a noticeable lack of culturally safe and responsive practices by child protection agencies across the country, with Aboriginal families subjected to racism and discrimination throughout the child protection service system.²⁰²

Local level Aboriginal community partnership

Presently the only way in which the Aboriginal community is formally engaged is through the legislative requirement that the Chief Executive of the Department or the Court must consult with and consider submissions from a Recognised Aboriginal and Torres Strait Islander Organisation, before placing a child or young person, where reasonably practicable.²⁰³ Organisations are gazetted through a Ministerial process that should involve local community consultation.²⁰⁴

At the time the Inquiry commenced, there was only one gazetted Recognised Aboriginal and Torres Strait Islander Organisation, Aboriginal Family Support Services, who although has some regional offices and staff, was largely considered by Aboriginal community members as a metro-based service, predominantly staffed by non-Aboriginal people, who are not connected and not effectively able to support regional or remote communities.

In 2016, the Nyland Report proposed that the South Australian Government fund multiple Aboriginal organisations, including those with strong connections to specific communities, to provide more specific consultation.²⁰⁵ The South Australian Coroner on 6 April 2023 made a recommendation to the same effect.²⁰⁶ Despite this, Aboriginal Family Support Services remained the sole Recognised Aboriginal and Torres Strait Islander Organisation until 9 February 2024, when the Minister for Child Protection declared KWY Corporation (KWY) as the second gazetted Recognised Aboriginal and Torres Strait Islander Organisation. KWY has an even smaller regional presence than Aboriginal Family Support Services and illustrates the Government’s ongoing misunderstanding that metropolitan-based state-wide services are best placed to support local Aboriginal communities. A statewide Aboriginal service governed from metropolitan Adelaide does not and will

not have the relationship and knowledge to engage effectively with families at the local-level as would an on-the-ground Aboriginal community based organisation.

The gazetting of KWY comes after the Department's Deputy Chief Executive acknowledged in his evidence to the Inquiry, that the child protection service system needed to move on from the one size fits all state-wide response and ensure that funding and support is going to the right people and in the right location.²⁰⁷

Recognised Aboriginal and Torres Strait Islander Organisations must have local cultural connections and knowledge to assist in the identification and scoping of family and kin for placement and participation in decision making, and to advise on relevant child-rearing practices and provide cultural intelligence relating to the local Aboriginal or Torres Strait Islander community. There are distinct differences in the culture and practices of different regions and Aboriginal communities, a point that was emphasised throughout the Aboriginal community forums and through submissions. Relationships Australia SA offered the following recommendation:

*“Recognise the diversity of Aboriginal communities and be sure not to generalise understanding about one by assuming it is true of others”.*²⁰⁸

The Aboriginal community highlighted the importance of local engagement with Aboriginal community organisations and groups, such as Aboriginal Community Controlled Health Organisations, Elders and Grannies' Groups, who could provide a collective voice to inform decision making and provide external support and advocacy for families and children. By harnessing the immense collective knowledge and wisdom of Aboriginal communities for systemic reform, relationships, trust and confidence can be rebuilt and damaged relationships repaired.²⁰⁹

“Local community partnerships are important and needed to empower families”.

– Kadina Aboriginal Community forum

Community highlighted the value of partnering with locally based Aboriginal Community Controlled Organisations when intervening with at-risk families and the important role that Aboriginal Community Controlled Organisations play by providing a culturally safe and supportive environment to access support services.

Throughout the Aboriginal community forums, community members raised concerns that the child protection service system does not effectively tap into local community knowledge to support families, inform safety assessments or removal and placement decisions. Community emphasised that their knowledge of family relationships, meant that they could play an important role in identifying and supporting family as part of decision-making, as well as supporting children to remain connected to the community by identifying kinship and local placement opportunities and supporting participation in community activities.

“We need genuine local Aboriginal voice that is focussed and committed and vetted by local Aboriginal community. We need them to provide advice about how things need to happen here and also question and call to account. It should be a mix of elders and younger people”.

– Berri Aboriginal Community Forum

The importance of effective partnerships with Aboriginal community representatives was emphasised by Relationships Australia South Australia in their submission to the Inquiry:

*“Effective partnerships with Aboriginal community representatives are needed to ensure valid decisions are made that reflect the best interests of Aboriginal children, as understood by their families and communities. Similarly, children and families must be actively involved in decision-making, shaping family supports that are tailored to their needs, and identifying opportunities for ongoing relational permanence that is essential to wellbeing, including family supports, cultural connections and, if necessary, placement options”.*²¹⁰

Concerns have been raised about the quality of partnership and engagement with Aboriginal Community Controlled Organisations across the child protection service system. Power imbalances with the Department was a consistent theme emerging from the Aboriginal community and sector stakeholder engagement. The issue of the power dynamics in decision-making was highlighted by Aboriginal Family Support Services:

*“... there is quite a significant power imbalance, and we also don't have access to information... we're not included in processes at the beginning, we come in halfway through because that's the way our system currently works...we're not given the level of power to participate actively in good decision-making quite often, which further makes it difficult to influence good decision-making”.*²¹¹

Finding

21. The Department for Child Protection district offices do not have formal partnership arrangements or local level Aboriginal community engagement mechanisms to garner Aboriginal advice external to the Department. The previous Aboriginal Family Care Program was a successful initiative that enabled strong partnerships, as it was delivered by a variety of local-level Aboriginal Community Controlled Organisations in their communities across South Australia. Each Aboriginal organisation was gazetted as a recognised consultative body for matters to do with local Aboriginal children and their families. It was mandatory for the district office to consult with the recognised Aboriginal organisation. The program was responsible for keeping Aboriginal children safe within community and culture, privileging the Aboriginal child and family's voice.

Findings

22. At the time the Inquiry commenced, there was one Recognised Aboriginal and Torres Strait Islander Organisation, Aboriginal Family Support Services. At the time of drafting this Report, a second Aboriginal Community Controlled Organisation, KKY, has been Gazetted as a Recognised Aboriginal and Torres Strait Islander Organisation. It is culturally inappropriate and unproductive for two statewide services to advise on matters relating to various Aboriginal communities that they are not connected to. This runs counter to the Principle and to Aboriginal self-determination for local Aboriginal communities.
23. The Recognised Aboriginal and Torres Strait Islander Organisation function under the *Children and Young People (Safety) Act 2017* is limited to consultation prior to placement of Aboriginal children and young people. This is an inadequate use of Aboriginal community knowledge and understanding of Aboriginal children and their families.

Recommendations

16. The *Children and Young People (Safety) Act 2017* require that at least one local level Recognised Aboriginal or Torres Strait Islander Organisation for each regional community with proven strong community knowledge and connections be gazetted and fully funded to perform legislated functions in line with Recommendation 18.
17. The *Children and Young People (Safety) Act 2017* should be amended to specifically provide for the delegation of the Chief Executive's powers to local-level Aboriginal Community Controlled Organisations. Current decision-making models are based on Eurocentric models of family life and relationships. The government must change the way decisions are made about Aboriginal children and shift power and decision-making back to Aboriginal families, communities and Aboriginal Community Controlled Organisations.

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18. The *Children and Young People (Safety) Act 2017* be amended to broaden the function of Recognised Aboriginal and Torres Strait Islander Organisations to provide that they assist Aboriginal families and their children at all significant decision-making points about the child's wellbeing or safety including by:
- a. providing cultural advice to the Department for Child Protection, the Youth Court, other state authorities and where necessary South Australian Civil and Administrative Tribunal on:
 - i. safety and wellbeing assessments
 - ii. family support needs for prevention of removals
 - iii. care options for children without orders
 - iv. placements for children where a removal is necessary.
 - b. undertaking family scoping for:
 - i. identification of family and kin to be involved in decision-making
 - ii. identification of family, kin and community placement options
 - c. development of cultural maintenance plans
 - d. attendance at reviews conducted under section 85 of the Act
 - e. attendance at Family Group Conferences
 - f. contributing to the design of relevant policies and programs
 - g. appointment of an Aboriginal cultural support person or child advocate to ensure the participation of children and young people in significant decisions or to advocate on their behalf
 - h. reporting to the Court about the efforts that have been made by the Chief Executive of the Department for Child Protection to comply with the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of Active Efforts before a guardianship order is made.

Aboriginal Family Care Program

In the late 1980s to the mid-1990s, the Aboriginal Family Care Program operated in local Aboriginal Community Controlled Organisations across South Australia in various Aboriginal communities. The program involved the assembly of cultural authorities known as Aboriginal Family Care Committees at the time a child came to the notice of the Department of Community Welfare, as it was then known. The Committees were supported by an Aboriginal Family Care Coordinator employed by the local Aboriginal Community Controlled Organisation. The Committees comprised local Aboriginal people who were connected to the Aboriginal community in which they worked and had cultural connections to children and families. They worked closely with the local Aboriginal Family Support Worker and the local departmental office, developed plans with parents and family and those culturally responsible for the child to avoid the child being removed. The Aboriginal Family Care Program also made recommendations for placement and ongoing connection of a child to family and community if a child was to be removed, and those decisions were respected and implemented by the child protection authority. This program was evaluated as successful in supporting children's safety in family arrangements within their communities.²¹² At the time, each Aboriginal Organisation that was auspiced to deliver an Aboriginal Family Care Program was gazetted to provide mandatory cultural consultation to child protection services. Each Aboriginal Organisation was also supported with resources to employ an Aboriginal Family Support Worker.

"We need to bring back the family care committees".²¹³

– Sandra Miller

"Bring back the Family Care Program that existed in Port Lincoln".

– Port Lincoln Aboriginal Community forum

The Aboriginal Family Care Program was an example of what Active Efforts for partnership with the Aboriginal community could look like, supporting early intervention and prevention, participation of family and community in decision making and local level scoping for family placement. Features of this program could be revived quickly through the gazetting of existing locally based Aboriginal Community Controlled Organisations with strong community connections. The idea of reviving this model is not new. In 2002, the *Review of Alternative Care in South Australia* made clear recommendations "that Aboriginal Family Care Committees and workers be established in strategic locations to ensure close liaison with Aboriginal communities, families and individuals..."²¹⁴

"Back then everyone's really enthusiastic to be involved and be part of making decisions about...their young people... children in their community. And we always had a full complement of people... participating in those sort of panels... when we needed them."²¹⁵

– Sandra Miller

Several submissions called for more Recognised Aboriginal and Torres Strait Islander Organisations to ensure local level knowledge from organisations with connections to community members and elders, specifically within regional communities.²¹⁶ This call was reinforced in the evidence gathered through the public hearings where several witnesses emphasised the importance of local Aboriginal Community Controlled Organisations supporting local communities.²¹⁷

“ALRM supports there being a greater number of Aboriginal Community Controlled Organisations to be gazetted as [RATSIOs], specifically, within regional communities, as metropolitan offices may not have the same connection to community as the local services have”.²¹⁸

The function of Recognised Aboriginal and Torres Strait Islander Organisations should be expanded within the Act from a purely consultative mechanism on placement decisions, to an active partner that participates with the family in all significant decisions about an Aboriginal child. With the right resourcing and support, Recognised Aboriginal and Torres Strait Islander Organisations could take on additional functions currently performed by the Department, such as the case management of Aboriginal children and young people in Out-Of-Home Care and decisions about removal through the delegation of powers.

Each regional community must have its own Recognised Aboriginal and Torres Strait Islander Organisation. Wherever possible, existing Aboriginal Community Controlled Organisations that are already active in local communities should be appointed and gazetted as Recognised Aboriginal and Torres Strait Islander Organisations. Such appointments ensure local trusted community are partners in decision making which supports the rights of Aboriginal children, families and communities to self-determination and the rights of the child to remain connected to community and culture.

This will require the mandatory gazetting of Recognised Aboriginal and Torres Strait Islander Organisations from all regional areas, including but not limited to the APY Lands, Coober Pedy, Ceduna, Yalata, Port Lincoln, Whyalla, Port Augusta, Port Pirie, Kadina, Berri, Murray Bridge and Mount Gambier, as well as the Adelaide metropolitan regions. A relevant Recognised Aboriginal and Torres Strait Islander Organisation should be identified for Torres Strait Islander children and families. Wherever possible, existing Aboriginal Community Controlled Organisations that are already active in local communities should be appointed and gazetted as Recognised Aboriginal and Torres Strait Islander Organisations.

It is vital that Recognised Aboriginal and Torres Strait Islander Organisations are commensurately funded and resourced to undertake the gazetted function and consultation with Aboriginal Community Controlled Organisations must occur to ensure self-determination is exercised.

Delegated authority

Through the national Safe and Supported plan, the Commonwealth, State and Territory Governments have made a commitment to “supporting delegation of authority in child protection to families, communities and Aboriginal and Torres Strait Islander community-controlled organisations”.²¹⁹

The Aboriginal and Torres Strait Islander First Action Plan under Safe and Supported acknowledges that decision making has for too long rested with governments, that ongoing harm has been caused by non-Aboriginal worldviews dominating and determining decision-making for Aboriginal children and young people, and that the creation and continuation of assimilatory policies of child removal has been based on false assumptions about Aboriginal families and cultures.²²⁰

The Inquiry heard from Aboriginal leaders that the strength in delegation of powers to the Aboriginal community is that the people making decisions about Aboriginal children are those who know, care for and will be present for children in the long term.²²¹ Delegation of authority must be done with care and be Aboriginal-led and designed, with adequate funding, community assessments of what is working well and ensuring that there is investment in Aboriginal holistic healing approaches.²²² Trust will need to be built between the Department and Aboriginal Community Controlled Organisations for there to be any hope of success in delegating power to them. There needs to be a willingness to test things, to ask questions, to admit and acknowledge the mistakes of the past and to relinquish power.²²³

“Change will happen as quickly as trust is built”

– Commissioner Natalie Lewis

Delegation of authority is not simply passing the cycle of a system that is not working effectively for Aboriginal children to Aboriginal Community Controlled Organisations, which then places the Aboriginal Community Controlled Organisation in the invidious position of failing Aboriginal families.²²⁴ Aboriginal Community Controlled Organisations must be respected if they decide that they are not willing or ready to accept delegation of power, or do not wish to undertake specific roles in the child protection sphere; such decisions are part of self-determination.²²⁵ Fundamental to the success of delegation of authority is that the organisations are adequately funded to undertake the work and provide the services that are required.

In seeking to recognise and restore the rights of Aboriginal and Torres Strait Islander peoples to autonomy and self-determination, the Inquiry heard that both Victoria and Queensland have implemented initiatives to have delegated authority to Aboriginal Community Controlled Organisations to deliver programs to Aboriginal children and families.²²⁶ This provides for access to culturally safe and responsive decision-making that is normally vested in the Minister or Chief Executive.

An Aboriginal Peak Body has been vital in Queensland in supporting Aboriginal Community Controlled Organisations to prepare to take on roles within the child protection system and provides a robust assessment program.²²⁷ There also needs to be robust cost-analysis to determine what funding an Aboriginal Community Controlled Organisation needs, with cost benefit analysis undertaken at an early stage of the delegation of authority. The funding model will need to change from one that meets the needs of the child protection service system to one that is tailored to meet the needs of families in crisis and in need of support.

There is a clear distinction between powers and functions when considering delegation. The Inquiry heard evidence from Commissioner Natalie Lewis from the Queensland Family and Child Commissioner, that functions are the focus of delegation in Queensland.²²⁸ Commissioner Lewis stated that to simply transfer the current system of child protection which is not working for Aboriginal children together with its frailties into an Aboriginal Community Controlled Organisation is not in the best interests of Aboriginal children.²²⁹ Aboriginal Community Controlled Organisations need to be empowered to undertake functions in their way and on their terms, and not just be an arbiter of the system.²³⁰

A common reason for resistance to delegation of power to the Aboriginal Community Controlled sector in Queensland has been the question of capacity of the Aboriginal Community Controlled Organisation by the Queensland Department for Child Safety, however Commissioner Lewis pointed out that there has never been any question as to the capacity of the Department to continue to do the things that they have not done well in the past.²³¹ When reflecting on self-determination in the context of the transition of authority, Commissioner Lewis stated:

“... the transition of authority... in the construct of self-determination...it’s really important to recognise that if...a community does not want to take on that system or take on those functions, their rejection of that is self-determination... there are a number of organisations that are asserting...that resistance because they do not want to inherit...

the system that has harmed children in their community...what we might want to negotiate is that delegation of authority for particular decisions, as opposed to...taking on functions. I just think that it’s important to recognise that when a community says no, that’s as much a valid act of self-determination as putting your hand up or signing a service agreement to say, OK, we’ll take on cultural support planning...?”²³²

Currently in South Australia, it is the State government that decides who it will work with, who gets to sit at the table, and as a result, there is no economic independence of Aboriginal Community Controlled Organisations. They are reliant on government funding which can be withdrawn and they are required to meet Eurocentric reporting models to remain eligible for the funding. This does not equate to self-determination, but simply the transfer of the role of the Department to an Aboriginal Community Controlled Organisation which is required to report on their compliance with their contractual obligations.

The Inquiry heard evidence from Dr Jacynta Krakouer that the delegation of power to Aboriginal Community Controlled Organisations does not amount to self-determination.²³³ What is required is a reversal of the balance of power and a change to who it is that determines outcomes for Aboriginal families, enabling children to be viewed as members of the entire community and not belonging to parents in a nuclear family.²³⁴ A fundamental element of self-determination is that communities determine the priorities and have the control over the decision making.²³⁵

The Inquiry heard evidence from Candice Butler from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, that the Queensland Government commenced delegating authority some years ago, and embedded 'being, doing and knowing in Aboriginal ways' into the child protection system.²³⁶ The implementation of robust research cycles assisted to understand what was working and identify what was getting in the way, and what needed to happen to make the transition successful.²³⁷ The findings were that effective delegation of authority requires system change across policy and practice, with a shift towards Aboriginal knowledge systems.²³⁸ Pivotal to the success of this, is the importance of leadership from the top of the child protection organisation down. Developing local governance and executive governance groups has resulted in the building of honest, frank relationships between the Queensland Department for Child Safety and the Aboriginal Community Controlled Organisations, addressing any barriers to successful partnership as they arise.²³⁹

Despite evidence that it is not best placed to make decisions about Aboriginal children and families, Dr Fiona Arney states that the mainstream system "continues along as the arbiter of all things child welfare, and you have Aboriginal organisations who do

absolutely everything they can on kind of the outskirts of that system".²⁴⁰

In the Deputy Chief Executive's evidence to the Inquiry, he stated that being true to self-determination for Aboriginal people in South Australia, the Department "should be guided or directed on what the model should look like, rather than us saying well we found one and it looked like it worked over here. I think we need to demonstrate our commitment to true partnership".²⁴¹

Professor Leah Bromfield didn't mince words when discussing the critical role of Aboriginal Community Controlled Organisations in supporting Aboriginal children and families encountering the child protection service system, stating:

"...you're never going to get anywhere until unless you start taking steps to actually grow the number of ACCOs, support their growth...You don't get anywhere by just saying ACCOs don't have current capacity or we don't have enough ACCOs".²⁴²

Finding

24. The *Children and Young People (Safety) Act 2017* provides for the delegation of powers. None of these powers have ever been delegated to an Aboriginal person, an Aboriginal entity or an Aboriginal Community Controlled Organisation.

Participation

The Participation element aims to ensure that Aboriginal and Torres Strait Islander children, parents and family members participate in all child protection decisions affecting them, including intervention, placement and care, judicial decisions and the design and delivery of child and family services.²⁴³

The participation of Aboriginal children and their families and communities in a culturally safe, formal and independent process of Aboriginal Family-Led Decision Making ensures that the right of Aboriginal people to self-determination, and the rights of the child to be heard and be connected to culture, can be fully implemented.

Active Efforts at participation requires early participation by family, community and the child to provide an opportunity for parents to access early intervention supports and for safety plans to be developed by family, community and Aboriginal Community Controlled service providers. These then can divert the child from a statutory response. Ongoing participation in decisions about removal ensures that children remain connected to family, community and culture.

The participation of Aboriginal peoples in decision-making is fundamental to realising their human rights as recognised under the United Nations Convention on the Rights of the Child, and United Nations Declaration on the Rights of Indigenous Peoples,²⁴⁴ with the right to participate primarily stemming from the right to self-determination.

The *Bringing Them Home* report emphasises the importance of Aboriginal self-determination as going beyond participation and consultation in decision-

making processes.²⁴⁵ Increased participation of Aboriginal people in decision-making will enable the development of government policies that recognise Aboriginal self-determination, including recognition of all cultural rights of Aboriginal children and young people removed from their family, community, and Country.²⁴⁶

Aboriginal Family-Led Decision Making

Family-led or family-group decision-making refers to a continuum of participatory processes used alongside statutory child protection practice to enable family participation in decision-making with children and young people.²⁴⁷ There are three aspects which determine the continuum; the level of independence of the process from child protection practices (from not independent at all to fully independent), the level of structure or formality to the family decision-making process (from informal and unstructured to formal and structured processes), and who is invited to participate in the conference (from biological parents to extended family members and support networks).²⁴⁸

The conceptualisation of Aboriginal Family Led Decision-Making can extend far beyond biological parents to include extended family, people with cultural kin relationships, people related by marriage, and members of the same language and/or skin group.²⁴⁹ Decision-making for Aboriginal children in the child protection service system needs to be done in a way that is culturally appropriate and governed, and which recognises Aboriginal concepts of family.²⁵⁰

Aboriginal Family Led Decision-Making is a rights-based process which prioritises the voices and perspectives of family members in decision-making, enabling cultural worldviews and values to be centred and which assume that with adequate information, families can make informed decisions.²⁵¹ Aboriginal family led decision making should be the basis for decision-

making in relation to infants for whom child protection concerns have been raised, and that “under no circumstances should any plans be made with hospital staff to be removed from families’ care without discussion and preventive plans being made with the parents and families”.²⁵²

In their submission to the Inquiry, the Department acknowledged the importance of Aboriginal Family Led Decision-Making:

*We know that Aboriginal people and families will enjoy far better outcomes when Aboriginal people lead decision-making for Aboriginal children, when Aboriginal leaders design child protection legislative, policy and practice settings, and when Aboriginal Community Controlled Organisations lead the design and provision of services for Aboriginal children and families.*²⁵³

The leading policy that guides the Department’s practitioners on the participation of Aboriginal families is the *Family Led Decision-Making for Aboriginal Families Framework*. The policy states its purpose is to “outline the DCP strategies to enable Aboriginal Family Led Decision-Making across all levels of child protection interventions and decisions” and purports that Aboriginal Family Led Decision-Making is a broad approach to identify opportunities in everyday practice for children and their families to a part of significant decision-making.²⁵⁴

The structures identified within the policy describe three levels on the “family led decision-making continuum”: informal, semi-formal and formal. Informal is described as unstructured and can be utilised during discussions for information sharing and seeking views. Semi-formal is described as structured and is appropriate for meetings, interviews and consultations. The formal level is described as highly structured and is most appropriate in facilitated family meetings and conferences. The guidance on Aboriginal Family Led Decision-Making enables caseworkers to deploy “informal” Aboriginal Family Led

Decision-Making across the spectrum of practice, which at best is participatory case planning and at worst is standard casework but is not Aboriginal Family Led Decision-Making.

The Department’s policy conflates participation in decision-making with Aboriginal Family Led Decision-Making. While informal modes of family participation in decision-making are important, best practice encompasses the more formal Aboriginal Family Led Decision-Making models.²⁵⁵

The Department’s policy outlines a number of key principles required to facilitate Aboriginal Family Led Decision-Making, despite this, the Inquiry heard from the Aboriginal community that families were being given insufficient opportunities to participate in decision-making and that decisions were regularly being made about children and families without their involvement. Aboriginal community members said that Family Group Conferences were rarely offered, and questioned whether they were always considered or valued by the Department.

“We must have family-led decision making at beginning and through involvement”.

– Western Metro Aboriginal Community forum

“DCP only involve Aboriginal families when there’s an issue... they should have listened in first place. If DCP don’t start listening, the matriarchs won’t be there”.
– Southern Metro Aboriginal Community forum

“Family invited to meetings but no transparency, always only half the story”.
– Port Lincoln Aboriginal Community forum

The absence of Aboriginal voice across the child protection and broader family support system was a consistent theme to emerge for the community and stakeholder engagement. Community felt that children and families were given insufficient opportunity to participate in decision-making and that decisions were routinely being made about children and families without their involvement. Community argued that the child protection service system did not value or prioritise family-led decision-making which, when coupled with the system's limitations in properly scoping family and Eurocentric notions of family structure, meant that families were not able to influence significant decisions.

"Let the community take control – it takes a community to raise a child"

– Murray Bridge Community Forum

Community discussed that the local Aboriginal community was generally not given the opportunity to inform decision-making on individual case matters, arguing that the system placed too much focus on parents being the sole decision makers, which in some cases could result in poorer outcomes for the child, as the emphasis becomes adult focused not child focused.

"Sometimes family don't speak up, we need family to speak up".

– Ernabella Aboriginal community member

"I didn't know whether any of the other family had been consulted about kids coming to me...I queried why they might be contacting me, knowing that there were a lot of other family members".

– Victor Harbor Aboriginal Community forum

Finding

25. The Department for Child Protection's policy for Aboriginal Family Led Decision Making is inadequate and does not sufficiently uphold the principle of Family Led Decision Making. In practice, Aboriginal families are routinely excluded from significant decision-making about their children.

Recommendation

19. The Department for Child Protection's current policy for Aboriginal Family Led Decision Making must be replaced by a new policy that must be developed in partnership with Aboriginal communities and Aboriginal Community Controlled Organisations.

Family Group Conferencing

Expert academic evidence suggests that processes such as Aboriginal Family Led Decision-Making through Family Group Conferencing, when embedded in legislation and independently facilitated, can successfully formalise participation of children, young people, families and communities in major decisions that affect them and can lead to empowerment, safety and collective responsibility.²⁵⁶ Many recent royal commissions and inquiries across Australia have repeatedly called for Family Group Conferencing, despite this, family decision-making processes are not mandated, referrals are inconsistent, and Family Group Conferences have been “inconsistently applied, under-funded, under-utilised, not implemented as agreed or used too late in the decision-making process, limiting potential impact on demands on the child protection system”.²⁵⁷

The Act sets out that the purpose of Family Group Conferencing is to provide an opportunity for a child or young person and their family:

- a. To make informed decisions as to the arrangements for the care of the child or young person; and
- b. To make voluntary arrangements for the care of the child or young person; and
- c. To review those arrangements from time to time.²⁵⁸

The Act provides that the Chief Executive or the Court *may* convene a Family Group Conference if deemed appropriate in all the circumstances.²⁵⁹ The current legislation does not compel the statutory body to ensure that Family Group Conferences are convened in every matter and does not indicate at what stage(s) of the decision-making process Family Group Conferencing should occur. The participation of extended family and kin who have knowledge and insight should occur as early as possible in child protection interventions.

The facilitation of Family Group Conferencing requires the exercise of the Chief Executive’s powers and therefore requires an intake into the statutory child protection system. In their evidence, the Department of Human Services acknowledged that Family Group Conferencing is the lynchpin of early intervention but as there are no statutory requirements that apply to the early intervention Pathways and services, they are unable to access Family Group Conferencing.²⁶⁰

Finding

26. The current legislation places the responsibility of convening a Family Group Conference with the Chief Executive of the Department for Child Protection. This limits the access of children and families to opportunities for family led decision-making in South Australia. Family Group Conferencing requires independent facilitation to uphold the fidelity of the program in a culturally appropriate manner.

Recommendation

20. As a matter of urgency, it must be mandated that a referral to a Family Group Conference be made before the Department for Child Protection can apply to the Court for any guardianship orders for Aboriginal children.

Family Group Conferencing is internationally recognised as the emerging practice to prevent child removals.²⁶¹ The Department's Manual of Practice states that practitioners should first assess the suitability of a referral for Family Group Conferencing based on a number of factors, including: what phase of the child protection process the matter is in, previous child protection history and protection orders, consultation with a Principal Aboriginal Consultant and any outcomes of family and kinship scoping.²⁶² This approach highjacks the intent of Family Group Conferencing by the Department determining whether the family is worthy enough to participate in family led decision-making.

The Inquiry's case file review revealed that whilst a Family Group Conference was considered in every case, the evidence on file was generally located in court reports or case plans, as a tick-box with limited evidence on rationale. There was sometimes reference to consideration of Family Group Conference in case consultations. Common reasons for non-referral to Family Group Conferencing included the parents' lack of engagement, the unpredictability of a parent's partner, a determination without explanation that it was not in the child's best interests, parents being incarcerated and prisoners not being permitted to attend conferences, the family not being in agreement with the case direction, and Family Group Conferencing not being considered appropriate and the only way to secure safety was through obtaining a Guardianship Order.



Other frequently recorded reasons for the Department not referring were ‘there were no family or there were no *safe* family’. This was the case even in instances where it was clear there were family members that could be involved, including instances where family members were providing kinship care for the child, such as case file 17. Without convening a Family Group Conference, the Department’s practitioners would not know if there were family or safe family available to the child. This is a common child protection error, where practitioners do not know the wider family networks and make false assumptions about family’s capability and capacity.²⁶³ There were several examples in the case files where the Department reported that they would seek the views of the parents in considering a referral for a Family Group Conference, but in each of these cases there was no recorded evidence that the parents’ views were sought.

Referrals for Family Group Conferencing were made in 17 of the 30 case files reviewed, with 11 being convened. There was an average of 134 days between the initial involvement with the Department and a referral being made for a Family Group Conference. Out of 17 referrals made, two cases were referred in less than four weeks from the initial involvement, two cases were referred between four to eight weeks, four cases were referred between eight to 12 weeks, and nine cases were referred more than 12 weeks after the involvement with the family commenced.

Of the 11 case files where Family Group Conferencing occurred, one case had only the mother present and no other family members; three cases had only two family members, with two of those being the mother and the adolescent child only; one case had three family members participating; two cases had four family members; one case had six family members;

one case had seven participants and one case had eight family members participating in the Family Group Conference. The remaining case had no record of who participated, with the only reference to the conference being in a subsequent court report noting that it occurred.

The Inquiry sought disaggregated data on Family Group Conferencing from the Department and the service providers for Family Group Conferencing in South Australia: Aboriginal Family Support Services and Relationships Australia South Australia. In the 2022–2023 financial year, Aboriginal Family Support Services received a total of 83 referrals and convened 47. Aboriginal Family Support Services reported that 19 referrals were withdrawn by the Department prior to the Family Group Conference being convened. Relationships Australia South Australia received a total of 291 referrals, of which 131 related to Aboriginal or Torres Strait Islander children and families for the same financial year; of the 131 referrals received, a total of 56 were held and 55 successfully reached valid agreements. Both Aboriginal Family Support Services and Relationships Australia South Australia provided rationales for the referrals that were withdrawn or declined with the most common rationale being a change in the Department’s case direction. Other reasons included: the Department were unable to locate family, there was an escalating risk, the family were in Sorry Business, or the family resided interstate.

The Courts Administration Authority is also funded to convene Family Group Conferences. The Department reported to the Inquiry that the Courts Administration Authority held 10 Family Group Conferences for Aboriginal children and families in 2022–2023 financial year.

The Inquiry reviewed a large number of submissions that drew attention to the lack of involvement of family and community in decision making in practice, with eight submissions highlighting that there was not enough involvement of family and community and seven providing examples of family members being excluded or where there was no family involvement at all in the process.²⁶⁴ It was noted that participation does not always include significant extended and cultural family members.²⁶⁵ There was a strong focus in submissions on the timing of Family Group Conferencing, with a consistent view that this should occur at an early stage in the family's involvement with services.²⁶⁶

"...the legislation governing Family Group Conferencing... is not directive enough and continues to rest too much decision-making power directly with DCP individual workers and offices with no outside accountability".²⁶⁷

The best practice of Active Efforts at participation occurs within the prevention context. In South Australia, Family Group Conferencing is not available to the Department of Human Services unless there is an intake to the Department for Child Protection and a referral for Family Group Conferencing and Tier 1 Intensive Family Support Services. Despite the Department of Human Services echoing support for the Principle's elements of partnership and participation, they do not have specific policies that implement these principles, let alone to the standard of active efforts.²⁶⁸ Without mandatory Family Group Conferencing, the family is dependent on the Department for Child Protection to make a discretionary decision to refer to a Family Group Conference.

In the Alexander Review, the importance of Family Group Conferencing was noted, and it was observed that the Department's Senior Executive Group should consider:

"Opportunities to rely on the current review of the legislation to make mandatory the use of Family Group Conferences for all families where Aboriginal children have been assessed as unsafe. Importantly, this would mean that no Aboriginal children can be presented before for the Youth Court seeking assumption of care orders in the absence of a Family Group Conference having taken place".²⁶⁹

The Inquiry heard evidence from Paul Nixon, an Independent Social Worker who was commissioned by SA Government to undertake research on the practice of Family Group Conferencing in SA.²⁷⁰ Mr Nixon's report found that the standard of Family Group Conferencing in South Australia is very high, and the outcomes are positive for families who are given the opportunity to participate.²⁷¹ Sarah Decea from Relationships Australia South Australia provided evidence to the Inquiry that in the two years that Relationships Australia South Australia have been providing Family Group Conferencing, 95% of the families have reached agreement, 94% of the children remained safe within the family, and 90% expressed satisfaction with the outcome.²⁷² Ms Decea also noted that there is no discernible difference between the outcomes for Aboriginal and non-Aboriginal families.²⁷³

The involvement of an independent organisation such as Relationships Australia South Australia conducting Family Group Conferencing and doing so using a culturally safe and appropriate model, addresses the power imbalance that exists between vulnerable families and the Department.

"We create change when families have some power... and feel like they have control...they are more likely to follow through and change because they've got control".²⁷⁴

Mr Nixon provided further evidence to the Inquiry regarding international successes, particularly in New Zealand, where the Courts will not accept applications for Guardianship orders unless there has been a referral to Family Group Conferencing, as it is considered a cultural right of children.²⁷⁵ Mr Nixon informed the Inquiry that New Zealand undertakes approximately 10,000 Family Group Conferences per year,²⁷⁶ compared to South Australia where referrals to Family Group Conferencing is ad hoc and inconsistent.

“The legislation seems preoccupied with a single agency accountability... often using separation as the method of protection, removal and separation of children from their families and their culture. When actually... there are many ways of keeping children safe in their family and culture”.²⁷⁷

A strength of Family Group Conferencing for Aboriginal families is the extensive work that occurs to bring in extended family members, in ways which are culturally congruent with the concept of kin, including family members who may have been estranged from the children and young people or each

other for some time.²⁷⁸ However, during engagement for the Inquiry, the Aboriginal community identified that when Family Group Conferencing was offered, they were not occurring early enough in the process to have any meaningful impact, as decisions had already been made by social workers prior to them taking place. Aboriginal community members also expressed deep concern that when conferences were offered, too much reliance was placed on parents identifying and nominating family participants, which could result in significant family and/or community being excluded from the conference for reasons such as shame or family conflict, impacting on decision-making and outcomes for the child.

It is positive that the Government has committed an additional \$13.4million of funding into Family Group Conferencing services. Whilst a significant proportion of that funding has been allocated to a non-Aboriginal organisation, the program offered to Aboriginal families, Ngartuitya, is Aboriginal led, culturally safe and appropriate.²⁷⁹ Funding has also been allocated to the Aboriginal Family Support Service.

Recommendation

21. The *Children and Young People (Safety) Act 2017* be amended to mandate that if the Chief Executive of the Department For Child Protection, the Court or a state authority suspects that an Aboriginal child or young person is at risk or there are concerns for their wellbeing, then the Chief Executive of the Department for Child Protection, the Court or the state authority must make a referral for a Family Group Conference at the earliest possible opportunity; and it is to be facilitated by an external, independent, Aboriginal-led program prior to any significant decisions being made about the child.

The voice of children and young people

The United Nations Convention on the Rights of the Child recognises children as active rights holders; as subjects of rights rather than objects of protection, stating that children have the right to freely express their views on all matters affecting them,²⁸⁰ with due weight given to their age and maturity.²⁸¹ The United Nations Convention on the Rights of the Child involves upholding children's rights in policies, laws, administrative decisions, and programs,²⁸² and outlines the right of children to be heard in any judicial or administrative proceedings that affect them, whether directly or through a representative or appropriate body.²⁸³ This also aligns with the United Nations Declaration on the Rights of Indigenous People which recognises the rights of Indigenous people "to participate in decision-making in matters which would affect their rights".²⁸⁴

Despite the significance of the decisions made in child protection practice, children and young people continue to be excluded from decision-making processes that concern them.²⁸⁵ The literature suggests that children's rights to participation are not being fully fulfilled, with children's participation being regarded as discretionary, their views marginalised, and the elements required to achieve meaningful participation in decision-making often neglected.²⁸⁶ The literature also suggests that most children are not informed about their entry into foster care, and many report that they have not had opportunities to express their views and desires for their own lives in this regard.²⁸⁷

Children and young people's participation in decision-making should not be tokenistic and should involve a broad range of active engagement strategies beyond mere consultation.²⁸⁸ It should be an ongoing process that involves systematic inclusion in determining how goals and policies are

set, programs are operated, and resources are allocated.²⁸⁹ This necessarily requires a shift in power-dynamics, includes sharing information and engaging in reciprocal and ongoing dialogue.²⁹⁰

The power imbalance between children and child protection service systems can affect children's participation in decision making.²⁹¹ It is essential to recognise that cultural and class differences can also influence how children 'frame' their experiences.²⁹² For Aboriginal children and young people, social factors can influence how their participation is interpreted, and their cultural paradigms must be taken into account to represent their best interests meaningfully.²⁹³

Currently, the Act requires the Department's workers to actively seek the views of children and young and have their views considered and given weight generally in the operation of the Act and at other points including, but not limited to, in the process of a Family Group Conference, the right to independent legal representation and during annual reviews.²⁹⁴ The Department's Manual of Practice guides practitioners that children are often able to express themselves from a young age if appropriate support is provided.²⁹⁵ However, evidence before the Inquiry indicates that the views of children and young people are often going unheard.

Throughout engagement with the Aboriginal community, concerns were raised that children were not consistently being given opportunities to participate in decisions that impacted them. Engagement with Aboriginal children and young people in Out-Of-Home Care indicated mixed experiences with some young people feeling as though they had a role in decision-making and others feeling they had no say at all.

"You have to be an issue to get something done in resi care. If you want to speak to your social worker, you smash a window and they're there in 5 minutes. You learn that negative behaviour is the only way that gets you heard".

– CREATE Aboriginal youth forum

“Children have no voice in DCP, only when they are screaming, they have a voice. DCP don’t want the children to have a voice”.

– Ceduna Aboriginal Community forum

“Children don’t seem to have a voice, besides crying for their families, surely that can be interpreted: the cultural connection needs to be maintained”.

– Murray Bridge Aboriginal Community forum

Submissions to the Inquiry identified that the views of children and young people were often being insufficiently represented or they were excluded from decision-making processes and that improvements were needed to ensure children and young people’s views were better represented.²⁹⁶

“When I was in care, I wanted to see my siblings, but this was denied”.

– Aboriginal young person

Finding

27. Aboriginal children and young people coming into contact with the child protection service system are not adequately involved or empowered to participate in decisions about their care.

The South Australian Guardian for Children and Young People, Shona Reid, informed the Inquiry that she is hearing that children feel they are not being heard or they are ignored in case planning decisions being made about them, and that children want agency with respect to the big and small decisions that impact on them.²⁹⁷ Children also want to be involved in the Annual Review process and want their views to be given sufficient weight.²⁹⁸ The Guardian provided data from the audit of 383 Annual Reviews for the 2021–2022 financial year, on the attendance and participation of Aboriginal children and young people at Annual Reviews. This data indicated that of the total number of Annual Reviews audited, 33% involved attendance by an Aboriginal young person and of that, 26% of cases were assessed to have had ‘strong or very strong’ voices of the young person.²⁹⁹

In his oral evidence, Associate Professor Paul Gray stated that hearing and heeding the views of children and young people requires more consideration within the child protection service system.³⁰⁰ Value needs to be given to the views expressed by children, and not only when those views align with the decision-makers, particularly where children express their wish to return to family. There also needs to be careful consideration given to how a child develops their views of culture and how best to support that development.³⁰¹

The Inquiry's Preliminary Report recommended the appointment of a cultural support person or child advocate for each Aboriginal child, nominated by the local Recognised Aboriginal and Torres Strait Islander Organisation, which would ensure that the child is supported to have their voice heard, the child is aware of their rights to be heard and to take actions to challenge decisions made about them, building their agency in decision making. It will ensure

cultural safety and an enduring connection to family and community by opening a pathway for the child to pursue meaningful participation in Annual Reviews, case planning, contact decisions and placement decisions. These are all occasions during engagement with the child protection service system where the child has a right to be heard but they are often overlooked or reluctant to participate.³⁰²

Recommendations

22. The following sections of the *Children and Young People (Safety) Act 2017* be amended to mirror the requirement of the Court and the South Australian Civil and Administrative Tribunal to provide reasonable opportunity for children and young people to personally present their views unless they are not capable of doing so:
 - a. Section 85: Annual reviews
 - b. Section 157: Internal reviews
 - c. Section 95: Review by Contact Arrangements Review Panel
23. That the legislated functions of Recognised Aboriginal and Torres Strait Islander Organisations be expanded within the *Children and Young People (Safety) Act 2017*, in line with Recommendation 18, to include appointment of an Aboriginal cultural support person or child advocate to ensure the participation of children and young people in all significant decisions and to advocate on their behalf generally and where the Act provides they have right to be heard or to have a decision reviewed.

Placement

The intention of the Placement element of the Principle is to enable children who cannot reside with their parents to remain connected to their family, and immersed in their culture, language and land through placement with their community.³⁰³

The United Nations Conventions on the Right of the Child underpins and upholds the intent of the Placement element. United Nations Conventions on the Right of the Child recognises a child's right to be cared for by people who respect their culture and language, when they are unable to be cared for by their parents; it also recognises the inherent right of Aboriginal children to enjoy their culture, language and customs.³⁰⁴

The placement element endorses a hierarchical model for placement of Aboriginal children to be prioritised as follows:³⁰⁵

- with Aboriginal and Torres Strait Islander relatives or extended family members, or other relatives and family members; or
- with Aboriginal and Torres Strait Islander members of the child's community; or
- with Aboriginal and Torres Strait Islander family-based carers.

The Act outlines the legislated placement hierarchy for Aboriginal children and young people in care in South Australia as follows:³⁰⁶

- A member of the child or young person's family;
- A member of the child or young person's community who has a relationship of responsibility for the child or young person;
- A member of the child or young person's community;

- A person of Aboriginal or Torres Strait Islander cultural background (as the case requires), (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);
- If an Aboriginal or Torres Strait Islander child or young person is unable to be placed with a person referred to in paragraph (a), or it is not in the best interests of the child or young person to do so, the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture (determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom);

If the above preferred options are not available, as a last resort the child may be placed with:

- non-Indigenous carer or in a residential setting.

If the child is not placed according to the highest priority, the placement must be within close geographic proximity to the child's family.

The priority is to place the child with a family member, someone in the child's community who has a relationship of responsibility for the child, followed by a member of the child's community and finally, a person of Aboriginal or Torres Strait Islander cultural background. However, the Act does not specify placement with an Aboriginal person until the fourth level of the hierarchy, which is "significantly out of step with the best practice hierarchy and legislation in other jurisdictions".³⁰⁷

In South Australia, the proportions of Aboriginal children and young people reported as being placed in compliance with the Principle's placement hierarchy (i.e., in a relative or kin placement or with an Aboriginal foster carer) has decreased over time (from 66.8% on June 30 2013 to 60.7% on June 30 2023).³⁰⁸ Nationally, a similar decrease has been observed, from 67.2% on June 30 2013 to 63.2% on June 30 2023.³⁰⁹

Finding family

Implementing the placement element of the Principle requires a comprehensive approach across legislation, policy, programs, processes, and practice. The family and those with cultural authority for a child should be the primary source of information for determining their care placement.³¹⁰ To achieve this, the best practice approach is to ensure that Aboriginal family led decision-making has occurred involving the child's Aboriginal family and community connections, before a placement decision is made.³¹¹

For Aboriginal children, kinship care with Aboriginal relatives and kin provides connection to culture, community, language and cultural identity, essential for resilience and social and emotional wellbeing and in disrupting cycles of cultural dislocation and destruction.³¹² Aboriginal kinship care has also been demonstrated to provide children with the same, if not better, emotional, social, cognitive and developmental outcomes as foster care and non-Aboriginal kinship care.³¹³

The Inquiry heard that there is an issue with the definition of 'kinship'; the Department determines that placements are deemed compliant with the Principle when the carers are non-Aboriginal or are not recognised according to Aboriginal culture and kinship rules. Chief Executive for the Department confirmed in affidavit evidence that when a child is "placed with family and the placement is supported by Aboriginal Family Support Services, then it counted as Kinship".³¹⁴ The counting rules of kinship do not reflect the definition of family in the Act which states "any person related to the child or young person in accordance with Aboriginal or Torres Strait Islander traditional practice or custom".³¹⁵ Current practice is a violation of the Principle and is unethical. SNAICC have expressed that placements that create a degree of separation from Aboriginal family and culture cannot rightly be deemed as compliant with the intent of the Placement principle.³¹⁶

Finding

28. The Department for Child Protection is inappropriately applying a broader definition of 'kinship' to kinship care. For Aboriginal children this does not guarantee an Aboriginal kinship placement in accordance with Aboriginal customary rules of kinship.

Implementation and adherence to the placement element presents two major challenges: the apparent scarcity of Aboriginal carers and the inconsistent knowledge and skills among practitioners. These issues both impact and are impacted by family scoping. The lack of Aboriginal carers can be attributed to various factors, including a shortage of effective ways to identify family relationships and evaluate potential carers.³¹⁷ Meanwhile, the lack of worker familiarity with Aboriginal kinship systems and relationships can result in workers not knowing how to identify a child's full range of family and kinship ties.³¹⁸

Poor family scoping practices result in a lack of knowledge about a child's family and kinship connections and may be driven by uninformed assumptions, differing value systems, systemic racism, or a crisis-driven approach.³¹⁹ This often leads to placement with non-Aboriginal carers and/or residential care. Additionally, past adversarial engagement with the Department and ongoing scrutiny or care concerns may deter some family members from wanting involvement with the Department.³²⁰ This highlights the need for improved family scoping practices that are informed, culturally sensitive, and consider the perspectives and experiences of Aboriginal children and young people and their families.

The Nyland Report highlighted that in making decisions for Aboriginal children and young people, Families SA (the then child protection agency) relied on speaking to family members to identify a suitable kinship carer, without a full understanding of family and community dynamics.³²¹ The Alexander Review acknowledged that properly retrieving information about a child's family background is a complex and time-consuming process that requires access to genealogical records and recommended that a dedicated Family Scoping Unit be established.³²²

A 2018 baseline analysis of the best practice implementation of the Principle in South Australia identified both a commitment by the South Australian Government, following the Nyland Royal Commission, for improved early identification of appropriate carers for Aboriginal children and young people and the establishment of a Family Scoping Unit with the main goal of identification of family members as safe care options.³²³

Despite these commitments, the Inquiry heard that there are ongoing problems with family scoping in South Australia. In practice it is either happening too late or without the input from the Aboriginal family or community. Staff of the Department informed the Inquiry that the current mechanisms for family scoping are inadequate, resulting in family not being identified, and therefore not being involved in the decision-making about a child. Contemporary practices in relation to family scoping are largely limited to internal consultation with Principal Aboriginal Consultants and the internal family scoping program.³²⁴

While Aboriginal family and community, who are the knowledge holders and authority for their children and young people, are best placed to identify family and kinship placements, the role of finding family is currently embedded in the Department as an Aboriginal-led program called Taikurtirna Warri-apinghi, previously known as the Family Scoping Team; the program was developed by the Aboriginal Practice Directorate.

Taikurtirna Warri-apinghi program was piloted across six metropolitan offices.³²⁵ Alongside family scoping, sits a Thinking Circle that aims to act as an Aboriginal governance mechanism, embedding "cultural legitimacy into practice by empowering Aboriginal employees' voices, skills and cultural knowledge".³²⁶ The cultural oversight, accountability and responsibility belongs in the Aboriginal community, not within the statutory system. The policy does not centre the Aboriginal family and community's voice.

Aboriginal children and young people eligible for referrals to Taikurtirna Warri-apintheta must be on orders not exceeding 12 months and have no appropriate placement within the placement hierarchy identified.³²⁷ In affidavit evidence, the Chief Executive for the Department stated that mapping for placement is key to the implementation of the Principle.³²⁸ This is incorrect; the key to proper implementation of the Principle is to ensure that family scoping for Aboriginal children occurs with the child's family and community at the earliest opportunity before they are placed on orders.

The Inquiry sought further information from the Department about the evaluation and success of Taikurtirna Warri-apintheta that underpinned the decision to expand the program to all metropolitan offices in October 2023. The Department told the Inquiry that the program received a total of 116 referrals between June 2022 and October 2023, prior to the roll out of the program to all metropolitan offices.³²⁹ The program

has since received 41 referrals between October 2023 and February 2024.³³⁰ Of the 157 total referrals received, which relate to 174 Aboriginal children and young people, 23 referrals for 42 Aboriginal children and young people resulted in Aboriginal kinship placements. This represents 24.1% of Aboriginal children and young people referred.

The decision to expand the Taikurtirna Warri-apintheta program off such a small success rate, as opposed to appropriately funding and resourcing the Aboriginal community to fulfil this function, is further evidence of the Department's drive to control decision-making for Aboriginal children.

Finding

29. Family scoping to identify placements for Aboriginal children is wrongfully in the control of the Department for Child Protection. Finding family is the responsibility of the Aboriginal community. Government is not the knowledge base for Aboriginal families, genealogy and kinship systems, nor connected through engagement or relationships of trust to be able to fulfil this role.

The Independent Inquiry into Foster and Kinship Care (the Foster Care Inquiry) reported that, though the Department indicate that they are guided to apply the placement principle, submissions to the Foster Care Inquiry from Aboriginal carers indicated that: “[DCP] case workers are placing children in foster care because it is easier than family scoping for Aboriginal kinship care and, when family scoping is conducted, it is not done properly. [They] also reported receiving threats from the Department, telling them if they don’t accept the child, they will go to residential care”.³³¹

Submissions to the Foster Care Inquiry received from foster carers reported no family scoping being performed, and, where family scoping had been done, one submission reported that the Department took six years to confirm the child’s Aboriginal identity, family and community. The Foster Care Inquiry also heard submissions from foster carers that the Department’s family scoping unit was understaffed and, when family scoping was done, it was often not done thoroughly or accurately.³³²

The placement of Aboriginal children in non-Aboriginal placements was one of the key themes during Aboriginal community engagement for this Inquiry. The Aboriginal community was deeply concerned about the inadequate scoping of family and community placement options, leading to Aboriginal children and young people being placed with non-Aboriginal carers. Aboriginal community members indicated that once a child had been placed in a care arrangement, little effort was made to scope for other placement options, with the child’s perceived attachment to their carer cited as a key factor. The Aboriginal community were strong in their messaging about the lack of invitation and involvement in decision-making for placements.

“DCP are not doing much to see who the children’s mob is. DCP saying can’t find out where they are from, but it can be clear to me as Aboriginal community member”.

– Western Metro Aboriginal Community Forum

“If DCP say there aren’t extended family, they are lying because there is! We need DCP to look at family through our lens, not through a white perspective”.

– Murray Bridge Aboriginal Community forum

“No effort to look for family carers when there are options. This needs to be the highest priority for DCP”.

– Port Lincoln Aboriginal Community forum

“Where is the work for the finding and bringing together of family?”

– Port Augusta Aboriginal Community Forum

Thirteen community and agency submissions highlighted the inadequacy of family scoping³³³ and the lack of timeliness of this occurring, noting a preference that this occurs as early as possible and parallel to the investigation and assessment process.³³⁴ Several submissions drew attention to the non-compliance or inconsistency in the application of the placement hierarchy and the child’s right to a voice and participation in decision making.

In the Inquiry’s review of case files, 11 of the 30 cases included a referral to the Department’s Aboriginal Family Scoping Team or the Aboriginal Family Finding and Mapping team. The Aboriginal Family Scoping Team was unable to accept the referral in four cases due to not accepting referrals at that time or having no capacity to allocate the case. In two cases the Aboriginal Family Scoping Team advised that they were unable to assist in family scoping due to insufficient information being provided.

In cases where a referral to Aboriginal Family Scoping Team was made, that referral occurred on average 37.6 days following the removal of the child, with the time of the referral ranging from 5 days prior to removal to 126 days after.

Of the 30 case file reviews, the placements as of March 2023 indicated that:

- Eight children had been reunified with either a parent or family member (with four of those being Aboriginal parents or family members).
- 11 children were in kinship placements, of which seven were Aboriginal kin.
- Eight children were in foster care, of which only one was an Aboriginal carer.
- Two children were in residential care, of which one was managed by Aboriginal Family Support Services; and
- One child had self-placed with a third party.

Thirteen of the 30 children were residing with Aboriginal family or carers. While there appears to be improvement in the rates of children being placed with Aboriginal carers or kin, the rates are still not considered satisfactory to the true intent of the Placement Principle.

“If you keep removing children, you’re going to keep dealing with the collateral damage for generations to come....”
– Dr Tracy Westerman.³³⁵

Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community.³³⁶

Finding

30. Current efforts to locate Aboriginal family when placing Aboriginal children are often inadequate and do not occur in a timely manner, resulting in the placement of Aboriginal children with non-Aboriginal carers. The misplaced use of Eurocentric attachment theory results in Aboriginal children remaining in non-Aboriginal foster placements, even when Aboriginal family are subsequently identified.

Recommendation

24. That the legislated functions of Recognised Aboriginal and Torres Strait Islander Organisations be expanded within the *Children and Young People (Safety) Act 2017*, in line with Recommendation 18, to include family scoping for identification of family and community placement options for Aboriginal children.

Placements of Aboriginal children in consultation with Recognised Aboriginal and Torres Strait Islander Organisations

Prior to the repeal of the *1993 Child Protection Act*, the legislation stated that “no decision or order may be made under this Act as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a recognised Aboriginal organisation”.³³⁷

The current Act now requires that “before placing an Aboriginal or Torres Strait Islander child or young person, the Chief Executive or the Court (as the case requires) must, where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation”.³³⁸ The inclusion of the wording ‘where reasonably practicable’ has significantly changed the practice of consultation and has weakened the requirement for the Department to consult with the Recognised Aboriginal and Torres Strait Islander Organisation prior to any decisions being made about the placement of Aboriginal children.³³⁹

The Department’s leading policy to guide placement are the *Manual of Practice* and the *Aboriginal and Torres Strait Islander Child Placement Principle Practice*

Paper which reiterates the legislative requirement.³⁴⁰ The Department’s policy states that “consultation with a Principal Aboriginal Consultant and with the recognised Aboriginal organisation, Aboriginal Family Support Services is best practice and should occur prior to any placement decisions”.³⁴¹

In practice, the process of undertaking the consultation involves the Department completing a proforma template, providing details of the child and their family including reasons for removal and what efforts have been made to place the child within the placement hierarchy. The Department provides this to the Recognised Aboriginal and Torres Strait Islander Organisation who, using a similar proforma template, respond within 48 hours of receiving the documents. The Recognised Aboriginal and Torres Strait Islander Organisation response outlines whether they consider the Principle hierarchy has been adhered to and provides practice and case guidance to assist the Departments’ practitioner in finding a more suitable placement, as well as appropriate referrals for both the child and their family.

Finding

31. The Department for Child Protection is non-compliant with the legislative requirement to consult with the Recognised Aboriginal and Torres Strait Islander Organisation prior to the placement of Aboriginal children and young people, and is failing to act on recommendations made by the organisation.

Recommendation

25. Reinststate the Aboriginal Family Care Program and amend the *Children and Young People (Safety) Act 2017* to set out the functions of an Aboriginal Family Care Program, inclusive of Recognised Aboriginal and Torres Strait Islander Organisation functions, and allocate funding to meet contemporary arrangements in line with Recommendations 16 and 18.

In providing oral evidence to the Inquiry, senior Aboriginal Family Support Services staff raised major barriers regarding the Recognised Organisation Consult. When analysing the data on Recognised Organisation Consultations, Kerry Rogers, Senior Manager Cultural Clinician at Aboriginal Family Support Services who oversees the gazetted function team, stated that despite the legislative requirement, Recognised Organisation Consultations are not sent for every placement of Aboriginal children.³⁴² During the 2022–2023 financial year, Aboriginal Family Support Services reported that they received 469 requests, which may represent a larger number of children.³⁴³ The Department reported 624 Aboriginal children were placed on Guardianship orders during the same reporting period.³⁴⁴ This demonstrates the Department's failure to fulfil its legislative requirement for mandatory consultation prior to the placement of Aboriginal children.

In her evidence to the Inquiry, Kate Wright stated that the level of consultation and information “varies office to office, team to team, location to location” and that “cultural consideration comes last in a process”.³⁴⁵

Aboriginal Family Support Services stated that Recognised Organisation Consultations can appear to be lacking information, prohibiting Aboriginal Family Support Services from making informed decisions about the placement of Aboriginal children.³⁴⁶ Often there is a lack of information around the family tree or genogram and kinship relationships are often not considered;³⁴⁷ this could be attributed to the Department's practitioners' lack of knowledge and understanding of Aboriginal kinship structures and the application of a Eurocentric lens. These practices can result in practitioners failing to delve further into the kinship structure of the child beyond the immediate family. Successful identification of Aboriginal family and kinship carers requires properly resourced local level, Aboriginal community-based mechanisms.

Aboriginal Family Support Services stated further that Recognised Organisation Consultations appear to be used with a ‘cut and paste’ approach, with the same, and sometimes incorrect, information provided for different Aboriginal children and families.³⁴⁸ This approach was observed throughout case file reviews. Ms Rogers identified that Active Efforts are not applied to the Recognised Organisation Consultation and often the Department's rationale will be simply “we looked and there was no safe family, and that's it”.³⁴⁹

Finding

32. The Recognised Organisation Consultation appears to be a tokenistic, tick-box exercise where the Department for Child Protection fails to consider the submissions made by the Recognised Aboriginal and Torres Strait Islander Organisation in relation to placements of Aboriginal children and young people.

Ms Rogers provided further evidence about how placement decisions are not revisited where the Recognised Aboriginal and Torres Strait Islander Organisation does not consider the placement compliant with the hierarchy.³⁵⁰ Ms Rogers explained that the common practice for consultation is at the point of the Aboriginal child's first placement and does not occur for additional placements. For example, the Department may consult when an Aboriginal child is placed in emergency care but when they are placed on long term orders and moved to another placement, the Department do not provide Aboriginal Family Support Services with another Recognised Organisation Consultation for succeeding placement decisions. This practice is a failure to comply with the legislative requirement.

The case file reviews found that for the 30 children, there were a total of 80 placement decisions made and consultation with the Recognised Aboriginal and Torres Strait Islander Organisation occurred in 57 of those decisions. There were 23 placement decisions where no request for consultation with the Recognised Aboriginal and Torres Strait Islander Organisation was recorded on file.

The average time between a placement of a child and a request for consultation being made with the Recognised Aboriginal and Torres Strait Islander Organisation was 22 days, for those children who were identified as Aboriginal at the time of the placement decisions being made. Of the 57 consultations with the Recognised Aboriginal and Torres Strait Islander Organisation, four requests were made prior to the placement of the child occurring; four requests were made on the same day as the placement occurred, and 11 requests were made within one to two days of the placement. 13 requests occurred within three to 10 days of the placement occurring, and 18 requests occurred more than 10 days after the placement occurred, ranging from 110 days to 481 days, noting that may be when the child was identified as Aboriginal.

Of the 23 placement decisions where consultation did not occur, nine placements were made with no rationale for non-consultation; for four of the placements, the child had not yet been identified as Aboriginal; another four placements were emergency placements for a period of one to two days and the Department consulted on the subsequent placements. In five of the 23 placement decisions, the child was reunified with their parents; although workers may consider that reunification does not require consultation with the Recognised Aboriginal and Torres Strait Islander Organisation because it is not a placement decision, the standard of Active Efforts requires consultation be undertaken.

Thirty of the 57 placement decisions where a Recognised Organisation Consultation was made, the Recognised Aboriginal and Torres Strait Islander Organisation either did not support the placement or only supported the placement on a short-term basis and recommended that family scoping be undertaken as a matter of urgency. For many of these placement decisions, the child remained in the placement despite the Recognised Aboriginal and Torres Strait Islander Organisation's determination and recommendations. This evidence, combined with Aboriginal Family Support Services evidence, demonstrates the Department often fails to heed advice provided during the consultation on placement of Aboriginal children.

Placements of Aboriginal children with Aboriginal family and kin

National reporting on compliance with the Principle identifies compliance as including the placement of an Aboriginal child or young person in a kinship placement, regardless of the Aboriginality of the kinship carer, or otherwise with an Aboriginal carer.³⁵¹ Overall, the literature suggests that a significant proportion of Aboriginal children and young people are placed in non-Aboriginal placements, which represents a “system failure that contributes to dislocation in Aboriginal families and communities”,³⁵² and indicates a failure to adhere to the placement hierarchy.³⁵³

Approximately 62% of Aboriginal children in South Australian Out-Of-Home Care are in non-Aboriginal care.³⁵⁴ Whilst the lack of successful family finding programs and mechanisms exist, this can also be attributed to a reluctance of Aboriginal people being recruited as carers. Barriers for Aboriginal people becoming carers include feeling that they are being surveilled by the Department, the risk of having their own children removed and the significant distrust between Aboriginal people and the child protection service system. The Inquiry heard that the Department continue to hold the power, even when Aboriginal Community Controlled Organisations are managing the placement of a child in care and supporting the kinship carer.

“Family need to be supported when children placed with them”.

– Northern Metro Aboriginal Community forum

“Kids in kinship care but welfare still watching, even when orders expired, they still watching”.

– Pipalyatjara Aboriginal Community member

Further barriers to recruiting Aboriginal carers include the carer approval process

that requires a number of assessments and criteria; some of which set an impossible standard for Aboriginal people when considering the systemic racism experienced in the criminal and child protection system contexts.

“There’s lots of Nungas not becoming foster carers because of the difficulty being approved”

– Gawler Community Forum

“Carers are judged unfairly and wrongfully, especially Aboriginal kinship carers”

– Port Pirie Community Forum

In accordance with the legislation, children may only be placed with approved carers,³⁵⁵ the approval process for carers is to be undertaken and determined by the Chief Executive of the Department (delegated decision-making power is given to the Manager of Carer Assessment and Review Unit).³⁵⁶ The Department’s practitioners are guided through the approval process by the *Carer approvals, agreements and cancellations for family-based carers* policy which provides the carer approval criteria that applicants must meet:

- Hold a current Working with Children Check,
- Not a prohibited person under the *Child Safety (Prohibited Persons) Act 2016*,
- Demonstrate an understanding of the child or young person’s needs and ability to meet these needs,
- Capability to manage family dynamics/interactions and contact with the birth family in ways that keep the young person safe.³⁵⁷

Where non-Aboriginal carers are approved to care for Aboriginal children and young people, the approval is reliant on those carers to attend cultural awareness training and demonstrate cultural competencies, knowing and capacity to support the child’s ongoing relationship with their extended family, community and connection to culture.³⁵⁸

Evidence of the requirements is included in

the carer assessment report. For Aboriginal carer applicants, the carer assessment reports can be undertaken by Aboriginal Kinship Care Support Program providers, such as KWY, Aboriginal Family Support Services and Incompro, with the exclusion of the pre-assessment child protection history checks.³⁵⁹ The approved assessment tool for kinship carers is the Winangay Aboriginal Kinship Care Assessment tool. This tool was developed by Winangay Resources, an NSW Aboriginal-led organisation and was implemented into the Department's practice during the 2019–2020 financial year.³⁶⁰ Winangay Resources develop "evidence based, trauma informed, culturally safe resources that embed self-determination for Aboriginal families, kin and communities".³⁶¹

The carer assessment report is provided to the Carer Assessment and Review Unit for approval; Carer Assessment and Review Unit also conducts a child protection history check. The child protection history check also applies to all household members, significant others and frequent visitors to the house. The Department's *Manual of Practice* directs that a case worker 'should, where reasonably practicable, obtain written consent from the proposed temporary carer and adult household member for checks'.³⁶² When written consent is not able to be obtained, workers should first obtain verbal consent.

Where the Carer Assessment and Review Unit and the Department's practitioner consider that an Aboriginal carer should not be approved, they are guided to consult with a Principal Aboriginal Consultant to ensure that a cultural lens has been applied across the process.³⁶³ However, no cultural lens is applied through the formal process of obtaining a Working with Children's Check, as it is undertaken by the Department of Human Services.

"Not being enough Aboriginal families versus restriction on families becoming carers based on criminal histories".
– Western Metro Aboriginal Community forum

The requirement for 'significant others' and 'frequent visitors' to the home to be assessed for risk is problematic for Aboriginal families and can result in family members being excluded from the home, causing division within families. In particular, it can result in the extended family being prevented from providing support and accommodation to a struggling family member, particularly one of the parents of the child being placed. The requirement relies on a Eurocentric view of family and support networks, and as such embeds a cultural bias that discriminates against Aboriginal people.

As the *BetterStart Report* indicates, Aboriginal families are significantly more likely to be notified to the Department than non-Aboriginal families. With this in mind, the requirement to have a clear child protection history to be deemed an approved carer limits the number of potential carers available for an Aboriginal child. Further, there is no capacity to correct any malicious or inaccurate reporting recorded on the Department's case management system. In practice, families are often not provided with an explanation for their non-acceptance as carers and given limited opportunities to address the concerns or correct any inaccurate information.

"Quite often kin are excluded early because there is no way they are going to make it through the Working with Children Check process"
– DCP Supervisors Forum

Throughout engagement for the Inquiry, Aboriginal community members perceived the carer assessment and approval process placed undue focus on past information, such as criminal history, resulting in potential carers being rendered ineligible without proper consideration of current circumstances. The Inquiry heard that the issue in practice is that the Department undertakes criminal history and child protection history checks prior to the application of kinship carers and without consent, as a way of eliminating, who they deem to be, unsuitable carers for the child.

“Make it easier for Aboriginal community to become foster carers, we need a different pathway and approach for assessing Aboriginal foster carers”.

– Murray Bridge Aboriginal Community forum

“Assessment for Aboriginal community members to become carers is a not a suitable process and not culturally appropriate”.

– Gawler Aboriginal Community forum

Further, the Inquiry heard that limited opportunities were presented to potential carers to discuss any issues that the Department saw as ‘red flags’, such as historical notifications or historical criminal incidents, ranging from shoplifting to minor driving offences, as well as mental health problems and other to historical misdemeanours that have no relevance or impact on their ability to provide safe and appropriate care for the child. This practice was also observed throughout the case file review.

This experience is not isolated to South Australia. Recently, the Queensland Family and Child Commission published a report on the analysis of provisionally approved kinship carers who subsequently received a Blue Card negative notice, the Queensland equivalent of Working with Children Checks. The Queensland Family and Child Commission reported that the Blue Card review process focused on “how the applicant’s offending history may present concerns regarding the applicant’s ability to ensure the best interests of children. None of the assessments discuss details of instances whereby the applicant is known to have caused harm to an individual child.”³⁶⁴

The Queensland Family and Child Commissioner found, “the implications of not approving a kinship carer are likely to result in the child residing with a stranger and/or in a residential care placement, compromising their family and cultural connections and impacting on their right to physical and relational permanency”.³⁶⁵

The *Children and Young Person (Safety) Act 2017* provides for temporary placements in circumstances where the carer is not yet approved, or an approved carer has not been identified.³⁶⁶ The Department should place children under this mechanism as a default position, opposed to non-Aboriginal approved foster carers, while Aboriginal carers await the approval process. This approach will prevent Aboriginal children entering non-Aboriginal care.

Throughout the Aboriginal community forums, the Inquiry heard a number of instances where the Department exercised powers of removal and placed children with relatives as unapproved carers but did not provide any support or follow up to the kinship carers. Historically, informal care arrangements existed in policy through the former Department for Community Welfare’s and organisations such as the former Aboriginal Child Care Agency supervised the placement. The Department for Community Welfare provided a basic subsidy to the carer to support the informal care arrangement. This arrangement ensured Aboriginal children were supported to remain safely in the care of family, community and culture, without state intervention.

Findings

33. The relevant carer approval policy includes the approval of kinship carers and subjects them to the legislation intended to minimise the risk to children posed by persons who work or volunteer with them (*Child Safety (Prohibited Persons) Act 2016*). Requiring kinship carers to undergo a Working with Children Check assessment and satisfy the Prohibited Persons Act can be a barrier to their carer approval status and kinship placement. This policy lacks sensitivity in responding to the needs of each particular child and carer and their pre-existing relationship.
34. The use of section 77 of the *Children and Young Person (Safety) Act 2017*, which provides that children can be placed with an unapproved carer is an underused provision in the Act, which would give Aboriginal children greater access to wider family and kinship care immediately.

The Inquiry found no evidence of current mechanisms within the child protection service system that provides for informal care arrangements. When families have the opportunity to come together for placement decisions for a child, agreements reached may not involve a statutory removal but involve supported care within the family structure.

Finding

35. There is no policy or practice for supporting informal care arrangements within the Department for Child Protection. Known successful informal care arrangements required the state to financially support the placement without supervising the care arrangements, as this was the funded responsibility of an Aboriginal Community Controlled Organisation.

Recruitment of Aboriginal carers

Aboriginal kinship carers provide an important role in supporting families and providing care for kin.³⁶⁷ While the vast majority of foster and kinship carers identify that caring for the children in is rewarding, kinship carers may not have time to prepare for their roles as carers and may feel little control or agency over the decision to become a carer.³⁶⁸ Kinship carers have identified that, in addition to a number of child-focused motivators, decisions to care for kin are prompted by a sense of duty and obligation to the meet needs of children within their families and preserve their families by ensuring children are not placed in non-relative care, preventing another Stolen Generation.³⁶⁹

Kinship care can lead to better outcomes for children than other forms of care, such as the preservation of children's cultural identity through family connections. Still, there are different characteristics for older and younger kinship carers, with the latter often being overlooked.³⁷⁰ The lack of support from child protection and government agencies for kinship carers is also a concern.

Kinship carers face various issues such as a lack of information, training, and access to services, financial vulnerabilities, and difficulties with respite care.³⁷¹ Kinship carers are also more likely than foster carers to be older, experience greater levels of poverty, have health problems and be single carers.³⁷² For Aboriginal kinship carers, these issues are compounded by a lack of cultural appropriateness, historical disadvantage, and socio-economic disadvantage. Aboriginal kinship carers have expressed the

need for formal intervention and support services that are culturally appropriate, including recruitment, assessment, training, and support processes.³⁷³ However, the support provided to Aboriginal kinship carers is often less than that provided to non-Aboriginal carers, and processes attached to Aboriginal kinship care do not take into account culturally specific communication, parenting, environments, relationships and households.³⁷⁴

The Inquiry heard that the Aboriginal community felt that there was one set of rules for non-Aboriginal carers and another for Aboriginal kinship carers. Aboriginal community expressed frustration and disempowerment when reflecting on their experiences as kinship carers stating that there is not enough support or resourcing to ensure placements are successful.

“Kinship carers need to be getting the same supports/services as foster carers”.
– Gawler Aboriginal Community forum

“Alternatives to making grandparents carers as a default”.
– Southern Metro Aboriginal Community forum

“Carers give up a lot in life to care for children under guardianship but we aren't given the resources to support children. Especially if we work, at times we sacrifice our time and leave requirements to support children in our care, but this isn't acknowledged by DCP, we're expected to use our own resources”.
– Port Pirie Aboriginal Community forum

One Aboriginal carer shared her experiences with the Inquiry stating: “We were praised by DCP for the immediate positive and growing change in the children and how well the children were doing in our care, the relationship with these children were strong and rewarding. DCP had told us we were the best people for them, however, DCP were very quick to knock us down when we raised cultural matters and that was the barrier. There are so many Aboriginal families who want to help bring the children home and give them a safe place to be with their people, but it is not that easy and I have felt stripped of my pride, worth and spirit during this process, I have always wanted to be a foster carer but the barrier is the lack of acceptance, understanding and acknowledgement to the culture, we want to bring back the children who have lost and are losing their identities during the removal process”.

Submissions from Aboriginal carers highlighted poor treatment by the Department and the need for better support of kinship carers to maintain successful placements.³⁷⁵ Consistent, transparent and respectful communication and information sharing were the most frequently mentioned with poor information sharing during transition planning being of particular concern.³⁷⁶ Other examples of support needs included adequate financial support, access to respite care, and training and support for managing trauma and complex behaviours. There was also a need to recognise the importance of family relationships, with one submission giving an example of the kinship carer being told by the Department she could not have any communication with mother when the child was placed with her.³⁷⁷

Finding

36. There is no distinct Aboriginal kinship care service system in South Australia that is legally independent of the Department for Child Protection.

Recommendation

26. Design, develop and implement a new approach specific to Aboriginal Kinship Care, in partnership with the Aboriginal community and the Aboriginal community-controlled sector. The profile of Aboriginal Kinship carers and their needs are different and Aboriginal kinship care should be developed as a distinct service type with its own legal, policy, financial and practice systems that recognise the difference and full potential of this type of care.

Connection

The Connection element of the Principle aims to maintain the cultural identity of Aboriginal children and young people by keeping them placed and connected within their own extended family, local community, or wider community and culture.³⁷⁸

The Connection element emphasises the rights of Aboriginal children and young people, which is upheld by the United Nations Conventions on the Rights of the Child, to be brought up within family, to stay in contact with their families and to enjoy their own culture, religion and language.³⁷⁹ The maintenance of Aboriginal children and young people’s cultural identity and connections with their families, communities, and country is critical to their wellbeing, identity and the preservation of their cultural heritage.³⁸⁰

As Aboriginal cultures are both heterogeneous and dynamic, cultural care planning needs to be individually tailored for each child and ongoing over time; a cultural care plan should be a living document and must be trauma-informed from an Aboriginal perspective.³⁸¹ Because family is central to cultural identity, establishing and maintaining connection with children and young people’s Aboriginal family is at the heart of cultural care planning.³⁸²

Further, there must be accountability mechanisms in place to monitor the requirement of state authorities to support Aboriginal children and young people in maintaining their cultural connections on an ongoing basis. Reunification of Aboriginal children with their families and kin must also be prioritised. This extends to continued scoping of the viability of reunification, in

partnership with family, kin and community, even after the making of long-term guardianship orders.³⁸³

Case planning for cultural maintenance

When connection, and the wider Principle are not properly implemented, it can lead to the separation of Aboriginal children and young people from their families, communities, and culture, which removes their right to a secure future and strong Aboriginal identity.³⁸⁴ Eurocentric perspectives on Aboriginal cultures struggle to engage with the more nuanced and subjective nature of cultural connection.³⁸⁵ The undermining of cultural identity strongly impacts on the future cultural roles held by children and the transmission of intergenerational cultural knowledge.³⁸⁶ Aboriginal children have the right to identify as Aboriginal without any negative consequences or doubts about their identity.³⁸⁷ However, the “risk of cultural loss and assimilation is heightened” for children and young people in care.³⁸⁸

Best practices approaches are models that support Aboriginal children and young people in maintaining or re-establishing connections to their family, community, culture, and country.³⁸⁹ This includes the need for workers and carers to provide a duty of care and be accountable for cultural care arrangements and for appropriate legislative and policy frameworks to be in place to meet cultural care needs.³⁹⁰ Furthermore, there needs to be a revised policy and practice approach for supporting and preserving family relationships and increased funding for collaboration with Aboriginal Community Controlled Organisations.³⁹¹ The inclusion of Aboriginal cultural workers and embedding of Aboriginal culture in programs is also highlighted as key to promoting positive outcomes for Aboriginal children.³⁹²

In his evidence to the Inquiry, Associate Professor Paul Gray referred to Professor Muriel Bamblett on why the denial of cultural identity is detrimental to the needs of Aboriginal children and young people:³⁹³

“Cultural identity is not just an add-on to the best interests of the child. We would all agree that the safety of the child is paramount...Denying cultural identity is detrimental to their attachment needs, their emotional development, their education and their health. Every area of human development which defines the child’s best interests has a cultural component. Your culture helps define how you attach, how you express emotion, how you learn and how you stay healthy.”³⁹⁴

The Act specifies that a case plan must be prepared and maintained for each child or young person who is under guardianship, care or custody pursuant to the Act.³⁹⁵

The *Children and Young People (Safety) Regulations 2017* provide that the Chief Executive must, in preparing a cultural maintenance plan, take reasonable steps to consult with an appropriate Aboriginal Community Controlled Organisation or member of the Aboriginal or Torres Strait Islander community to which the child belongs.³⁹⁶ It is important to note that the legislation treats contact with family separately to cultural maintenance plans.

The cultural planning tool for Aboriginal children and young people in Out-Of-Home Care is the Aboriginal Cultural Identity Support Tool; the tool was previously a separate document but has since been embedded within the case plan. An Aboriginal Cultural Identity Support Tool is mandatory for every Aboriginal child and young person in care and aims to promote their connections to family, community, and culture.³⁹⁷ Policy states that an Aboriginal Cultural Identity Support Tool must be regularly reviewed and updated, and that the Aboriginal child, their family and kinship network should be supported to be active participants in decisions around case planning.³⁹⁸

The Department’s *Annual Report 2022–2023* reported the proportion of Aboriginal children and young people in care with a current and approved Aboriginal Cultural Identity Support Tool is 91.3%.³⁹⁹ On the face of it this is an impressive achievement, but what is yet to be assessed is the quality and implementation of the Aboriginal Cultural Identity Support Tools. The Department is required to report on the extent to which Aboriginal Cultural Identity Support Tools are developed with input from local Aboriginal communities and organisations but has consistently failed to do so.⁴⁰⁰ Practitioners are guided by policy to ensure that the child’s family and those with significant kinship relationships to the child are active participants in the development and implementation of the child’s Aboriginal Cultural Identity Support Tool,⁴⁰¹ but not guided about how to find an appropriate Aboriginal community member or Aboriginal Community Controlled Organisation connected to the child’s community.⁴⁰² The Aboriginal Cultural Identity Support Tool prompts the case worker to record details such as family, kin, or Elders who have been consulted in the development of the Aboriginal Cultural Identity Support Tool or whether a Principal Aboriginal Consultant was consulted, however, the Chief Executive of the Department confirmed that this data is not recorded in a quantifiable manner.⁴⁰³

The Department has also failed to report on the extent to which agreements made in case planning are supporting the cultural needs of Aboriginal children and the extent to which Aboriginal children have access to a case worker, community, relative or other person from the child’s community.⁴⁰⁴ In her oral evidence to the Inquiry, the Chief Executive stated that she had taken comfort in the Director of Aboriginal Practice supporting the efforts towards increasing the number of completed Aboriginal Cultural Identity Support Tools but was unable to determine what cultural oversight is provided for cultural maintenance plans to ensure the child’s cultural needs are being met.⁴⁰⁵

The Department's *Manual of Practice: Case planning, review and annual review chapter* outlines a number of principles for practitioners to uphold when undertaking case planning; for Aboriginal children and young people. The policy highlights the need to:

- Demonstrate Active Efforts in decision-making that are developed in partnership with family, kin and community including Aboriginal Community Controlled Organisations,
- Promote cultural safety by respecting Aboriginal children and young people's Aboriginality and encouraging their sense of self and identity,
- Promote permanency for Aboriginal children with family, kin, culture and country.⁴⁰⁶

The *Manual of Practice* reminds practitioners of the right of Aboriginal children to know about and connect with their cultural identity and heritage, in line with the United Nations Declaration on the Rights of Indigenous Peoples.⁴⁰⁷

The Inquiry heard that the Aboriginal Cultural Identity Support Tool is failing to translate to Active Efforts to support connection to family, culture, community which are key to the effective implementation of the Principle.⁴⁰⁸ The *Manual of Practice* guides the practitioner to recognise the wider definition of family for Aboriginal children and the important role the family and other community members can play in providing cultural support during cultural maintenance planning.⁴⁰⁹ Substantial guidance and instructions on how to develop a tailored plan to the child's specific cultural needs and customs are not embedded in policy. The *Aboriginal and Torres Strait Islander Child Placement Practice Paper* includes reflective

practice questions but fails to instruct the practitioner on useful and effective cultural maintenance methods. Review of training materials on the Aboriginal Cultural Identity Support Tool identified inadequate as it reduced the tool to a mere administrative task involving completing a form.⁴¹⁰

The Aboriginal Cultural Identity Support Tool template requires information about the Aboriginal child and their family, including the child's specific Nation or Language group (if known), important cultural kin relationships and any connections to cultural organisation and services, and whether a cultural mentor has been nominated. The practitioner records events and activities the child will attend as part of the cultural maintenance plan and is guided to consider such factors as attendance at family events, attendance for 'Sorry Business', events that support 'cultural exposure' including NAIDOC and Reconciliation Week, age-appropriate ceremonies and traditions and other cultural learning material such as books, television, art, or online media.⁴¹¹

The Act requires the Chief Executive of the Department to report on the extent to which cultural maintenance plans are developed with input from local Aboriginal communities or organisations, but has consistently failed to do so,⁴¹² citing that the barrier to compliance with this reporting is the way the case management system collects the data in an unstructured data field.⁴¹³ In policy, practitioners are guided to ensure that the child's family and community are active participants in the development and implementation of cultural maintenance plans,⁴¹⁴ however they are not guided on how to find an appropriate Aboriginal community member or an Aboriginal Community Controlled Organisation appropriately connected to the child.



Finding

37. The Department for Child Protection is not compliant with its annual reporting obligations under section 156 (1) (a) *Children and Young People (Safety) Act 2017*, regarding the extent of input from local Aboriginal and Torres Strait Islander communities and organisations in the development of cultural maintenance plans; the extent to which cultural maintenance plans are meeting the cultural needs of Aboriginal children; and the extent to which Aboriginal children have access to people from the same Aboriginal or Torres Strait Islander community as them.

The case file reviews identified poor and infrequent engagement and consultations with family, kin or Elders in the development of Aboriginal child's cultural maintenance plan. The default position is to consult with Principal Aboriginal Consultants. Only four out of 30 cases involved consultation with an Aboriginal Community Controlled Organisation, community member or Recognised Aboriginal and Torres Strait

Islander Organisation in the development of a cultural maintenance plan. It was observed that where records of consultations with Principal Aboriginal Consultants were located in case files, the consultation related to consultations about removals or at other decision-making points, not specific consultation about the development of the cultural maintenance plan.

Finding

38. The consultation on the development of cultural maintenance plans for Aboriginal children is not occurring in accordance with the Regulations. The consultation should occur with an Aboriginal or Torres Strait Islander Organisation, or member of the Aboriginal or Torres Strait Islander community to which the child belongs; instead, where consultation does occur, it occurs with a Principal Aboriginal Consultant.

It was observed in the case file review that the use and implementation of Aboriginal Cultural Identity Support Tools in cultural maintenance planning fell short of meeting the needs of Aboriginal children in Out-Of-Home Care. Seven out of 30 files did not contain a record of an Aboriginal Cultural Identity Support Tool. The quality of the cultural maintenance plans were poor, with limited targeted and meaningful actions to ensure the child's connection with culture was nurtured or maintained.

In case file 11, the child's father informed the Department of the need for the child to participate in cultural business, as is required in accordance with the father's specific cultural customs and values. There was no evidence on file to suggest that this request was actioned or even discussed any further for the duration of the child's time in care; the child was not supported to visit his father's country and attend cultural business.

The cultural maintenance plans recorded on case files 11 and 25 requested Aboriginal family members to undertake cultural awareness training. This is deeply offensive and demonstrates a poor understanding of what is required to support cultural maintenance for Aboriginal children. It is the role of the Aboriginal community to develop, implement and review cultural maintenance plans for Aboriginal children. The Aboriginal child's family and community understand what is required for specific and meaningful cultural development, in accordance with their own Aboriginal language group and culture.

"We have to stop this welfare taking our kids and putting them in whitefullas hands, it's no good for them, when they grow up that way, they lose their culture and healing, and everything is English English English! They need to speak their own language, need to speak Pitjantjatjara".

– Yalata Aboriginal community member

Finding

39. Government does not understand what is required to meet Aboriginal children and young people's cultural needs. Government cannot facilitate the connection of culture; it is for the Aboriginal community to fulfil this responsibility.

The South Australian Guardian for Children and Young People's submission to the Inquiry highlighted the issue of quality assurance for Aboriginal Cultural Identity Support Tools and stated that her Office's annual review audits identified concerns regarding the extent to which key indicators of cultural support were actually incorporated into the lives of Aboriginal children in care.⁴¹⁵

Despite the existing legislative and policy requirements, the Inquiry heard that in practice, Aboriginal children and young people in care are not involved in the development of their cultural maintenance planning and not supported to maintain their cultural connections. During consultation for the Inquiry, Aboriginal young people in Out-Of-Home Care described an overwhelming lack of support for their connection to family and to culture. This was echoed in Aboriginal community forums, the Department's staff forums and several submissions.⁴¹⁶ Aboriginal community and Aboriginal children and young people described the Department's efforts in maintaining connection to culture as generic and superficial, with activities limited to NAIDOC events, watching NITV and reading books by Aboriginal authors. This sentiment was also observed throughout the case file review.

"Our kids need specific connections to country, culture, community and family. Sometimes it's too generic and doesn't provide a sense of connection that's real and meaningful for our kids".

– Port Pirie Aboriginal community forum

Aboriginal community reinforced that cultural identity is developed and maintained through authentic connection with Aboriginal family, community and country. The Inquiry heard that Aboriginal children in care are provided limited opportunities to return to their country, even when country is accessible. Aboriginal community were strong in their message to the Inquiry that residential care is not appropriate for Aboriginal children and their disconnection from culture is exacerbated through these institutions.

"Been pushing for family access. Meeting place would be ... Have tried several times. They make a time and date to meet but it never happens. ... always come up with an excuse. I see the disappointment in her eyes. Other siblings that she didn't even know about. All in care in another community ... I have to keep saying it. keep telling story over and over. Lucky to get phone call to say they [the workers] coming over ... Only can give them [the workers] phone contact or video chat".

– Oodnadatta, private session

"Only seen him once this year – he doesn't even know who I am he calls me aunty. Can't see them until they're 18 ...Keep asking when can I see my kids. You're making me lose my mind. They're looking at me like I'm a ... freak. They keep saying to me there's no funding for the travel ... They keep saying I'm an emotional wreck ... I haven't seen my kids ever since ...They keep asking me do you feel like harming yourself – I said youse are trying to make me look like I'm a psycho or something. I'm just built up, the anger...".

– Coober Pedy, private session

In Aboriginal community forums and sessions with children in care the Inquiry heard it is common for older children, particularly in residential care to self-place. At a private session a young child described constantly trying to get home from residential care, to be with his family forever. He said "They know I love my mum".

Tragically this child had been in over 50 care placements, which he described as having “2000 carers”. The response from the Department when he returned home was to threaten his mother with prosecution.

Such sad and unsatisfactory outcomes are not in the best interests of Aboriginal children and do not pay any attention to their deeply held wishes. Such outcomes maybe mitigated by making Active Efforts at reunification after long term orders are granted.

Currently the Department is trialling a family finding program through KWT focussing on transferring Aboriginal children out of residential care to family care. Such efforts are supported but it should also extend to children in non-Aboriginal care who self-place and the reunification effort should also be applied to the parents of the child. It points to another missed opportunity by the Department to apply the Principle fully.

Finding

40. There are Aboriginal children in residential care who are continually self-placing with their family of origin without consideration of reunification.

“One young girl lost her language because she was taken”.

– Ceduna Aboriginal Community forum

“Our culture is the foundation of their growth... kinship is so critical to our kids it forms their identity”.

– Whyalla Aboriginal Community forum

“All kids want a connection to culture”.

– Gawler Aboriginal Community forum

“More funding for cultural activities and returning to country”.

– Port Lincoln Aboriginal Community forum

“Cultural planning to identify family connections, language group, language programs required tapping into the local community members to support this cultural connection”.

– Murray Bridge Aboriginal Community forum

“There are major gaps in cultural connection, DCP are not listening”.

– Southern Metropolitan Aboriginal Community forum

“Keeping family connected is so important. Provide cultural programs for kids in care, that are designed, managed and led by Aboriginal people like taking them out on country”.

– Port Pirie Aboriginal Community forum

Findings

41. There is no external cultural oversight and quality assurance for the Aboriginal Cultural Identity Support Tool and cultural maintenance planning.
42. There is a lack of compliance with the appointment of cultural mentors for Aboriginal children in care, in accordance with the Aboriginal Cultural Identity Support Tool. It is for the Aboriginal child's family to identify and appoint an appropriate cultural mentor.
43. The Department for Child Protection applies a generic and superficial approach to cultural maintenance. The Aboriginal Cultural Identity Support Tool is not effectively understood and utilised to nurture or maintain cultural identity and connections to family, community and country for Aboriginal children in care. Aboriginal children and young people in care are often disconnected from their cultures. For Aboriginal children in residential care, disconnection is exacerbated.

Recommendation

27. *The Children and Young People (Safety) Act 2017 and Children and Young People (Safety) Regulations 2017* be amended to expand the functions of Recognised Aboriginal and Torres Strait Islander Organisations to include the development of cultural maintenance plans for Aboriginal children, in line with Recommendation 18.

The Inquiry also heard evidence about the use of Aboriginal Life Story Books, which are books provided to Aboriginal children in care, for the child and their carers to add details about the child's family and culture. Aboriginal young people told the Inquiry that if they were given an Aboriginal Life Story Book, it was left to them to add information or photos to it and described it as a scrapbooking exercise. One young person told the Inquiry *"it's [Aboriginal Life Story Book] useless...I chucked it away, it was a reminder of a horrible experience"*. When asked who should be responsible for the Aboriginal Life Story Books work, Aboriginal young people said it should be the responsibility of their family members or someone with a connection to them.

The Inquiry heard from the Aboriginal community that Aboriginal Life Story Books cannot be a replacement for genuine connections to culture through relationships with family and community.

"Life story books aren't done properly"
– Mount Gambier Aboriginal Community forum

"Life story books are too generic. I identified a page that requests a court document that states the child has been removed and placed into OOHC. This is inappropriate and reminds me of the paperwork blackfullas used to get to be allowed off the mission to be 'considered a white man'".

– Murray Bridge Aboriginal Community forum

The South Australia Guardian for Children and Young People stated in her oral evidence to the Inquiry that her office has observed life story books can contain non-age-appropriate information about why the child has entered care, as well as a general non-compliance in providing them to Aboriginal children.⁴¹⁷

Identification

The Act defines an Aboriginal child as a descendant of the Indigenous inhabitants of Australia and regards themselves as Aboriginal or is regarded as Aboriginal by at least one of their parents.⁴¹⁸

The Department's policy guidance regarding identification of Aboriginal children and families is contained in the *Aboriginal and Torres Strait Islander Child Placement Principle Practice Paper*. While the practice guidance references to the legislative requirements, the Department's training materials indicate that the practice position is that self-identification is the only requirement for practitioners to apply the Principle.⁴¹⁹ Whilst it is acknowledged that for some families, identification is a sensitive and complex topic given the impacts of the Stolen Generations and the disconnection of identity and culture, this is in conflict with the Act. Self-identification as a standalone requirement creates an issue where there may be contradictory accounts of Aboriginality and Active Efforts are not applied to determine Aboriginal descent of the child and family.

The case file review observed several cases where identification in practice did not involve Active Efforts. For example, case file 5 where the family believed that they may have Aboriginal heritage but did not identify as Aboriginal and did not wish to identify the child as Aboriginal, yet the child remained identified as Aboriginal on the system and this information does not appear to have been followed up with any further conversations as practitioners changed over time.

Case file 7 where the child's father and paternal grandfather identified as Aboriginal three months after the removal of the child. The Department heard from the paternal grandmother that the paternal grandfather had never previously identified as Aboriginal, and she had no knowledge of their Aboriginality.

Case file 8 where the child's father had diagnosed mental illnesses and intellectual disabilities. The father had provided inconsistent accounts of Aboriginality, identifying with multiple Aboriginal nation groups, across various states. The child's paternal aunts and uncles, who shared the same parents with the child's father, did not identify as Aboriginal and had no knowledge of their brother's Aboriginality.

Case file 21 where the mother stated that she and the child were Aboriginal, yet other maternal family members denied any knowledge of Aboriginal heritage.

Case file 26 where the mother had identified herself and her children as Aboriginal, however the Department received contradictory information from the child's older sibling and other family members that the mother was potentially misleading the Department and other organisations regarding her claims of Aboriginality.

Further case files indicated that identification of Aboriginal children was not occurring during the initial stages of contact with the Department. In some cases, this was understandable due to new information coming to light for family members, but others indicated that the Department were not actively seeking to identify Aboriginality.

Additionally, the Inquiry heard that Aboriginal Family Support Services have occasionally observed that when the Aboriginality of a child and their family is in question, the Department have sought DNA testing for confirmation.⁴²⁰ This practice

is deeply concerning and demonstrates further evidence of the need for cultural oversight by the Aboriginal community due to the Department's inadequate understanding of how to confirm identity and community connections.

Failing to confirm Aboriginality to the standard of Active Efforts has implications on the maintenance, or establishment, of Aboriginal children's connection to culture. Cultural maintenance planning becomes difficult due to limited options to genuinely connect children with their culture, which results in generic and superficial activities and approach.

In his evidence to the Inquiry, the Deputy Chief Executive of the Department indicated his intentions to undertake work in shifting the control of cultural maintenance plans back to the family, partnering with the Aboriginal community on the design and implementation.⁴²¹

The misidentification of children and young people may have further implications for their identity as they get older and are required to comply with the more fulsome definition and test of Aboriginality applied in other contexts.

The Inquiry heard from Professor Muriel Bamblett that the work to deidentify children must be done when the system wrongfully identifies them as Aboriginal.⁴²² Professor Bamblett also shared that as part of cultural support planning, confirmation of Aboriginality for all Aboriginal children in care is required.⁴²³

Finding

44. The Department for Child Protection's practice in identifying Aboriginal children and families does not uphold the definition of an Aboriginal child in the *Children and Young Person (Safety) Act 2017*. The practice of only requiring self-identification runs the risk of responding to a young person as Aboriginal when there may not be any connection or heritage.

Connection and contact

The cultural identities of Aboriginal children and young people are best supported through consistent and meaningful contact with their family, kin and extended community.⁴²⁴ Best practice for family contact for Aboriginal children and young people in care involves recognising the child's right to maintain connections with family, with legislation allowing contact with family to be court-ordered.⁴²⁵ Resourcing the implementation of contact arrangements through Aboriginal Community Controlled Organisations and ensuring a high level of quality and safe contact with family are also considered best practices.⁴²⁶ Where contact must be supervised, Aboriginal families feel safer and more comfortable if the staff supervising the contact are Aboriginal because of the common approaches to contact, communication and understanding of the parent's circumstances.⁴²⁷

As well as being enshrined in various Articles and Standards of the United Nations Convention on the Rights of the Child, the right to connection with family is recognised in *South Australia's Outcomes Framework for Children and Young People* and the *Charter of Rights for Children and Young People in Care*.⁴²⁸ The Charter highlights the importance of keeping in regular contact with siblings, family, friends, and other significant people in their lives.⁴²⁹

Despite the need for cultural connection for Aboriginal children and young people in care, a 2018 study identified that less than half of Aboriginal children and young people in care are reported to have contact with their parents' community.⁴³⁰

The Act provides that "it is desirable that the connection of children and young people with their biological family be maintained".⁴³¹ For Aboriginal children, the Act provides that they "should be given the opportunity for continuing contact with their family, community or communities and culture".⁴³²

The Act confers power to determine contact

arrangement to the Chief Executive of the Department,⁴³³ making contact an administrative decision rather than rights based. The Act provides that in making contact determinations, the Chief Executive must have regard to whether reunification is likely or not, as it will determine the primary aim of the contact arrangements. If reunification is likely, then the primary aim is to establish or maintain attachment between the child and the person they will be reunified with; if reunification is not likely, the Chief Executive must give particular consideration to the need to not undermine or compromise the ability of the child to establish or maintain attachment relationships with their carer.⁴³⁴

The Department's *Manual of Practice* states that it is essential for children in care to be supported to maintain and build connections with important people in their lives, which may include their parents, kin, siblings, extended family, friends, previous carers and other significant people to them.⁴³⁵ In making contact determinations for Aboriginal children in care, practitioners should consider whether the contact supports them to maintain connections to family, culture, community and Country, the child and their family's views about contact and the quality of previous contact and relationship with the significant person.⁴³⁶ A notice of the contact determination must be provided in writing to the parent or other family member setting out the frequency, duration and venue details of the contact arrangements, as well as any other provisions as may be considered appropriate by the Chief Executive and reasons for a provisions set out in the determination⁴³⁷ the notice should also outline the rights to review the decision.⁴³⁸



The case file reviews and Aboriginal community forums identified that the requirement to provide contact determinations in writing is not consistently complied with. It is important to note, the legislation outlines that failure to comply does not, of itself, invalidate a contact determination, however, this does not provide procedural fairness for families. It is important to note that in seeking external reviews of contact decisions, families are unable make proper applications to the Contact Arrangements Review Panel without a written contact determination and may not understand or have been notified of their rights to review without this notice.

Currently the only method to review a contact decision made by the Chief Executive is the Contact Arrangements Review Panel. Applications for review must be completed within 14 days after the determination is made.⁴³⁹ When reviewing contact determinations involving Aboriginal children, the Contact Arrangements Review Panel Procedure states that the Panel must give specific consideration of the five elements of the Principle, and the Panel must include a Principal Aboriginal Consultant who was not involved in the original determination decision.⁴⁴⁰ There is a lack of transparency regarding who is appointed to the Panel by the Minister for

Child Protection and the level of cultural understanding and responsiveness they possess in exercising their discretion. There is also a lack of procedural fairness to the applicant given that determinations are made without providing opportunity for the applicant to be heard orally. Neither Act, nor policy require the Contact Arrangements Review Panel to hear the voice of the child, unless the child themselves makes an application for review. The voices of children and families are critical in these decisions and the proper application of the Principle.

Decisions about contact are disconnected from policies that attempt to ensure connection to family, community and culture because contact with family is dealt with separately in case plans and not scoped within the child's cultural maintenance plan.

The Aboriginal community members identified that children were being deprived of their right to cultural connection due to insufficient opportunities to connect with family, with contact arrangements reported to be inconsistent and often limited. It was further noted that sibling contact arrangements were not prioritised, and where contact with parents was not taking place, efforts to maintain sibling connections also lapsed.

Finding

45. Contact is not treated as a rights-based need of the Aboriginal child. This is not consistent with international standards as applied by the Federal Circuit Family Court of Australia. Instead contact is dealt with by administrative arrangements of the Department for Child Protection.

The South Australian Guardian for Children and Young People informed the Inquiry that there needs to be significant investment in maintaining family relationships for children in care, and in particular sibling contact.⁴⁴¹ This is not only important in helping children understand and build a narrative about why they are in care but is also vitally important for when they leave care. The Guardian's submission also noted that contact with family members and significant people to children and young people in care features among the top presenting issues with requests for advocacy by the office.⁴⁴²

Submissions highlighted that contact with family is facilitated in cold, sterile and culturally unsafe environments supervised by the Department.⁴⁴³ These environments do not enable Aboriginal children to be organically immersed in their culture. There was a preference for contact to occur in more natural settings like at home and for this to be managed by family in a natural way where possible.⁴⁴⁴ One submission observed a lack of consistency in contact arrangements which appeared to be based on the resources available to the Department at any given time.⁴⁴⁵

Analysis of the case file review identified that in 13 out of the 30 cases, there was no evidence that contact determination letters were provided to family members. In 12 of the 30 cases, there was inconsistent record keeping of contact determination letters and five cases where they were included in the case file. Three cases sought review by Contact Arrangements Review Panel.

It was apparent across the case files that where case direction changed from reunification to long-term guardianship, contact was significantly reduced.

Case file 1 where contact commenced at 90 minutes per week before being reduced to once per month due to long term guardianship orders being granted.

Case file 2 contact commenced for one hour, twice weekly, before being reduced to one hour per week following the decision to apply for long term guardianship orders.

Case file 24 contact commenced at one hour, twice weekly, before being reduced to once monthly following the decision to apply for long term guardianship orders.

Case file 29 contact commenced at 90 minutes, twice weekly, before being reduced to once weekly following the decision to apply for long term guardianship orders.

This was echoed throughout the Aboriginal community forums where community members shared numerous stories of meagre contact arrangements and highlighted that one of the reasons often given by the Department for reducing contact between the child and the family was that it was considered it too traumatic and unsettling for the child.

In his evidence to the Inquiry, Associate Professor Paul Gray provided a profound analogy of the learning to re-establish relationships within family and the Department allowing space for this occur, stating: "when we're teaching kids to ride a bike, when they fall off, we don't just respond to that distress and pain and frustration by throwing the bike away and saying look well, we tried, that hurt you so we're not going to do it. We also don't encourage them to continue developing that skill by insisting that they only ever ride their bike if we're holding onto it. Because sure, that might make the child safe from falling, but they'll never actually grow to master the skill of riding a bike or enjoy everything that can come with, with that...We will always impose limitations on the child around that and there will be this underlying sense of fear and anxiety about cycling. And so likewise, I think our efforts to protect children in Out-Of-Home Care from that distress and confusion that can come with that disconnection and trying to navigate those family spaces. If we do it in that way of just cutting it off or holding it too tightly, I think we can sort of interrupt their opportunity to process and to heal and to move forward with that within their families."⁴⁴⁶

Finding

46. Contact is not adequately facilitated for Aboriginal children and young people, and they are not afforded the right to have contact with their siblings, family, communities and culture.

Recommendation

28. That the *Children and Young People (Safety) Act 2017* be amended to:
- a. remove the power conferred to the Chief Executive of the Department for Child Protection in section 93 and give powers to the Youth Court to make orders in relation to contact with family, and
 - b. abolish the Contact Arrangements Review Panel.

Reunification

One of the most confronting findings of the data analysis is the increasing proportion of Aboriginal and Torres Strait Islander children being placed onto Guardianship orders until 18 years of age. Every year since 1991, the proportion of Aboriginal children being placed on a Guardianship orders has increased, while the proportion of non-Aboriginal children placed on Guardianship orders has remained relatively stable.⁴⁴⁷ One in 10 Aboriginal children born in 2000–2003 were removed on long-term Guardianship orders by age 17, if we fast forward 15 years later, we see that this has increased to 1 in 10 children by age 5, for those born in 2015–2016.⁴⁴⁸

The greatest increases of children on long-term orders have occurred at young ages. In 2010, the number of Aboriginal children placed on long-term orders before they turned one, was 1 child in every 70. For infants born in 2020, this had increased to 1 in every 24 Aboriginal children being placed on long-term guardianship orders before their first birthday.⁴⁴⁹

What the data shows is that not only are more Aboriginal children being removed from their families and culture at increasing rates, but this is also occurring at much younger ages and with less of those children being returned to family. The consequence is that their opportunities to form meaningful connections are severed more frequently, far earlier and often irreparably.

While the numbers of children placed on long-term guardianship orders increased, the numbers of children who are reunified with their families has decreased over the past decade. The data analysis measured reunification rates of children with their families at 6 months, 12 months and 24 months after their first Out-Of-Home Care placement. The data was compared longitudinally and revealed that rates of reunification have decreased year on year for both Aboriginal and non-Aboriginal children; however, the decrease in reunifications

is more pronounced for Aboriginal children. For Aboriginal children placed in Out-Of-Home Care for the first time in the 2011–2012 year, 51.4% of those children had been reunified with their families within 24 months. However, for children removed in the 2018–2019 year, just 28.9% had been reunified by 24 months. This demonstrates an absolute decrease of almost 22% in reunification rates over a 7-year period.⁴⁵⁰ The most recent data on reunification rates in South Australia shows a further 25.1% decrease over the last five years, with the current rate for 2022–2023 being 3.8%. This is abhorrent.

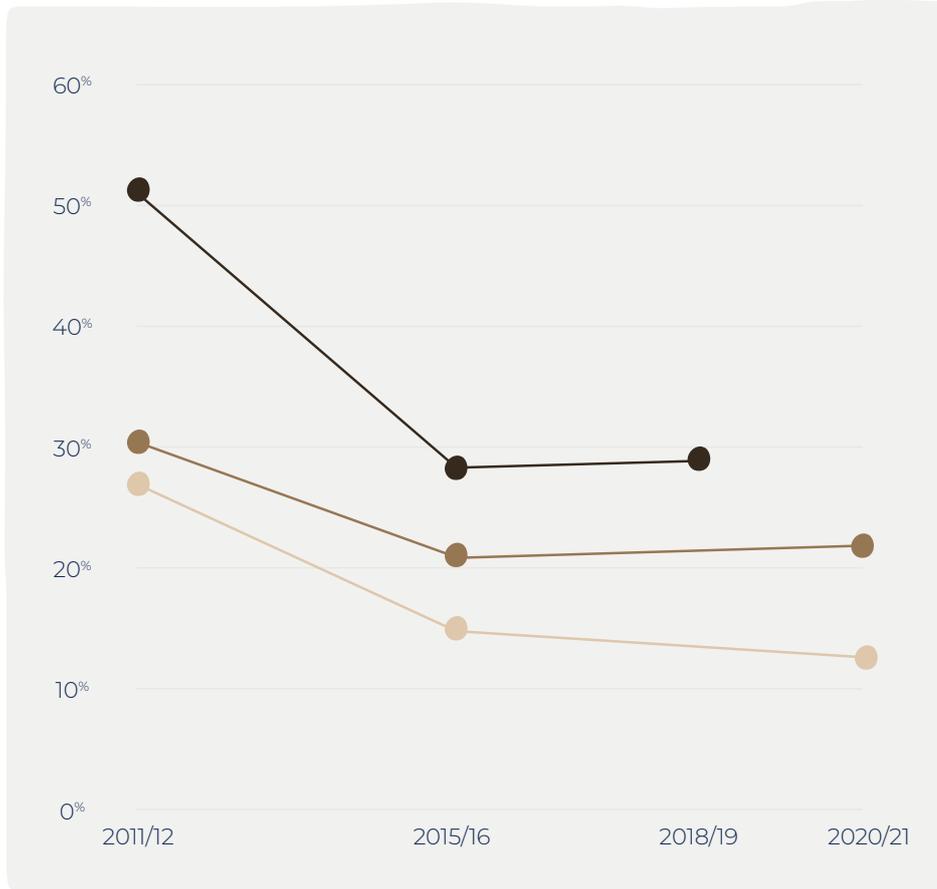
One major reason for this increase of long-term guardianship orders is the current emphasis on early decision-making in the legislation where decisions should be taken in a timely manner and, “in particular, should be made as early as possible in the case of young children in order to promote permanence and stability”.⁴⁵¹ There has been a trend towards “timely decision-making” within the Department which is outlined in the *Permanency Planning Practice Paper* that “decisions about the viability of reunification must be made within six months for children under the age of two years, due to their critical need to develop a secure attachment relationship with a carer, and within twelve months for children over the age of two years”.⁴⁵²

This emphasis on timeliness and permanency planning results in decisions for long-term placements being made earlier, giving families less time to address the child protection concerns. The legislative provisions and policies impact significantly on Aboriginal parents who are required to demonstrate insight, change in behaviour and learning to parent effectively in a short period of time to satisfy the Department.

This issue was raised by several of the submissions to this Inquiry, where it was noted that the timeframes for reunification were inadequate and that a longer period was required for families to receive the support they needed.⁴⁵³

Reunification Rates for Aboriginal Children

Reunification rates for Aboriginal and non-Aboriginal children placed in out-of-home care continue to decrease.*



Aboriginal children

● % reunified at 6 months

● % reunified at 12 months

● % reunified at 24 months

In **2011/12**, around **1 in 4** Aboriginal children were **reunified** with their families **within 6 months** of entering out-of-home care. Fast forward **10 years** and this has **decreased to 1 in 8**.

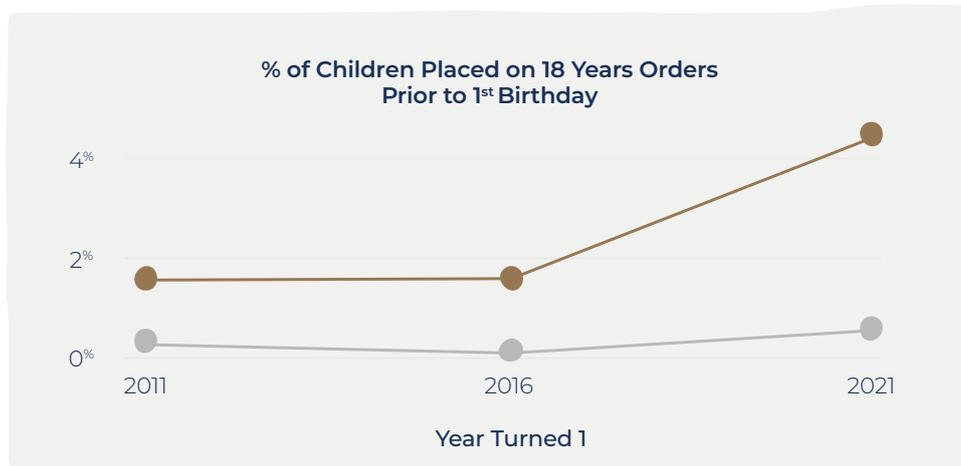
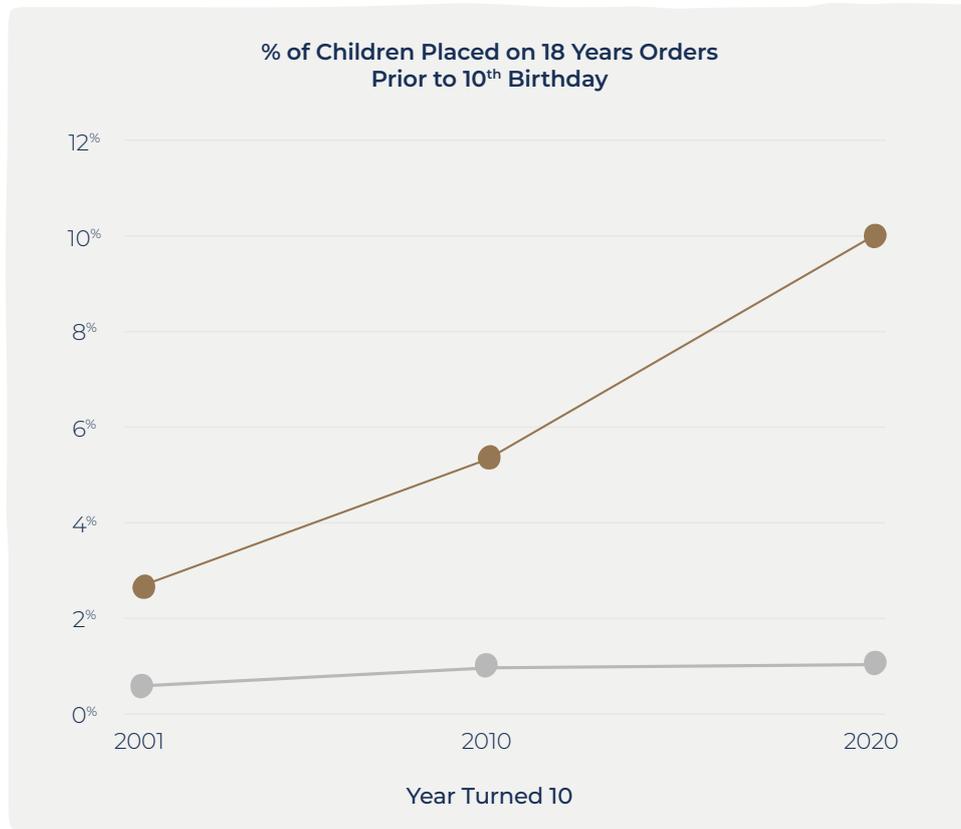
In **2011/12**, **1 in 2** Aboriginal children were **reunified** with their families **within 24 months** of entering out-of-home care, compared to around **1 in 4** by **2018/19**.

* Note that reunification rates for Aboriginal and non-Aboriginal children show a similar trend.

Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Guardianship to 18 Years Orders

The number and proportion of **Aboriginal children placed on Guardianship to 18 years orders** has **increased dramatically** over the past 20 years compared to non-Aboriginal children.



● Aboriginal Children ● Non-Aboriginal Children

Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Key Messages



Aboriginal children are being placed on these orders at an increasingly younger age.

1 in 48 Aboriginal children who turned 10 years old in **2001** were placed on a **Guardianship to 18 years order**.

Fast forward nearly **20 years** and this has increased to **1 in 11** Aboriginal children.*



The **biggest increase** in Guardianship to 18 years orders was for **Aboriginal children under 1**.

1 in 70 Aboriginal children born in **2010** were placed on a **Guardianship to 18 years order** before their 1st birthday.

Fast forward **10 years** and this has increased to **1 in 24** Aboriginal children.**

* Compared to 1 in 600 non-Aboriginal children who turned 10 years old in 2001 and 1 in 149 non-Aboriginal children who turned 10 years old in 2020.

** Compared to 1 in 900 non-Aboriginal children who turned 1 year old in 2011 and 1 in 310 non-Aboriginal children who turned 1 year old in 2021.

Source: Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, The University of Adelaide.

Finding

47. Reunification is rarely considered after a long-term guardianship order is made severing connection to family and culture when placement is made to non-Aboriginal carers. In the case of young children, the principles of intervention support permanence planning as early as possible, thereby subordinating the application and impact of the Aboriginal and Torres Strait Islander Child Placement Principle.

Reunification of children with the person or persons from whom they were removed must be considered before applying for a guardianship or custody order from the Court.⁴⁵⁴ There is no statutory limit set on the timeframe for reunification. Whilst the Court has power to make guardianship orders, and the practice is that a 12-month order is made for this purpose, the Court does not have specific powers with respect to reunification.

Currently the Youth Court requires the attendance of parents, the Department's case managers and the child representatives, with or without the child, at Reunification Court where the Judge of the Youth Court assists with keeping the parties on track with actions towards reunification. But the Court has no powers to make any orders to keep the parties on track.

Reunification should take into account the connection and placement elements of the Principle. Active Efforts for connection and placement require active participation of family and community in partnership with Aboriginal Community Controlled Organisations including Recognised Aboriginal and Torres Strait Islander Organisations. Placements with family and kin and contact with parents in the reunification context maintains active connection with family, community and culture. Importantly, cultural attachment in line with Aboriginal parenting practices is maintained whilst reunification is being attempted. This also enables reunification to be considered with participation of family and community at all annual reviews of an Aboriginal child.

The limited timeframes are unrealistic in circumstances of disadvantage, multi-generational trauma and contact with the child protection service system. The requirement for early placement decisions also fails to acknowledge Aboriginal attachment styles and Aboriginal child rearing practices, in which a network of kin with cultural obligations, in addition to the biological parents, have child-rearing responsibilities.

The Inquiry heard from Aboriginal community members that once a child is placed in Out-Of-Home Care, not enough effort is made for reunification with parents or to secure long-term family placements. Community voiced concerns that the child protection service system puts undue emphasis on a child's attachment to their carer, at the expense of reunification and experienced a lack of will to review parenting capacity and revisit reunification throughout long-term orders.

"I met all the requirements of DCP for my kids to return to me, but they kept changing the goal posts, they didn't report on all the positives things I was doing until much later".

– Port Lincoln Aboriginal Community forum

A positive reunification story was shared with the Inquiry, highlighting the important role Aboriginal workers play in supporting family and guiding the Department:

"Good outcome with reunification, the children returned to parents. Parents were supported by services to change. DCP were actively involved in supporting the kinship carer. Parents went through rehab, housing, employment and drivers license in 12 months. There was a lead Aboriginal worker keeping everyone connected and informed and doing the coordination of communication".

– Mount Gambier Aboriginal Community forum

"AC.Care reunification program exists but doesn't get any referrals from DCP, I wonder how many other programs does this happen to?".

– Murray Bridge Aboriginal Community forum

"If you give longer contact time will give mum hope, her addiction will lesson, and she can work on goals".

– Southern Metropolitan Aboriginal Community forum

Finding

48. Current efforts by the Department for Child Protection to reunify Aboriginal children with their families are inadequate. The Department for Child Protection appears to be using the reunification process to investigate and gather information to support applications for long term guardianship orders. The reunification process is not centred around the supports needed by families to succeed and often sets them up to fail. Families feel misled and the focus is on planning for permanency as opposed to reunification.

The Principle should be paramount in any decisions made about Aboriginal children, including reunification, with SNAICC reporting that: “the permanency measures tend to reflect an underlying assumption that a child in Out-Of-Home Care experiences a void of permanent connections that needs to be filled by the application of permanent care orders. This understanding fails to recognise that children begin their Out-Of-Home Care journey with permanent identity that is grounded in cultural, family and community connections...For an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanency of their identity in connection with family, kin, culture and country”.⁴⁵⁵

The need for permanency of care must not cause harm by severing the real potential for future cultural connections and reunification for Aboriginal children.

The Department’s Deputy Chief Executive acknowledged in his evidence to the Inquiry that: “*It does feel like the interpretation of ‘timely’ has translated to an arbitrary number... When I think of timely.*”⁴⁵⁶ He went on to say that timely should be interpreted as an appropriate time frame for the individual case and that this is something he would like to see changed within the legislation, to allow flexibility around those timeframes and afford people some opportunity to pursue reunification.⁴⁵⁷

There is also a reliance upon Eurocentric attachment theory which does not account for the fact that concepts and practices relating to children’s attachment and bonding differ markedly between Aboriginal and Eurocentric cultures.⁴⁵⁸ Developed from a Eurocentric perspective, attachment theory emphasises the importance of the relationship between the primary carer, usually mother, in early infancy, as providing the secure base and internal working models for emotional and physical safety, exploration and building of future relationships.⁴⁵⁹ However, in collectivist cultures, early childrearing may occur with multiple central caregivers drawn from

broader family and kinship networks, with children seen as belonging to the collective whole and having their needs met through a system of collaborative caregivers.⁴⁶⁰ Aboriginal families may include multiple caregivers caring for children, spanning generations, with children being raised by the family or clan, including multiple attachment figures.⁴⁶¹

Multigenerational shared care arrangements in which multiple people provide care for children in the same household or across households do not fit Eurocentric assessment models and are not accounted for in program design or service delivery models.⁴⁶² Culturally relevant attachment theories that recognise the strengths of Aboriginal childrearing and the attachment networks available to Aboriginal children to support their stability, identity and cultural connection, have not been adopted in mainstream child protection or family support practice.

Dr Tracy Westerman gave evidence to the Inquiry that there is no validated cultural attachment theory, and little understanding amongst the general population of the nature and strengths of kinship relationships in Aboriginal society.⁴⁶³ Dr Westerman argued that it is more appropriate to refer to attachment styles when referring to Aboriginal children and their families.⁴⁶⁴ In her study into the causes of Aboriginal suicide rates, she found that the causal pathways to suicide were highly reactive, linked to trauma and compromised attachment to family, kin and culture, and therefore were in a response to child removal.⁴⁶⁵

Recommendations

29. The *Children and Young People (Safety) Act 2017* be amended to require that the Court and Chief Executive of the Department for Child Protection must have regard to Aboriginal attachment styles and Aboriginal child rearing practices, when making decisions about reunification and long-term orders.
30. The *Children and Young People (Safety) Act 2017* be amended to provide for regular consideration of the viability of reunification at annual reviews after children have been placed under long term guardianship orders.
31. The Review of Care arrangements for Aboriginal in care should be conducted by Independent Reviewing Officers, external to the Department for Child Protection with powers to report back to the courts if the Aboriginal child's reunification, contact, cultural safety and cultural needs are not being met.
32. The *Children and Young People (Safety) Act 2017* be amended to give the Court power to make reunification orders, that such orders require reviews every two months and to make consequential orders at reviews. The Court should have discretion to extend orders if substantial progress has been demonstrated.

Performance

It is a headline recommendation of this Inquiry that a sixth element of Performance be included to the Aboriginal and Torres Strait Islander Child Placement Principle for South Australia.

The aim of the Performance element is to ensure that there are culturally appropriate accountability and oversight mechanisms for reviewing the application of the Principle and the cultural responsiveness of the child protection service system. The implementation of Performance to the standard of Active Efforts is demonstrated by accurate reporting and compliance of all elements, including comprehensive measures embedded within practice and case management systems.

Whilst national reporting mechanisms exist such as the Family Matters Report, it is clear more day-to-day, local-level oversight is needed by the Aboriginal Community-Controlled Organisations in partnership with Aboriginal families and communities.

In her evidence to the Inquiry, the Chief Executive of the Department, conceded that the current compliance measures with the Principle focus on the compliance with the placement hierarchy and “do not provide a comprehensive assessment of compliance with the five core elements of the Principle”.⁴⁶⁶ The Deputy Chief Executive for the Department reiterated this stating “we don’t currently have formal reporting in place for compliance, however that is one of the higher priorities that we have in terms of taking the organisation through its evolution process to its next stage”.⁴⁶⁷ It is clear that the Department are not able to evidence effective implementation or adherence of the Principle within their systemic practice.

In her evidence to the Inquiry, Commissioner Natalie Lewis reflected on the child

protection service system being delivered in a way that continues to fail Aboriginal children and young people, stating that “if an Aboriginal organisation was to take on those functions and demonstrated such a high tolerance for failure, they would be defunded within a reporting cycle”.⁴⁶⁸

“If we do better about implementing each element, we will do better for children and we will address... the overrepresentation that Aboriginal children make up in the child protection system”.⁴⁶⁹

Accountability and oversight

Apart from reporting to SNAICC on the compliance with the Principle’s five elements, there is no formal accountability and oversight mechanisms on the Department’s performance in working to the standard of Active Efforts, with implementation of the full Principle. The Aboriginal community and the Aboriginal Community Controlled sector must be partners in designing and determining how the Department’s compliance should be measured, assessed and managed. Performance reporting on Active Efforts is not limited to the Department, as it must include Non-Government and Aboriginal Community Controlled sectors where there has been a transfer of authority and functions.

System competency and cultural responsiveness

There is no defined Aboriginal strategy or plan by the Department for Child Protection, to improve outcomes for Aboriginal children, their families and communities. Further to this, the Department lacks a central Aboriginal business unit with Aboriginal leadership and critical mass of Aboriginal staff to lead the provision of high-level, strategic advice and policy development on improving Aboriginal outcomes.

This blind spot in the corporate governance of the Department enables an environment where cultural incompetency festers across the organisation. Aboriginal voices across leadership is important in decision-making. Aboriginal people making decisions on Aboriginal issues yields better outcomes for Aboriginal children and their families, whether it be policy, practice or financial and human resource management.

“The workforce is only as good as the extent to which the organisation guides you around difference”.⁴⁷⁰

The Inquiry heard consistently throughout its engagement with the Aboriginal community, stakeholders and the child protection service system workforce, that the current child protection service system workforce is not culturally responsive to the needs of Aboriginal children, families and communities. The Department’s staff stated that greater workplace learning is required regarding the Principle to ensure consistent application and implementation.

“DCP staff are not culturally appropriate and like to compare us to other cultures”.

– Mount Gambier Aboriginal Community forum

“DCP don’t take culture differences into account and workers lack cultural competency”.

– Murray Bridge Aboriginal Community forum

“The model of the Aboriginal Child Placement Principle is good but it’s the people who are implementing them that’s the problem, they aren’t following the instructions or guidelines of the principles. The government’s approach is systematically flawed and broken”.

– Berri Aboriginal Community forum

“Child protection system hasn’t evolved to include Aboriginal community, it’s still a western model”.

– Gawler Aboriginal Community forum

“DCP are encouraging our mob to get into the system, but we need our own system of an Aboriginal workforce of social workers, who have knowledge of our culture and practices, who respect our elders, if we could make that happen, I would work for that department. Blackfullas need their own DCP, watch what happens with our kids and with the system”.

– Southern Metropolitan Aboriginal Community forum

“There’s a huge gap in the knowledge and understanding of DCP workers about Aboriginal culture, they are lacking cultural respect”.

– Port Pirie Aboriginal Community forum

Cultural training for the Department's workforce is currently delivered through the mandatory Aboriginal Cultural Footprint training. The extent to which this training results in cultural competence is questionable. During forums with the Department's staff, participants reflected that workers learn best from experience working with community, not by training and that their tertiary qualifications did not effectively address knowledge and skills helpful for working with Aboriginal families. Despite the Aboriginal Cultural Footprint training being considered beneficial for non-Aboriginal workforce, staff stated cultural learning should be ongoing and needs to be put into practice with support and mentoring from experienced workers. Additionally, staff also expressed lack of time to complete cultural training due to high caseloads.

Cultural competency training must be designed by Aboriginal people and must be measurable and organisational culture needs to be critically assessed, even if such an assessment is confronting. Policy and procedures must be assessed and reassessed on a regular basis to ensure that the workforce is guided and that cultural factors are incorporated into the day-to-day practice.⁴⁷¹

The Inquiry heard evidence from Dr Tracy Westerman who identified that cultural incompetency within the child protection system is a leading cause of the over-representation of Aboriginal children being removed from their families.⁴⁷² She also identified that there is a cultural empathy gap which results in the system assessing the pain of Aboriginal people as less than that of non-Aboriginal people, and an assumption that Aboriginal people care less about their children than non-Aboriginal people.⁴⁷³

In her evidence to the Inquiry, Amy Cleland, an Aboriginal PhD candidate, described the different lens Aboriginal people apply, compared to non-Aboriginal people within child protection service systems stating "things like personal racism, prejudice and values" contribute to Aboriginality being viewed as a risk factor.⁴⁷⁴

"We just had different glasses on when we were looking at families compared to our non-Aboriginal counterparts...I think it has to do with predominantly non-Aboriginal people do not have a relationship with Aboriginal people".⁴⁷⁵

Further evidence was provided to the Inquiry by Dr Jacynta Krakouer that structural racism creates oppressive circumstances for Aboriginal families and the need to challenge systems on individual and community levels.⁴⁷⁶ Dr Krakouer explained that the broader inequalities in society impose barriers to health and wellbeing as well as access to services.⁴⁷⁷

Bias in the assessment of safety and risk

The current systems and processes of risk assessment are not responsive to the culture and needs of Aboriginal children. Dr Pilkington stated in her evidence to the Inquiry that "racism is inherent in the way our systems work all the way from who gets notified to who gets removed".⁴⁷⁸

Throughout community forums, Aboriginal community members told the Inquiry about several systemic issues relating to cultural bias, racism and non-compliance with the Principle. They also expressed a concern that Aboriginality is considered a deficit rather than a strength and gave examples of the number of people living in a home being seen as a risk factor rather than a protective factor for Aboriginal children.

Aboriginal staff throughout all stakeholder forums told the Inquiry they understand only

too well that what may appear a disordered or unsafe environment to a non-Aboriginal person will be seen with different eyes by an Aboriginal worker. One Aboriginal CaFS worker observed: “I went into the house with my colleague and she immediately fixated on the mess in the house, the number of people and children occupying it and the dirty dishes in the sink. She saw risk and disorder. What I saw was a very healthy baby”.

The Alexander Review noted “troubling findings about over reporting of Aboriginal children based on racist assumptions in communities and bias in assessment and decision-making approaches and attitudes of the workforce”.⁴⁷⁹ An example of cultural bias impacting Aboriginal families can be seen in an increasing cohort of Aboriginal women who reach out for help as victims of domestic and family violence. Aboriginal women experiencing domestic violence often have their children removed as a result of statutory child protection contact. While this may be present in many instances of family violence in both Aboriginal and non-Aboriginal communities, it is far more prevalent for Aboriginal women to have their children removed.⁴⁸⁰

“If you are in a DV relationship, that’s an automatic removal. You are punished for being a victim”.

– Mount Gambier Aboriginal Community Forum

Addressing cultural bias and systemic racism is essential to bringing about change. ‘Cultural ways of doing’ are key to fostering safety and this includes promoting Aboriginal worldviews, both-ways thinking, having an Aboriginal presence and having an option of Aboriginal practitioners involved in services.⁴⁸¹

Bias in the assessment of attachment and parenting capacity

There is a heavy reliance placed on Eurocentric attachment theories and concepts during parenting assessments when determining what is in the best interests of Aboriginal children and the norms and standards for parenting.⁴⁸²

The Inquiry heard evidence that the parenting capacity assessments and psychological assessments that are used in the child protection service system are all based on Eurocentric models and individualistic concepts of parenting and family. Assessments such as these are not appropriate or adaptable to take into consideration the differences in child-rearing practices or intergenerational trauma and the impact that historical child removals have had on a parent’s ability to parent their own children.

Cultural identity, belief systems, childrearing and cultural ways of learning are protective, however these concepts are very rarely reflected in policy for Aboriginal people, particularly in child protection.⁴⁸³

Dr Tracy Westerman provided extensive evidence to the Inquiry about the use of attachment styles and theories when assessing Aboriginal children and families. Dr Westerman stated current assessments and assessors use a universality of attachment theory, despite not having been tested with Aboriginal people and Aboriginal child-rearing practices.⁴⁸⁴ Previous studies have examined collective cultures, with similar child-rearing practices to Aboriginal cultures and found that collective cultures have different attachment classifications. The concept of the whole mob or community raising a child is a common cultural practice and encourages multiple attachments to meet all the child’s needs. Dr Westerman stated that no jurisdiction within Australia has embedded cultural mapping tools within their workforce to

recognise different attachments based on the Aboriginal child's emotional needs as they develop.⁴⁸⁵ Dr Westerman explained that when non-Aboriginal people assess Aboriginal children's attachment, they can misinterpret anxious and avoidant attachments to caregivers without contextualising kinship relationships and protocols.⁴⁸⁶

Dr Westerman continued by stating that attachment theory and child maltreatment assessment theories are often confused with each other, as there is a lack of understanding of cultural differences that impact parenting styles. Dr Westerman stated that when cultural difference is not being considered for alternative parenting styles, assessors will view this as a deficit.

Dr Westerman discussed the way in which child maltreatment assessments inflate child risk based on cultural differences.⁴⁸⁷ She stated that Psychologists who use them "know the test is biased" but the "the system insists on them using it and tries to adjust it for cultural difference without guidance".⁴⁸⁸ Dr Westerman said that continued use of these culturally inappropriate tests cost our Aboriginal communities, not "just generational pain and trauma but it's also costing us economically, you know, \$45 billion a year costs us to be racist".⁴⁸⁹

The case file review process identified that the use of the current Parenting Capacity Assessments within the Department focuses solely on the parents, to the exclusion of all other family and kinship ties, therefore excluding critical cultural considerations of the Aboriginal child and family. The Parenting Capacity Assessment does not encourage assessors to apply a strengths-based approach, instead viewing the Aboriginal parents within a nuclear and Eurocentric structure.

"Aboriginal mums teach kids to be more focused on the group rather than the self, right? The group is a lot more important

than the self that looks like...maternal deprivation and then when you get into skin group relationships, you know that becomes really complex because kids are taught to avoid certain attachment and that looks like avoidant attachment".⁴⁹⁰

Dr Westerman went on to explain that Aboriginal children have the ability to organise their attachments based on their emotional needs and the responsiveness of their carers:

You ask an Aboriginal kid, hey, what if you went home and no one was there waiting for you with a nice sandwich. They go "that's OK 'cause I can go to Granny's because she's always got a nice feed". "Oh, deadly what about night time? When you feel a bit scared? What would you do?", "I'd go to auntie's because she's always got a safe place for me", "What if you fell over and hurt yourself? What would you do?", "Oh, uncle, he's really good at making me feel better when I'm upset".⁴⁹¹

She noted that Aboriginal children have the ability to organise their attachments according to their emotional needs, and this is misunderstood as 'chaotic parenting' rather than a strength.⁴⁹²

Currently, there are 29 psychologists employed in the Department's Psychological Services team. Of the 29 Psychologists, 0 identify as Aboriginal.⁴⁹³ The Department's Psychological Services team is guided by the Clinical Guidelines which was updated in 2023 in collaboration with the Aboriginal Practice Directorate.⁴⁹⁴ However, outsourced Psychologists that conducted majority of assessments in 2023 were not bound by the *Clinical Guidelines*.



In her evidence to the Inquiry, Kerry Rogers discussed the need for Aboriginal Psychologists within the Psychological a Services team and noted that when she was employed with the Department “there was no challenge to those foundational knowledges and a psych assessment or evaluation was always looked at as overriding everything... my experience was they [psychologists] have not even worked with an Aboriginal family, there is no expectation that they work with an Aboriginal family”.⁴⁹⁵

*“you keep removing children, you’re going to keep dealing with the collateral damage for generations to come and irrefutably linked to child suicides, irrefutably linked to the pipeline to the justice system. Everything we are dealing with, this is the most important thing we need to fix is child removals but people have this attitude that Aboriginal people are better off with white families or outside their families because of this cultural empathy gap and in fact you know that kids have more of a likelihood of being abused in care than in their own home”.*⁴⁹⁶



The Way Forward

Aboriginal children continue to be over-represented in the child protection system and removed from their families at an alarming rate. Despite changes to legislation in response to Royal Commissions, Inquiries and Coronial Inquests, removal rates have continued to increase year after year. The evidence provided to this Inquiry shows that removal of Aboriginal children from their families does not have positive outcomes and increases the intergenerational trauma and disconnection from family, kin, community and culture.

The Aboriginal community needs to be more involved in preventing Aboriginal child removals. It is time for Aboriginal people to make decisions for Aboriginal children and their best interests. There must be change in the way decisions are made and to centre Aboriginal people in decision-making. Families of Aboriginal children must be involved early in the process and they must lead decision-making. Aboriginal parents must be given intensive and sustained support to prevent issues from escalating.

The Aboriginal community must be legally empowered and adequately resourced to implement a culturally appropriate care service system to keep Aboriginal children growing up safe and connected with family and culture. The future of our Aboriginal children needs to be in the hands of Aboriginal people.

The South Australian Government should urgently implement the recommendations of the Inquiry.

References



References

1. Guardian for Children and Young People, *South Australian child protection expenditure from the Productivity Commission's Report on Government Services 2022*, pp 8-9; Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024, *Children aged 0-17 years in care, by Indigenous status- Table 16A.2*.
2. Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024, *Children aged 0-17 years in care, by Indigenous status- Table 16A.2; SNAICC, Family Matters Report 2023*.
3. Nyland, M., Government of South Australia, *The life they deserve: Child Protection Systems Royal Commission Report*, Adelaide, August 2016.
4. Barker B, Alfred GT, Kerr T., *An uncaring state? The overrepresentation of First Nations children in the Canadian Child Welfare system*, Canadian Medical Association Journal Oct 7;186(14), 2014.
5. Ibid.
6. Sacker, A., Murray, E., Lacey, R., & Maughan, B., *The lifelong health and wellbeing trajectories of people who have been in care: Findings from the Looked-after Children Grown up Project*, 2021.
7. Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle 2023*, Adelaide: BetterStart Health and Development Research Group, p 6, p 19.
8. Priest N, Doery K, Truong M, et al, *Updated systematic review and meta- analysis of studies examining the relationship between reported racism and health and well-being for children and youth: a protocol*, BMJ Open 2021;11; Priest N, Paradies Y, Trener B, et al., *A systematic review of studies examining the relationship between reported racism and health and wellbeing for children and young people*, Soc Sci Med 2013; 95: pp 115-27.
9. Australian Government, Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, April 1997, p 104, pp107-108.
10. Ibid.
11. *Children's Protection Act 1993 (SA)*.
12. SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*, 2019; SNAICC, *The Family Matters Report*, 2023.
13. Montgomerie (n 7), p 6.
14. Child Development Council (South Australia), *South Australia's Outcomes Framework for Children and Young People*, 2023; Guardian for Children and Young People South Australia, *Charter of Rights for Children and Young People in Care*, 2021, p 66.
15. DCP, *Annual Report 2022-2023*, p 39.
16. Hall, Andrew., *A brief history of the laws, policies and practices in South Australia which led to the removal of many Aboriginal children: we took the children: a contribution to reconciliation*, Department for Family and Community Services, 1998.
17. Ibid, p 3.
18. Montgomerie (n 7), p 6.
19. Montgomerie (n 7), p 1.
20. Ibid.
21. Newton, B. J., Katz, I., Gray, P., Frost, S., Gelaw, Y., Hu, N., & Stephensen, J.,

-
- Restoration from out-of-home care for Aboriginal children: Evidence from the pathways of care longitudinal study and experiences of parents and children.* *Child Abuse & Neglect*, 149, 106058, 2024, p 11.
22. Guardian for Children and Young People, *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021*, May 2021.
 23. Nyland (n 3).
 24. Montgomerie (n 7), p 6.
 25. Ibid, p 5.
 26. Richards, S., *Baby removals trigger whistleblower to tell of 'inhumane' practices and mothers' trauma*, ABC News, 11 April 2024, <https://www.abc.net.au/news/2024-04-11/whistleblower-tells-of-baby-removals-at-sa-hospitals/103687624>; Richards, S., *Newborn removals at public birthing hospitals trigger review into 'heartbreaking' cases*, 4 May 2024, <https://www.abc.net.au/news/2024-05-04/review-ordered-into-sa-newborn-removals/103800006>.
 27. DCP (n 15), p 39.
 28. Child Development Council (South Australia), *South Australia's Outcomes Framework for Children and Young People*, 2023; Guardian for Children and Young People South Australia, *Charter of Rights for Children and Young People in Care*, 2021, p 66.
 29. SNAICC, *Family Matters Report 2023*, p 16.
 30. Ibid, p 20.
 31. Guardian for Children and Young People, *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021*, May 2021.
 32. Productivity Commission, Report on Government Services 2024, Australian Government, 2024, *Children aged 0-17 years in care, by Indigenous status- Table 16A.2*.
 33. Hall (n 16), pp 18-19.
 34. Ibid.
 35. SNAICC (n 29).
 36. *United Nations Convention on the Rights of the Child*, Article 19.
 37. *United Nations Convention on the Rights of the Child*, Article 30; *United Nations Declaration on the Rights of Indigenous Peoples*, UNDRIP, Articles 3-5, 18-19.
 38. SNAICC, *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*, June 2013.
 39. Submission 40, RASA, p 1.
 40. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle A Resource for Legislation, Policy, and Program Development*, June 2017.
 41. Paul Gray, Jumbunna Institute for Indigenous Education and Research, 18 October 2023, Transcript p 13.; Jacyntha Krakouer, University of South Australia, 18 October 2023, Transcript p 2.
 42. Cindy Blackstock, First Nations Child and Family Caring Society of Canada, 10 October 2023, Transcript.
 43. Jacyntha Krakouer, UniSA Justice and Society, University of South Australia, 18 October 2023, Transcript p 6.
 44. Ibid.
 45. Queensland Aboriginal and Torres Strait Islander Child Protection Peak, *Active Efforts in Practice*, March 2023.
 46. SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation of the ATSICPP*, 2019, p 3.
 47. Ibid, p 15.
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48. Adam Reilly, DCP, 27 November 2023, Transcript p 7.
49. Katina D'Onise, Wellbeing SA, 19 October 2023, Transcript p 3.
50. Ibid, pp 6-8.
51. Ibid.
52. Ibid.
53. DCP, *Safe and Well Supporting Families and Protecting Children*, December 2019.
54. Cindy Blackstock, (n 42), pp 1-11.
55. Fiona Arney, Arney Chong Consulting, 9 October 2023, Transcript p 17.
56. Rhiannon Pilkington, BetterStart, 9 October 2023, Transcript p 6.
57. Leah Bromfield, Australian Centre for Child Protection, 27 October, Transcript pp 8-11.
58. Ibid, p 16.
59. Turnbull-Roberts, V., Salter, M., & Newton, B. J., *Trauma then and now: Implications of adoption reform for First Nations children*, Child & Family Social Work, 2022, 27(2), pp 163-172.
60. Arndt, A., 'You cannot apologise for treating someone badly, without then changing your behaviour towards them in the future': *An analysis of contemporary approaches to Indigenous child removal in Western Australia and British Columbia*, Thesis, Curtin University, 2017, p 38.
61. Segal L, Nguyen H, Mansor MM, Gnanamanickam E, Doidge JC, Preen DB, Brown DS, Pearson O, Armfield JM., *Lifetime risk of child protection system involvement in South Australia for Aboriginal and non-Aboriginal children, 1986-2017 using linked administrative data*, Child Abuse and Neglect, 2019:104145, p 9.
62. Rhiannon Pilkington (n 56), p 6.
63. Ibid.
64. Montgomerie (n 7), pp 9-10.
65. Rhiannon Pilkington (n 56), p 9.
66. Montgomerie (n 7), p 5.
67. Rhiannon Pilkington (n 56), p 9.
68. *United Nations Convention on the Rights of the Child*, Article 3.
69. *Children and Young People (Safety) Act 2017 (SA)*, s 7.
70. Paul Gray, Jumbunna Institute for Indigenous Education and Research, 18 October 2023, Transcript pp 8-13.
71. Fiona Arney, Arney Chong Consulting, 9 October 2023, Transcript pp 1-17; Leah Bromfield, Australian Centre for Child Protection, 27 October 2023, Transcript pp 6-8.
72. Leah Bromfield, 27 October 2023, Australian Centre for Child Protection, Transcript; Fiona Arney, Arney Chong Consultancy, 9 October 2023; Paul Gray, Jumbunna Institute for Indigenous Education and Research, 18 October 2023, Transcript; Natalie Lewis, Queensland Family and Child Commission, 12 October 2023, Transcript.
73. Paul Gray (n 70), p 4.
74. Paul Nixon, Independent Consultant Social Worker, 17 October 2023, Transcript p 23.
75. Sacker, A., Murray, E., Lacey, R., & Maughan, B., *The lifelong health and wellbeing trajectories of people who have been in care: Findings from the Looked-after Children Grown up Project*, 2021.
76. Ibid.
77. Guardian for Children and Young People, *South Australian child protection expenditure from the Productivity Commission's Report on Government Services 2021*, p 1.
78. Commonwealth of Australia *Safe and Supported, the National Framework*
-

-
- for *Protecting Australia's Children 2021-2031, Aboriginal and Torres Strait Islander First Action Plan 2023-2026*.
79. Ibid.
80. Ibid, p 7.
81. Ibid.
82. DCP, *Safe and Well Supporting Families and Protecting Children*, December 2019.
83. Ibid, p 8.
84. Ibid.
85. Jackie Bray, DCP, 27 November 2023, Transcript p 10.
86. Leah Bromfield (n 57), p 13.
87. Government of South Australia, *Child Protection Royal Commission Report 2016: Chapter 8 Early Intervention*, pp 152-174 and Recommendations 49 to 56, p 176.
88. SNAICC (n 29), p 15.
89. Katherine Hawkins, DHS, 20 November 2023, Transcript, p 47; DHS, *Table of Supplementary Question and Responses*, 14 March 2024, p 7.
90. DHS, *Table of Supplementary Question and Responses*, 14 March 2024, p 7.
91. Ibid, p 8.
92. Ibid.
93. Ibid, p 7.
94. Kerry Beck, DHS, 20 November 2023, Transcript p 16.
95. Katherine Hawkins, DHS, 20 November 2023, Transcript p 16.
96. Australian Government Productivity Commission, *Report on Government Services 2024 Child Protection Services, Table 16A.8*.
97. Ibid,
98. Ibid.
99. DCP (n 15), pp 31-34.
100. Government of South Australia, *State Budget 2023-2024*.
101. Kerry Beck (n 94), pp 16 and 30.
102. DHS (n 90), p 8.
103. Ibid, p 1.
104. Alexander, K., *Trust in Culture: A Review of Child Protection in South Australia*, 2022, p 11.
105. Ibid.
106. Kerry Beck (n 94), p 30.
107. Nyland (n 3), Recommendation 51 p xxxv.
108. Katherine Hawkins (n 95), p 24.
109. Montgomerie(n 7), p 17.
110. Rhiannon Pilkington (n 56), p 4.
111. Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle*, 2023, BetterStart Health and Development Research Group, The University of Adelaide p 18; Rhiannon Pilkington, BetterStart, 9 October 2023, Transcript p 8.
112. Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle*, 2023, BetterStart Health and Development Research Group, The University of Adelaide p 18; Rhiannon Pilkington, BetterStart, 9 October 2023, Transcript p 4.
-

-
113. Montgomerie A, Dobrovic J, Pilkington R, Lynch J., *Analysis of child protection contact to support the South Australian Commissioner for Aboriginal Children and Young People's Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle*, 2023, BetterStart Health and Development Research Group, The University of Adelaide, p 19; Rhiannon Pilkington, BetterStart, 9 October 2023, Transcript p 4.
114. Rhiannon Pilkington (n 56), p 8.
115. *Children and Young People (Safety) Act 2017 (SA)*, s 31.
116. *Ibid*, s 32.
117. DCP, *Manual of Practice: Call Centre Chapter*, p 8.
118. *Ibid*, p 2.
119. Government of South Australia, Department for Families and Communities, *Child abuse report line manual of practice*, 2010, p 6.
120. Government of South Australia, Department for Families and Communities, *Child abuse report line manual of practice*, 2010, p 6; Government of South Australia, Family and Community Services, *Child protection manual of practice*, Volume 1, Version 1, 1997, pp 22-23; Government of South Australia, Families SA, *Child protection manual, Volume 1*, 2008, pp 115-116; Government of South Australia, Department for Education and Child Development, *Child protection manual, Volume 1*, 2010, p 112-113; Government of South Australia, Department for Families and Communities, *Child protection manual of practice*, 2000, p 93.
121. Adam Reilly (n 48), pp 6-7.
122. Paul Gray (n 70), p 10.
123. Harnett, P. H., & Featherstone, G., *The role of decision making in the over-representation of Aboriginal and Torres Strait Islander children in the Australian child protection system*, Children and youth services review, Volume 113, 2020.; Gillingham, P., Harnett, P., Healy, K., Lynch, D., & Tower, M., *Decision making in child and family welfare: The role of tools and practice frameworks. Children Australia*, 42(1), 2017, pp 49-56.
124. Tracy Westerman, Indigenous Psychological Services, 26 October 2023, Transcript, p 5.
125. Allam, L & Bogle, A., *NSW to review child protection screening algorithm over concerns about racial bias*, 8 April 2024, <https://www.theguardian.com/australia-news/2024/apr/08/nsw-child-protection-laws-indigenous-children-in-care>
126. Tracy Westerman (n 124), pp 17-18.
127. *Ibid*, p 10.
128. *Ibid*, p 5.
129. *Ibid*, p 10.
130. Jackie Bray (n 85), p 28.
131. Adam Reilly (n 48), p 34.
132. Harnett, P. H., & Featherstone, G., *The role of decision making in the over-representation of Aboriginal and Torres Strait Islander children in the Australian child protection system*, Children and Youth Services Review, Volume 113, 2020.
133. Alexander (n 104), p 119.
134. DCP, *Safety Assessment Policy and Procedures Manual*, March 2021.
135. DCP (n 15), p 36.
136. DCP, *Annual Report 2017-2018*, p 6.
137. DCP (n 15), p 36.
138. Alexander (n 104), p 109.
139. Submissions 3, 16, 20, 27, 29, 31, 34, 35.
140. Submissions 3, 31, 33, 41.
-

-
141. *Children and Young People (Safety) Act 2017 (SA)*, s 32(3).
142. *Ibid*, s 33(d).
143. *DCP Manual of Practice: Intake and Investigation Chapter*, pp 59-64.
144. *Children and Young People (Safety) Act 2017 (SA)*, s 41.
145. *Ibid*, s 53.
146. *Ibid*, s 21(1)(a).
147. *Ibid*, s 10(1)(d).
148. Jackie Bray (n 85), pp 22-23.
149. Yvonne Clark, University of South Australia, 26 October 2023, Transcript, p 14.
150. *Ibid*, pp 14-15.
151. Montgomerie (n 7), p 5.
152. *Ibid*, p 45 and p 50.
153. *Ibid*, pp 10-11.
154. Rhiannon Pilkington (n 56), p 13.
155. *Children and Young People (Safety) Act 2017 (SA)*, s 31(3) and s 31(4).
156. *DCP Manual of Practice: Intake Investigation and Assessment Chapter*.
157. DCP (n 15), p 4.
158. Relationships Australia South Australia, *Ngartuitya Family Group Conferencing Response to data request from the Commissioner for Aboriginal Children and Young People*, pp 13-24.
159. *DCP Manual of Practice: Intake Investigation and Assessment Chapter*, p 13.
160. O'Connor, A, Harris, E., Seeber, C., Hamilton, D., Fisher, C. and Sachmann, M., *Methamphetamine use in pregnancy, child protection, and removal of infants: Tertiary centre experience from Western Australia*, *Midwifery*, Volume 83, 2020, 102641; Jenkins, E., Corbett, M., Breen, A., O'Brien, K., Cooney, C., McGrath, R. et al., *Child protection pathways for newborn infants: A multi-disciplinary retrospective chart review of an Irish maternity hospital's records*. *Child Abuse Review*, 32(1), 2023.
161. Sarah Decrea, RASA, 17 October 2023.
162. Adam Reilly (n 48), p 23.
163. Heather Baron, Department of Health and Wellbeing, 9 November 2023, Transcript p 10.
164. *SA Health Collaborative Case Management of High-Risk Infants* p 4
165. *SA Health Collaborative Case Management of High-Risk Infants* p 5.
166. Heather Baron (n 163), p 12.
167. Karen Glover, SAHMRI Women and Kids Theme, 9 October 2023, Transcript.
168. *Ibid*, pp 23-24.
169. *Ibid*, p 25.
170. Heather Baron (n 163), p 7.
171. Submission 43, DCP p 17.
172. *Ibid*.
173. Trew, S., Taplin, S., O'Donnell, M., Marriott, R., & Broadhurst, K., *Parents' experiences with child protection during pregnancy and post-birth*, *Child & Family Social Work*, 2022, pp 1-14.
174. *Ibid*, pp1-14.
175. Heather Baron, Department for Health and Wellbeing, 9 November 2023, Transcript p 12-13, p 19; Adam Reilly, DCP, 28 November 2023, Transcript, p 10.
176. Jackie Bray (n 85), p 22.
177. Amy Cleland, Australian Centre for Child Protection, 19 October 2023, Transcript p 6.
178. Katherine Hawkins (n 95), p 4.
179. Heather Baron (n 163), p 6.
180. SNAICC (n 46), p 31.
-

-
181. Ibid.
182. SNAICC, *Creating change through partnerships. An introductory guide to partnerships between Aboriginal and Torres Strait Islander and non-Indigenous organisations in child and family services*, 2020, p 5.
183. Commonwealth of Australia, *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, 2017, pp 399-402; Blagg, H., Williams, E., Cummings, E., Hovane, V., Torres, M., & Woodley, K. N., *Innovative models in addressing violence against Indigenous women*, ANROWS, 2018; SNAICC, *Family Matters Report 2022*.
184. Libesman, T., *Cultural care for Aboriginal and Torres Strait Islander Children in out of home care*, SNAICC & Barnardos, 2011, p 14.
185. Libesman, T., *Cultural care for Aboriginal and Torres Strait Islander Children in out of home care*, SNAICC & Barnardos, 2011, p 14; Creamer, S., Blair, S., Toombs, M., & Brolan, C. E., *Indigenous services leading the way for Aboriginal and Torres Strait Islander children in out-of-home care*, *Social Work Education*, 2022, pp 10-11; Osborne, K., Baum, F. and Brown, L., *What works? A review of actions addressing the social and economic determinants of Indigenous health*, Issues Paper no.7, Closing the Gap Clearinghouse, 2013; Victorian Aboriginal Community Controlled Health Organisation (VACCHO), *Culture and Kinship Evaluation Report*, 2023, p 10.
186. Tsantefski, M., Wilde, T., Young, A., & O’Leary, P., *Inclusivity in interagency responses to domestic violence and child protection*, *Australian Social Work*, Volume 71, No. 2, 2018, pp 202-214.
187. Central Australian Aboriginal Congress, *Response to the Department of Social Services Consultation Paper: Implementing the successor plan to the National Framework*, 2021, pp 9-10.
188. Jackie Bray, DCP, *Affidavit*, 6 March 2024, Transcript p 6; *Children and Young People (Safety) Act 2017 (SA)*, s 84(1)(c).
189. Jackie Bray, DCP, *Affidavit*, 6 March 2024, p 5.
190. Kate Wright, AFSS, 1 November 2023, Transcript p 4.
191. Adam Reilly, DCP, 28 November 2023, Transcript p 7.
192. DCP, *Aboriginal and Torres Strait Islander Child Placement Principle and Aboriginal Cultural Identity Support Tool Facilitators Guide and Session Plan (version 3, 2022)*, p 3.
193. Ibid, slide 32.
194. Jackie Bray (n 189), p 7.
195. DCP (n 15), p 39.
196. Jackie Bray (n 189), p 3.
197. Menzies, K., & Stoker, L., *When “culture trumped safety”, developing a protective weave in child welfare organisations: A case study*, *Children Australia*, Volume 40, No. 3, 2015, p 27, pp 260-268; SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2017, p 5; SNAICC, *Family Matters Report 2022*.
198. Adam Reilly (n 191), p 8.
199. Adam Reilly (n 48), p 5.
200. Submission 43, DCP, p 17.
201. Adam Reilly, DCP, 28 November 2023, Transcript p 7; Jackie Bray, DCP, 27 November 2023, Transcript p 38.
202. Menzies, K., & Stoker, L., *When “culture trumped safety”, developing a protective weave in child welfare organisations: A case study*, *Children*
-

-
- Australia, Volume 40, No. 3, 2015, p 27, pp 260-268; SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, SNAICC, 2017, p 5.
203. *Children and Young People (Safety) Act 2017 (SA)*, s12(3)(c).
204. Ibid, s 12(5).
205. Nyland (n 7), p 460.
206. Finding of Coronial Inquest into the Death of Zhane Andrew Keith Chilcott. Recommendation 1 page 80.
207. Adam Reilly (n 48), p 15.
208. Submission 40, RASA, p 2.
209. Hamilton, S. L., Maslen, S., Farrant, B., Ilich, N., & Michie, C., *We don't want you to come in and make a decision for us: Traversing cultural authority and responsive regulation in Australian child protection systems*, Australian Journal of Social Issues, Volume 57, No. 2, 2022, pp 236-251.
210. Submission 40, RASA, p 1.
211. Kate Wright (n 190), p 11.
212. M. A, Bin-Salikk; K, McConnachie; S, Chittleborough and A, Tucker., *Evaluation of the Aboriginal Family Care Program*, April 1992.
213. Sandra Miller, Aboriginal Elder, Leader and rights advocate, 24 October 2023, p 8.
214. *Review of Alternative Care in South Australia*, Des Semple and Associates, March 2002, p 19.
215. Sandra Miller (n 213), p 7.
216. Submissions 13, 15, 31, 37, 38.
217. Muriel Bamblett and Sarah Gafforini, VACCA, 10 October 2023, Transcript; Natalie Lewis, Queensland Family and Child Commission, 12 October 2023, Transcript; Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023, Transcript.
218. Submission 38, ARLM, p 3.
219. Commonwealth of Australia (n 78), p 28.
220. Ibid.
221. Muriel Bamblett, VACCA, 10 October 2023, Transcript; Natalie Lewis, Queensland Family and Child Commission, 12 October 2023, Transcript; Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023, Transcript; Jacynta Krakouer, University of South Australia, 18 October 2023, Transcript; Amy Cleland, Australian Centre for Child Protection, 19 October 2023, Transcript.
222. Muriel Bamblett, VACCA, 10 October 2023, Transcript; Natalie Lewis, Queensland Family and Child Commission, 12 October 2023, Transcript; Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023, Transcript; Jacynta Krakouer, University of South Australia, 18 October 2023, Transcript; Amy Cleland, Australian Centre for Child Protection, 19 October 2023, Transcript.
223. Muriel Bamblett, VACCA, 10 October 2023, Transcript; Natalie Lewis, Queensland Family and Child Commission, 12 October 2023, Transcript; Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023, Transcript; Jacynta Krakouer, University of South Australia, 18 October 2023, Transcript; Amy Cleland, Australian Centre for Child Protection, 19 October 2023, Transcript.
224. Professor Leah Bromfield (n 58), p 13.
225. Natalie Lewis, Queensland Family and
-

-
- Child Commission, 12 October 2023, Transcript pp 6-7.
226. Muriel Bamblett, VACCA, 10 October 2023; Commissioner Natalie Lewis, Queensland Family and Child Commission, 12 October 2023; Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023.
227. Candice Butler, Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 12 October 2023.
228. Natalie Lewis (n 224), pp 6-14.
229. Ibid, p 6.
230. Ibid.
231. Ibid, pp 9-11.
232. Ibid, pp 6-7.
233. Jacyntha Krakouer (n 43), pp 5-8.
234. Ibid, pp 9-11.
235. Ibid.
236. Candice Butler (n 227), p 3.
237. Ibid.
238. Ibid, p 4.
239. Ibid, p 5.
240. Fiona Arney (n 55), p 15.
241. Adam Reilly (n 48), p 28.
242. Leah Bromfield (n 58), p 9.
243. SNAICC (n 40), p 5.
244. Arndt, A., *'You cannot apologise for treating someone badly, without then changing your behaviour towards them in the future': An analysis of contemporary approaches to Indigenous child removal in Western Australia and British Columbia*, Thesis, Curtin University, 2017, p 22.
245. Australian Government, Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, April 1997.
246. Briggs, C., *Aboriginal Child Protection Business: The Significance of Aboriginal Self-Determination in NSW Child Protection policies*, Social Work & Policy Studies: Social Justice, Practice and Theory, Volume 4, No. 2, 2021, pp 5-6; Crosby, Sarah, *Children in Out-of-Home Care in the East Kimberley: How the Child Protection System Is Failing Aboriginal Communities*, ANU Undergraduate Research Journal 11 (1):108-18, 2021, p 115.
247. Merkel-Holguin, L, Schwab-Reese, L, Drury, I, Allan, H, Hollinshead, D., *'Nothing about me without me': Children and young people's experiences with family group conferences*, Child & Family Social Work. 2020; 25: pp 27- 36; Merkel-Holguin, L., Cooke, A., Evans, D. and Beck, K.L., *The New Zealand Family Group Conference Confidentiality Protections: Lessons Learned and an Application in U.S. Child Welfare Systems*, Family Court Review, 2020, 58: pp 109-125.
248. Tangentyere Council, *Children Safe, Family Together: A model and implementation guide for Aboriginal family and kin care services in the Northern Territory*, 2019, p 23; Browe Olson, K., *Family Engagement and Collaborative Decision-Making Processes Provide Multiple Benefits in Child Welfare Cases*, Family Court Review, 2020, 58: p 937-954; Merkel-Holguin, L, Schwab-Reese, L, Drury, I, Allan, H, Hollinshead, D., *'Nothing about me without me': Children and young people's experiences with family group conferences*, Child & Family Social Work, 2020; 25: 27– 36, p 28; Hollinshead DM, Corwin TW, Maher EJ, Merkel-Holguin L, Allan H, Fluke JD., *Effectiveness of family group conferencing in preventing repeat referrals to child protective services and out-of-home placements*, Child
-

-
- Abuse and Neglect, 2017 Jul; 69:285-294, p 286.
249. Tangentyere Council, *Children Safe, Family Together: A model and implementation guide for Aboriginal family and kin care services in the Northern Territory*, 2019, p 16.
250. Commonwealth of Australia, *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, 2017, p 280.
251. SNAICC, *Evaluation- Aboriginal and Torres Strait Islander Family Led Decision Making Trial*, October 2017, pp 111-112; Hamilton, S. L., Maslen, S., Farrant, B., Ilich, N., & Michie, C., 'We don't want you to come in and make a decision for us': *Traversing cultural authority and responsive regulation in Australian child protection systems*, Australian Journal of Social Issues, Volume 57, No. 2, 2022, pp 236-251, 2022; Browe Olson, K., *Family Engagement and Collaborative Decision-Making Processes Provide Multiple Benefits in Child Welfare Cases*, Family Court Review, 2020, 58: pp 937-954.
252. Chamberlain, C., Gray, P., Bennet, D., Elliott, A., Jackomos, M., Krakouer, J, Langton, M., *Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start (SAFeST Start): Urgent call to action to address crisis in infant removals*, Australian Journal of Social Issues, 57, 2022, pp 252-273.
253. Submission 43, DCP, p 7.
254. DCP, *Family Led Decision Making for Aboriginal families Framework*, December 2021, p 1.
255. SNAICC (n 40), p 58.
256. SNAICC, *Evaluation- Aboriginal and Torres Strait Islander Family Led Decision Making Trial*, October 2017, pp 111-112 ; Hamilton, S. L., Maslen, S., Farrant, B., Ilich, N., & Michie, C., 'We don't want you to come in and make a decision for us': *Traversing cultural authority and responsive regulation in Australian child protection systems*, Australian Journal of Social Issues, Volume 57, No. 2, 2022, pp 236-251; Browe Olson, K, *Family Engagement and Collaborative Decision-Making Processes Provide Multiple Benefits in Child Welfare Cases*, Family Court Review, 2020, 58: pp 937-954.
257. Commonwealth of Australia., *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, 2017, p 277; Arney, F., Schutz, C., Hawkes, M., Bevan, K. & Barnes, M., *Report of the Independent Inquiry into Foster and Kinship Care*, 2022; Harris, N, *Family group conferencing in Australia 15 years on*, National Child Protection Clearinghouse, Australian Institute of Family Studies, 2008.
258. *Children and Young People (Safety) Act 2017 (SA)*, s 21.
259. *Ibid*, s 22.
260. Kerry Beck and Katherine Hawkins, DHS, 20 November 2023, Transcript pp 31-32, p 41.
261. Nixon, P., *Family Group Decision Making – a brief international overview of findings and evidence*, 2023.
262. DCP, *Manual of Practice: Ongoing Intervention Chapter* pp 8-14
263. Marsh, P., & Peel, M., *Leaving Care in Partnership: Family involvement with care leavers*, 1999.
264. Submissions 1, 3, 5, 6, 7, 12, 15, 20, 21, 23, 26, 28, 29, 33, 34.
265. Submissions 31, 34, 35.
266. Submissions 9, 13, 15, 31, 33, 34, 37.
267. Submission 33, Child and Family Focus
-

-
- SA, p 18.
268. DHS Table of Supplementary Questions and Responses February 2024, pp 6-7. Kerry Beck DHS, 20 November 2023, Transcript page 29
269. Alexander (n 104), p 20.
270. Paul Nixon (n 74), pp 3-4.
271. Ibid, pp 19-24.
272. Sarah Decrea (n 161), p 4.
273. Ibid..
274. Ibid, p 13.
275. Paul Nixon (n 74), p 22.
276. Ibid.
277. Ibid. p 23.
278. Alexander (n 104).
279. SNAICC, *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*, June 2013, p 109.
280. *United Nations Convention on the Rights of the Child*, Article 12
281. Duncan, M., *The Ideological Basis of Children's Participation in the Child Protection System, in Participation in Child Protection: Theorizing Children's Perspectives*, 2019, pp 159-183; Fitzmaurice, L. S., *Te Rito o Te Harakeke: Decolonising Child Protection and Children's Participation*, Thesis, University of Otago, 2022, p 151; Woodman, E, Roche, S, McArthur, M, Moore, T., *Child protection practitioners: Including children in decision making*, *Child & Family Social Work*, 2018; 23: pp 475-484.
282. Article 12; Canosa, A., Graham, A., & Simmons, C., *Progressing children's rights and participation: Utilising rights-informed resources to guide policy and practice*, *Australian Journal of Social Issues*, Volume 57, No. 3, 2022, pp 600-626.; Vosz, M., *Participation is not enough: Practices associated with giving due weight to the views of children and young people in out-of-home care policy-making in Australia*, Thesis, Southern Cross University, 2021, pp 15-16.
283. Driscoll, J., *Children's rights and the protective care continuum, in Child Protection and the Care Continuum*, 2020, Routledge, pp 52-64.
284. *United Nations Declaration on the Rights of Indigenous Peoples*, Article 18.
285. Vosz, M., *Participation is not enough: Practices associated with giving due weight to the views of children and young people in out-of-home care policy-making in Australia*, Thesis, Southern Cross University, 2021, pp 15-16; Woodman, E., Roche, S., & McArthur, M., *Children's participation in child protection-How do practitioners understand children's participation in practice?* *Child & Family Social Work*, 28(1), 2023, pp 125-135.
286. Mitchell, M., *'Because I'm a kid ...': The struggle for recognition of children and young people involved in child and family social work*. *Child & Family Social Work*, 27(3), 2022, pp 526-534.
287. Delgado, P., Carvalho, J. M., & Alves, S., *Children and young people's participation in decision-making in foster care*, *Child Indicators Research*, Volume 16, No. 1, 2023, pp 421-445.
288. SNAICC., *Whose voice counts? Aboriginal and Torres Strait Islander participation in child protection decision-making*, 2013, p 9; Vosz, M., *Participation is not enough: Practices associated with giving due weight*
-

- to the views of children and young people in out-of-home care policy-making in Australia, Thesis, Southern Cross University, 2021, p 14.
289. SNAICC., *Whose voice counts? Aboriginal and Torres Strait Islander participation in child protection decision-making*, 2013, p 9; Vosz, M., *Participation is not enough: Practices associated with giving due weight to the views of children and young people in out-of-home care policy-making in Australia*, Thesis, Southern Cross University, 2021, p 14.
290. Ibid.
291. Keddell, E., *Recognising the embedded child in child protection: Children's participation, inequalities and cultural capital*, Children and Youth Services Review, Volume 147, 2023.
292. Ibid.
293. Ibid, p 9.
294. *Children and Young People (Safety) Act 2017 (SA)*, ss 8(a), 10, 62, 85.
295. Department for Child Protection, *Supporting the participation of children and young people in decision making Practice Paper*, Volume 2.0, June 2022, p 2.
296. Submissions 12, 17, 18, 29, 30, 31, 32, 33, 34, 35, 41, 44.
297. Shona Reid, Guardian for Children and Young People, 27 October 2023, Transcript p 9.
298. Submission 41, Office of the Guardian for Children and Young People, p 63.
299. Submission 41, Office of the Guardian for Children and Young People, p 58.
300. Paul Gray (n 41), p 11.
301. Ibid, p 4.
302. *Children and Young People (Safety) Act 2017 (SA)*, s 8; s 10, s21, s23 ; s 62; s 82, s 85, s 95, s 159.
303. Arney, F., Chong, A. & McGuinness, K., *The power of family – supporting family decision making approaches with Aboriginal families to promote the safety and wellbeing of children*, 2013; Arney, F., & Scott, D., *Working with vulnerable families: A partnership approach*. Cambridge University Press, 2013.
304. *United Nations Convention on the Rights of the Child*, Article 20 and 30.
305. SNAICC (n 46), p 3.
306. *Children and Young People (Safety) Act 2017 (SA)*, s 12(3)(a).
307. *Children and Young People (Safety) Act 2017 (SA)*, s 12(3)(a); SNAICC, *Baseline Analysis of Best Practice Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, SNAICC, 2018, p 5.
308. The Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024, Table 16A.23.
309. The Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024, Table 16A.23.
310. SNAICC (n 46), pp 45-51.
311. Ibid, p 45.
312. Hunter, S. A., Skouteris, H., & Morris, H., *A Conceptual Model of Protective Factors Within Aboriginal and Torres Strait Islander Culture That Build Strength*, *Journal of Cross-Cultural Psychology*, 52(8–9), 2021, pp 726-75; Delfabbro, P., *Developmental outcomes for children and young people in relative/kinship care and foster care. Pathways of Care Longitudinal Study: Outcomes of children and young people in out-of-home-care*, Research report no.16, Sydney, New South Wales Department of Communities and Justice, 2020;

-
- Kiraly, M., *A review of kinship carer surveys: The “Cinderella” of the care system?*, Child Family Community Australia CFCA Paper No. 31, 2015, p 2.
313. Winokur, M. A., Holtan, A., & Batchelder, K. E., *Systematic Review of Kinship Care Effects on Safety, Permanency, and Well-Being Outcomes. Research on Social Work Practice*, 28(1), 2018, pp 19–32; Delfabbro, P., *Developmental outcomes for children and young people in relative/kinship care and foster care. Pathways of Care Longitudinal Study: Outcomes of children and young people in out-of-home-care*, Research report no.16, Sydney, New South Wales Department of Communities and Justice; Kiraly, M., *A review of kinship carer surveys: The “Cinderella” of the care system?* Child Family Community Australia CFCA Paper No. 31, 2015, p 2.
314. Evidence of Jackie Bray, DCP, *Affidavit*, 23 February 2024, p 2.
315. *Children and Young People (Safety) Act 2017 (SA)*, s 16(1).
316. SNAICC (n 46), p 47.
317. Arney, F., Iannos, M., Chong, A., McDougall, S., Parkinson, S., *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, Australian Institute of Family Studies, Australian Government, 2014, p 9.
318. Ibid, p 10.
319. Arney, F., Iannos, M., Chong, A., McDougall, S., Parkinson, S., *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, Australian Institute of Family Studies, Australian Government, 2014, pp 7-8; McGaw J, Vance A, White S, Mongta S., *Whose place? Lessons from a case study of a guardianship determination for an Australian Indigenous child*. Health Place. 2022 Jan;73:102739.
320. Ibid.
321. Alexander (n 104).
322. Ibid.
323. SNAICC, *Baseline Analysis of Best Practice Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, SNAICC, 2018, pp 7-8.
324. Lawrie, A. *South Australia’s Commissioner for Aboriginal Children and Young People Report 2020: ‘Family and Culture is everything’*, 2020.
325. DCP, *Taikurtirna Warri-apinthe Program*.
326. DCP, *Aboriginal Child and Young Person Placement Thinking Circle*, p 1.
327. DCP, *Taikurtirna Warri-apinthe Procedure*, September 2023, p 4.
328. Evidence of Jackie Bray, DCP, *Affidavit*, 8 March 2024, p 3.
329. Ibid, p 2.
330. Ibid.
331. Arney, F., Schutz, C., Hawkes, M., & Bevan, K., *Report of the Independent Inquiry into Foster and Kinship Care*, 2022.
332. Ibid.
333. Submissions 3, 7, 9, 11, 12, 15, 16, 20, 29, 36, 37, 38, 41.
334. Submissions 4, 12, 15, 37.
335. Tracy Westerman, Indigenous Psychological Services, 26 October 2023, Transcript, p 18.
336. SNAICC (n 40), p 4.
337. *Children’s Protection Act 1993 (SA)*, s 5(1).
338. *Children and Young People (Safety)*

- Act 2017 (SA), s 12 (3)(c).
339. Kate Wright (n 190), p 9.
340. DCP, *Aboriginal and Torres Strait Islander Child Placement Principle Practice Paper*, p 2.
341. Ibid, p 8.
342. Kerry Rogers, AFSS, 1 November 2023, Transcript p 5.
343. Ibid.
344. DCP (n 15), p 37.
345. Kate Wright (n 190), p 7.
346. Kerry Rogers (n 342), pp 2-13.
347. Ibid, p 3.
348. Ibid, p 8.
349. Ibid, p 9
350. Ibid, p 23.
351. The Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024; Australian Institute of Health and Wellbeing, *Child Protection Australia 2020-2021*, 2022.
352. Nyland (n 7), p 461.
353. SNAICC (n 29).
354. The Productivity Commission, *Report on Government Services 2024*, Australian Government, 2024.
355. *Children and Young People (Safety) Act 2017 (SA)*, s 71.
356. *Children and Young People (Safety) Act 2017 (SA)*, s 72; DCP, Carer approval, agreements and cancellations for family-based carers, p 5.
357. DCP, *Carer approvals, agreements and cancellations for family-based carers*, p 4-5.
358. Ibid, p 5.
359. Ibid, p 4.
360. DCP, *Aboriginal Action Plan 2019-2020*.
361. Winangay Resources, Strong ways with Aboriginal kids and families- <https://www.winangay.com/about-us>
362. DCP, *Manual of Practice: Place a child or young person in care chapter V4.13*, March 2023 p 26.
363. DCP (n 357), p12-13
364. Queensland Family and Child Commission, *A thematic analysis of provisionally approved kinship carers who receive a subsequent Blue Card negative notice*, 2023, p 12.
365. Ibid, p 10.
366. *Children and Young People (Safety) Act 2017 (SA)*, s 77.
367. McGuiness, K., Arney, F., *Foster and Kinship Care Recruitment Campaigns: A Review and Synthesis of the Literature*, The Centre for Child Development and Education, Menzies School of Health Research, 2012.
368. Qu, L., Lahaussé, J. & Carson, R., *Working Together to Care for Kids: A survey of foster and relative/kinship carers*. (Research Report). Melbourne: Australian Institute of Family Studies, 2018.
369. McGuiness (n 367), pp 19-20.
370. Arney (n 331).
371. Kiraly, M., *A review of kinship carer surveys: The "Cinderella" of the care system?*, Child Family Community Australia CFCA Paper No. 31, 2015, p 2; Qu, L., Lahaussé, J. & Carson, R., *Working Together to Care for Kids: A survey of foster and relative/kinship carers*, (Research Report), Melbourne: Australian Institute of Family Studies, p.vii, 2018.
372. Ibid.
373. Higgins, D., Bromfield, L., & Richardson, N., *Enhancing out-of-home care for Aboriginal and Torres Strait Islander young people*, Australian Institute of Family Studies, 2005; McHugh, M., *A framework of practice for*

-
- implementing a kinship care program: Final report*, The Benevolent Society, 2009; Bromfield, L., Richardson, N., & Higgins, D., *Kinship care: A culturally appropriate practice framework for Aboriginal and Torres Strait Islanders*, 2006; Boetto, H., *Kinship care: A review of issues*, Family Matters, No. 85, 2010, p 64, pp 60-67.; Delfabbro, P., *Developmental outcomes for children and young people in relative/kinship care and foster care. Pathways of Care Longitudinal Study: Outcomes of children and young people in out-of-home-care*, Research report no.16, Sydney, New South Wales Department of Communities and Justice; Kiraly, M., *A review of kinship carer surveys: The "Cinderella" of the care system?*, Child Family Community Australia CFCA Paper No. 31, 2015, p 2.
374. Ibid.
375. Submissions 6, 12, 27, 29, 30, 33, 40
376. Submissions 4, 12, 18, 19, 20
377. Submission 6, Individual submission - Regina Newchurch.
378. Brennan, D., Cass, B., Flaxman, S., Hill, T., Jenkins, B., McHugh, M., Purcal, C., Valentine, K., *Grandparents raising grandchildren: Towards recognition, respect and reward*, Social Policy Research Centre Report 14/13, University of New South Wales, 2013, p 29.
379. *United Nations Convention on the Rights of the Child*, Articles 8, 9, 20, 30.
380. Cripps, K., & Laurens, J., *The protection of cultural identity in Aboriginal and Torres Strait Islander children exiting from statutory out of home care via permanent care orders: Further observations on the risk of cultural disconnection to inform a policy and legislative reform framework*, Australian Indigenous Law Review, Volume 19, 2016, pp 70-87.; Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S., *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, Child Family Community Australia, Australian Institute of Family Studies, 2014; Bamblett, M., & Lewis, P., *Embedding culture for a positive future for Koorie kids. Developing Practice*, The Child, Youth and Family Work Journal, Volume 17, 2006, pp 58-66; McGuinness, K., Arney, F., *Foster and Kinship Care Recruitment Campaigns: A Review and Synthesis of the Literature*, The Centre for Child Development and Education, Menzies School of Health Research, 2012.
381. Cripps, K., & Laurens, J., *The protection of cultural identity in Aboriginal and Torres Strait Islander children exiting from statutory out of home care via permanent care orders: Further observations on the risk of cultural disconnection to inform a policy and legislative reform framework*, Australian Indigenous Law Review, Volume 19, 2016, pp 70-87; Krakouer, J., Nakata, S., Beaufils, J., Hunter, S., Corrales, T., Morris, H., & Skouteris, H., *Resistance to assimilation: Expanding understandings of First Nations cultural connection in child protection and out-of-home care*, Australian Social Work, 2022, pp 1-15; Gatwiri K, McPherson L, Parmenter N, Cameron N, Rotumah D., *Indigenous Children and Young People in Residential Care: A Systematic Scoping Review. Trauma Violence Abuse*, 2021 Oct;22(4):829-842, p 837.
382. Libesman (n 184), p 53.
383. SNAICC, *The Aboriginal and Torres*
-

-
- Strait Islander Child Placement Principle: A guide to support implementation*, SNAICC, 2019, p 72.
384. Commissioner for Aboriginal Children and Young People, *Annual Report 2021/2022*, South Australia's Commissioner for Aboriginal Children and Young People, 2022, p 20.
385. Krakouer, J., Wise, S., & Connolly, M., "We live and breathe through culture": *Conceptualising cultural connection for Indigenous Australian children in out-of-home care*, Australian Social Work, Volume 71, No. 3, 2018, pp 265-276, p 270, pp 272-273.
386. VACCA, *VACCA Discussion Paper on treaty, self-determination and the Aboriginal community-controlled services sector*, Victorian Aboriginal Child Care Agency, 2019, p 24.
387. Ibid.
388. Krakouer, J., *Journeys of culturally connecting: Aboriginal young people's experiences of cultural connection in and beyond out-of-home care*, Child & Family Social Work, 2023, pp 1-11, p 9.
389. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, SNAICC, 2017, p 5, pp 8-9, pp 11-12; SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2019, pp 67-68.
390. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, SNAICC, 2017, p 5, pp 8-9, pp 11-12; SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2019, pp 67-68.
391. Krakouer, J., Wise, S., & Connolly, M., "We live and breathe through culture": *Conceptualising cultural connection for Indigenous Australian children in out-of-home care*, Australian Social Work, Volume 71, No. 3, 2018, pp 265-276, p 270, pp 272-273.
392. Bamblett, M., & Lewis, P., *Embedding culture for a positive future for Koorie kids. Developing Practice*, The Child, Youth and Family Work Journal, Volume 17, pp 58-66, 2006, pp 64-65.
393. Paul Gray (n 41), p 22.
394. Paul Gray, Jumbunna Institute for Indigenous Education and Research, 18 October 2023, Transcript p 4; Bamblett, M. and Lewis, P., *A vision for Koorie Children and Families: Embedded Rights, Embedded Culture*, Just Policy, Vol 41, 2006, p 45.
395. *Children and Young People (Safety) Act 2017 (SA)*, s 28.
396. Ibid, s 8(3).
397. DCP, *Aboriginal and Torres Strait Islander Child Placement Principle Practice Paper*, p 10.
398. Ibid, p 23
399. DCP (n 15), p 27.
400. *Children and Young People (Safety) Act 2017 (SA)*, s 156(1)(a)(i).
401. DCP *Manual of Practice: Case Planning, Review and Annual Review*, pp 12-13.
402. Ibid.
403. Evidence of Jackie Bray, DCP, *Affidavit*, 23 February 2024, p 7.
404. *Children and Young People (Safety) Act 2017 (SA)* s 156(ii)-(iii).
405. Jackie Bray, DCP, 28 November 2023, Transcript p 48.
406. DCP *Manual of Practice: Case Planning, Review and Annual Review*, p 44.
407. Ibid, p 24
-

-
408. Submission 41, Office of the Guardian for Children and Young People, p 61.
409. DCP *Manual of Practice: Case Planning, Review and Annual Review*, p 12.
410. DCP, *Aboriginal and Torres Strait Islander Child Placement Principle and Aboriginal Cultural Identity Support Tool Facilitators Guide and Session Plan (version 3, 2022)*.
411. DCP *Manual of Practice: Case Planning, Review and Annual Review*, p 25.
412. *Children and Young People (Safety) Act 2017* (SA), s 156(1)(a)(i).
413. Evidence of Jackie Bray, DCP, *Affidavit*, 23 February 2024, p 2.
414. DCP *Manual of Practice Case Planning, Review and Annual Review*, pp 12-13.
415. Submission 41, Office of the Guardian for Children and Young People, p 61.
416. Submissions 17, 33, 41.
417. Shona Reid (n 297), p 11.
418. *Children and Young People (Safety) Act 2017* (SA), s 16.
419. DCP, *S2.004 Aboriginal and Torres Strait Islander Child Placement Principle and Aboriginal Cultural Identity Support Tool*, pp15-16.
420. Kerry Rogers (n 342), p 10.
421. Adam Reilly (n 191), pp 63-64.
422. Muriel Bamblett, VACCA, 10 October 2023, Transcript pp 21-22.
423. *Ibid*, p 20.
424. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2017, p 8, p 10, p 12; SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2019, p 68.
425. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development* SNAICC, 2017, p 8, p 10, p 12; SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, SNAICC, 2019, p 68.
426. SNAICC, *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development* SNAICC, 2017, p 8, p 10, p 12; SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, SNAICC, 2019, p 68.
427. Libesman (n 184), pp 18-19.
428. Child Development Council (South Australia), *South Australia's Outcomes Framework for Children and Young People*, 2023; Guardian for Children and Young People South Australia, *Charter of Rights for Children and Young People in Care*, 2021.
429. Guardian for Children and Young People South Australia, *Charter of Rights for Children and Young People in Care*, 2021.
430. Krakouer, J., Wise, S., & Connolly, M., "We live and breathe through culture": Conceptualising cultural connection for Indigenous Australian children in out-of-home care, *Australian Social Work*, Volume 71, No. 3, 2018 pp 265-276, p 269.
431. *Children and Young People (Safety) Act 2017* (SA), s 8(3).
432. *Ibid*, s 12(3)(b).
433. *Ibid*, s 93.
434. *Ibid*, s 93(3).
435. DCP *Manual of Practice: Case*
-

- Planning, Review and Annual Review*, p 17.
436. Ibid, p 18.
437. *Children and Young People (Safety) Act 2017 (SA)*, s 93(5) *Children and Young People (Safety) Regulations 2017 Regulation 24(1)(e)*.
438. DCP, *Manual of Practice: Supporting Children and Young People in Care*, p 117.
439. *Children and Young People (Safety) Act 2017 (SA)*, s 95(2)(a).
440. DCP Contact Arrangements Review Panel Procedure p 3.
441. Shona Reid (n 297), pp 5-6.
442. Submission 41, Office of the Guardian for Children and Young People.
443. Submissions 17, 29, 30, 31.
444. Submissions 17, 31, 33.
445. Submission 31, Individual submission – Rowena Hammond.
446. Paul Gray (n 41), p 14.
447. Montgomerie (n 7), p 35.
448. Ibid, p 6.
449. Ibid.
450. Ibid, p 46.
451. *Children and Young People (Safety) Act 2017 (SA)*, s 10(1)(a).
452. DCP, *Permanency Planning Practice Paper*, May 2022.
453. Submissions 3, 9, 16, 33, 38
454. *Children and Young People (Safety) Act 2017 (SA)*, s 50(4).
455. SNAICC, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care*, SNAICC, 2016, p 9.
456. Adam Reilly (n 191), p 58.
457. Ibid, 58-59.
458. Scrine, C., Farrant, B., Michie, C., Shepherd, C., & Wright, M., *Raising strong, solid Koolunga: Values and beliefs about early child development among Perth's Aboriginal community*, Children Australia, 2020, 45(1), pp 40-47, p 46.
459. Turnbull-Roberts, V., Salter, M., & Newton, B. J., *Trauma then and now: Implications of adoption reform for First Nations children*, Child & Family Social Work, 2022, 27(2), pp 163– 172, p 167; Booth AT, McIntosh JE, Sri L, Decrea S, Lee J, Ralfs C., *A culturally safe referral service for at-risk mothers and infants in marginalised, Aboriginal, and Culturally and Linguistically Diverse families*, Aust Health Rev, 2023 Feb;47(1):58-63, p59; Choate P, Tortorelli C., *Attachment Theory: A Barrier for Indigenous Children Involved with Child Protection*, Int J Environ Res Public Health, 2022 Jul 19;19(14):8754 p 2.
460. Terare, M., *'It hasn't worked so we have to change what we are doing': First Nations worldview in human services practice*, Thesis, 2020, University of Sydney, pp 150-1; Choate, P. W., CrazyBull, B., Lindstrom, D., & Lindstrom, G., *Where do we go from here? Ongoing colonialism from Attachment Theory*, Aotearoa New Zealand Social Work, 32(1), pp 32-44, 2020, p 35; Lohoar, S., Butera, N & Kennedy, E., *Strengths of Australian Aboriginal cultural practices in family life and childrearing*. 2014, Child Family and Community Australia (CFCA), Paper no. 25.
461. Ibid.
462. Crosby, S. 2021., *Children in Out-of-Home Care in the East Kimberley: How the Child Protection System Is Failing Aboriginal Communities*, ANU Undergraduate Research Journal 11 (1):108-18, p 111.
463. Tracy Westerman (n 124), p 3.
464. Ibid, p 3-6.

-
465. Ibid, p 6-8.
466. Evidence of Jackie Bray, DCP, *Affidavit*, 6 March 2024, p 2.
467. Adam Reilly (n 48), p 3.
468. Natalie Lewis (n 225), p 12.
469. Paul Gray (n 41), p 12.
470. Tracy Westerman (n 124), p 17.
471. Ibid, p 17.
472. Ibid, pp 6-20.
473. Ibid, p 18.
474. Amy Cleland (n 177), p 7.
475. Ibid, p 7.
476. Jacynta Krakouer (n 43), p 4.
477. Ibid.
478. Rhiannon Pilkington (n 56), p 9.
479. Alexander (n 104), p 76.
480. Tracy Westerman (n 214), p 11.
481. Chamberlain, C., Gray, P., Herrman, H., Mensah, F., Andrews, S., Krakouer, J. et al., *Community views on 'Can perinatal services safely identify Aboriginal and Torres Strait Islander parents experiencing complex trauma?'*, *Child Abuse Review*, 32(1), 2023.
482. Choate P, Tortorelli C., *Attachment Theory: A Barrier for Indigenous Children Involved with Child Protection*, *Int J Environ Res Public Health*, 2022 Jul 19;19(14):8754 p 1; Choate P, Tortorelli C., *Attachment Theory: A Barrier for Indigenous Children Involved with Child Protection*, *Int J Environ Res Public Health*, 2022 Jul 19;19(14):8754 pp 32-44.
483. Morgan, G., Butler, C., French, R., Creamer, T., Hillan, L., Ruggiero, E., & Trew, S., *New ways for our families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people*, 2020, p 20; Parkes, A., & Zufferey, C., *Aboriginal mothering in the Australian context. In Intersections of Mothering*, Routledge, 2019, pp 104-116.
484. Tracy Westerman (n 124), p 4.
485. Ibid, p 9.
486. Ibid, p 4.
487. Ibid, p 18.
488. Ibid.
489. Ibid.
490. Ibid, p 5.
491. Ibid, p 8.
492. Ibid, pp 8-9.
493. Evidence of Jackie Bray, DCP, *Affidavit*, 6 March 2024, p 4.
494. Ibid.
495. Kerry Rogers (n 342), p 19.
496. Tracy Westerman (n 124), p 18.

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Appendices



Appendix A: List of Written Submissions

1. Individual submission – name withheld
2. Individual submission – Robert Varley
3. Individual submission – name withheld
4. Individual submission – name withheld
5. Individual submission – Mete Olle
6. Individual submission – Regina Newchurch
7. Individual submission – name withheld
8. Individual submission – name withheld
9. The Reily Foundation
10. Individual submission – name withheld
11. Individual submission – name withheld
12. Centacare Catholic Family Services
13. Youth Court of South Australia
14. Individual submission – name withheld
15. NPY Women’s Council
16. Individual submission – name withheld
17. Create Foundation
18. Individual submission – Lisa O’Malley
19. Individual submission – name withheld
20. Individual submission – name withheld
21. ac.care
22. Individual submission – name withheld
23. Individual submission – Tonya Scott
24. The Carer Project
25. Individual submission – name withheld
26. Individual submission – Winston Dance
27. Individual submission – name withheld
28. Individual submission – name withheld
29. Connecting Foster & Kinship Carers SA
30. Child Death and Serious Injury Review Committee
31. Individual submission – Rowena Hammond
32. Junction Australia
33. Child and Family Focus SA
34. South Australian Council of Social Service
35. Family Violence Legal Service Aboriginal Corp
36. Individual submission – name withheld
37. KWY
38. Aboriginal Legal Rights Movement
39. Emerging Minds
40. Relationships Australia SA
41. Office of the Guardian for Children and Young People
42. Department of Human Services
43. Department for Child Protection
44. South Australian Aboriginal Community Controlled Organisation Network

Appendix B: List of Public Hearing Witnesses

Session 1 - 9 October 2023

- Dr Rhiannon Pilkington, Epidemiologist, BetterStart Health and Development Research, University of Adelaide
- Dr Fiona Arney, Director, Arney Chong Consulting
- Karen Glover, Principal Research Fellow, SAHMRI Women and Kids theme

Session 2 - 10 October 2023

- Professor Cindy Blackstock, McGill University and Executive Director, First Nations Child and Family Caring Society of Canada

Session 3 - 10 October 2023

- Professor Muriel Bamblett AO, CEO, Victorian Aboriginal Child Care Agency and Chair of SNAICC – National Voice for our Children
- Sarah Gafforini, Director, Office of the CEO, Victorian Aboriginal Child Care Agency

Session 4 - 12 October 2023

- Candice Butler, Director, Centre of Excellence, Queensland Aboriginal and Torres Strait Islander Child Protection Peak

Session 5 - 12 October 2023

- Commissioner Natalie Lewis, Queensland Family and Child Commission

Session 6 - 17 October 2023

- Sarah Decrea, Practice Manager Family-Led Decision Making, Relationships Australia South Australia
- Paul Nixon, Independent Consultant Social Worker

Session 7 - 18 October 2023

- Associate Professor Paul Gray, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney

Session 8 - 18 October 2023

- Dr Jacyntha Krakouer, UniSA Justice and Society, University of South Australia

Session 9 - 19 October 2023

- Amy Cleland, Australian Centre for Child Protection, University of South Australia

Session 10 - 19 October 2023

- Professor Katina D'Onise, Executive Director, Prevention and Population Health, Wellbeing SA

Session 11 - 24 October 2023

- Sandra Miller, Aboriginal Elder, leader and rights advocate

Session 12 - 26 October 2023

- Associate Professor Yvonne Clark, UniSA Justice and Society, University of South Australia

Session 13 - 26 October 2023

- Dr Tracy Westerman AM, Managing Director, Indigenous Psychological Services

Session 14 - 27 October 2023

- Professor Leah Bromfield, Director and Chair of Child Protection, Australian Centre for Child Protection, University of South Australia

Session 15 - 27 October 2023

- Shona Reid, Guardian for Children and Young People

Session 16 - 1 November 2023 and 9 November 2023

Aboriginal Family Support Services

- Kerry Rogers, Senior Manager Cultural Clinician, Aboriginal Family Support Services
- Kate Wright, Senior Manager Therapeutic Services, Aboriginal Family Support Services

Session 17 - 9 November 2023

Department for Health and Wellbeing

- Heather Baron – A/Chief Child Protection Officer, Department for Health and Wellbeing
- Ben Thomas – Manager, Child Protection and Policy Unit, Department for Health and Wellbeing

Session 18 - 20 November 2023

Department of Human Services

- Katherine Hawkins – Executive Director, Inclusion and Reform, Department of Human Services
- Kerry Beck – Director, Safer Family Services, Department of Human Services

Session 19 - 27 November 2023 and 28 November 2023

Department for Child Protection

- Jackie Bray – Chief Executive, Department for Child Protection
- Adam Reilly – Deputy Chief Executive, Department for Child Protection

Appendix C: Glossary

Aboriginal: The term 'Aboriginal' in this report refers to both Aboriginal and Torres Strait Islander peoples. It is used to refer to the numerous nations, language groups and clans in SA. 'Indigenous' is retained when it is part of the title of a program, report or quotation, or when the context requires it.

Aboriginal Community Controlled

Organisation: As defined in the National Agreement on Closing the Gap (clause 44), an Aboriginal Community Controlled Organisation is an organisation that delivers services, including land and resource management, that builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people and is: (a) incorporated under relevant legislation and not-for-profit; (b) controlled and operated by Aboriginal and/or Torres Strait Islander people; (c) connected to the community, or communities, in which they deliver the services; and (d) governed by a majority Aboriginal and/or Torres Strait Islander governing body.

Aboriginal Family Led Decision-Making:

Aboriginal Family-Led Decision-Making draws on traditional Aboriginal consultative methods to create spaces where families feel supported to make culturally based, family-driven decisions in the best interest of Aboriginal children.

Aboriginal Kinship or Kin: Kinship is a term that describes family relationships and ties within a community. Aboriginal kinship rules and lore are diverse and rooted in history and tradition. Some communities maintain strong traditional kinship ties, while others maintain strong kinship ties based on social and family histories. Principles of kinship, community connectedness and obligation continue despite policies of colonisation, assimilation and protection.

Aboriginal relative/kinship care: Aboriginal relative/kinship care is care provided through a home-based care arrangement where the carer is a relative (other than a parent), is considered to be family, or is a person to whom the child shares a cultural or community connection. For Aboriginal children, a kinship carer may be another Aboriginal person who is a member of their community, a compatible community, or from the same language group.

Aboriginal self-determination:

Self-determination is the right of Aboriginal people as a collective to determine how their lives are governed; participate in decisions that affect them; to exercise control over their own lives and development and to live well according to their cultural values and beliefs.

Aboriginal and Torres Strait Islander Child Placement Principle:

The *Aboriginal and Torres Strait Islander Child Placement Principle* is a broad principle that applies to the involvement of Aboriginal children and families in the child protection system and is made up of the following five elements: prevention, partnership, placement, participation, and connection.

Active efforts: Active efforts are purposeful, thorough and timely, supported by legislation and/or policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children. Active efforts encompass a variety of strategies to support Aboriginal and Torres Strait Islander children's connection to family, culture, community and country is maintained.

Best Interests of the Child: For the purposes of this report, the best interests of an Aboriginal child must always include the maintenance of connection with family, community and culture and the right for that child to explore and enjoy the full extent of their culture. The best interest of the child is not defined in the *Children and Young People (Safety) Act 2017 (SA)* however section 60B(2)(e) of the *Family Law Act 1975 (Commonwealth)* provides that the best interests of a child includes that “children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture)” and section 60B(3) specifically provides the right for an Aboriginal child “to maintain a connection with that culture; and to have the support, opportunity and encouragement necessary: to explore the full extent of that culture, consistent with the child’s age and developmental level and the child’s views; and to develop a positive appreciation of that culture”.

Child protection service system: Services and systems provided by state and territory governments to not only assist children who are suspected of being abused, neglected or harmed, but provide assistance to vulnerable families in need with targeted, specialist services to keep families strong together and prevent family breakdown.

Cultural lens: For the purposes of this Report, cultural lens refers to using a deep understanding of Aboriginal ways of knowing, doing and being to best inform practice and decision-making.

Cultural safety: Cultural safety is an environment which is spiritually, socially, emotionally and physically safe for Aboriginal people, where there is no assault, challenge or denial of their identity, of who they are and what they need.

Family: Aboriginal families are significantly more than the nuclear family unit and are inclusive of far-reaching extended family members, including blood and/or kinship brothers, sisters, immediate and extended cousins, aunties, uncles, grandparents, non-Aboriginal family members, significant others, Elders, and community peer groups.

Family Group Conferencing: Family Group Conferencing is a model of Family Decision making whose origins stem from Indigenous practices, which give power and responsibility back to families to make plans with their children. Family Group Conferencing exists in South Australia’s laws only as an option for the Department for Child Protection to consider, when making plans for children. When the term is used in the context of the *Children and Young People (Safety) Act 2017* it has the definition laid out in section 16 of that Act and referred to as a section 22, Family Group Conference.

Foster care: The term ‘foster care’ is used for the Out-Of-Home Care setting where a child is placed with a foster carer and is living with the carer and their family in the family home. Foster carers are authorised, supported and supervised by the Department for Child Protection or a non-government Out-Of-Home Care service provider.

Guardianship order: An order placing a child in the care of a guardian (who is given parental responsibility for the child) until the child is 18 years of age.

Intake: the record of the assessment by the Department for Child Protection concerning a screened-in notification.

Immediate or crisis care: An emergency placement of a child, which may occur after hours or on weekends and may involve the child being placed in a motel or other similar emergency accommodation.

Out-Of-Home Care: Overnight care for children aged under 18 for which there is ongoing case management and financial payment (including where a financial payment has been offered but has been declined by the carer).

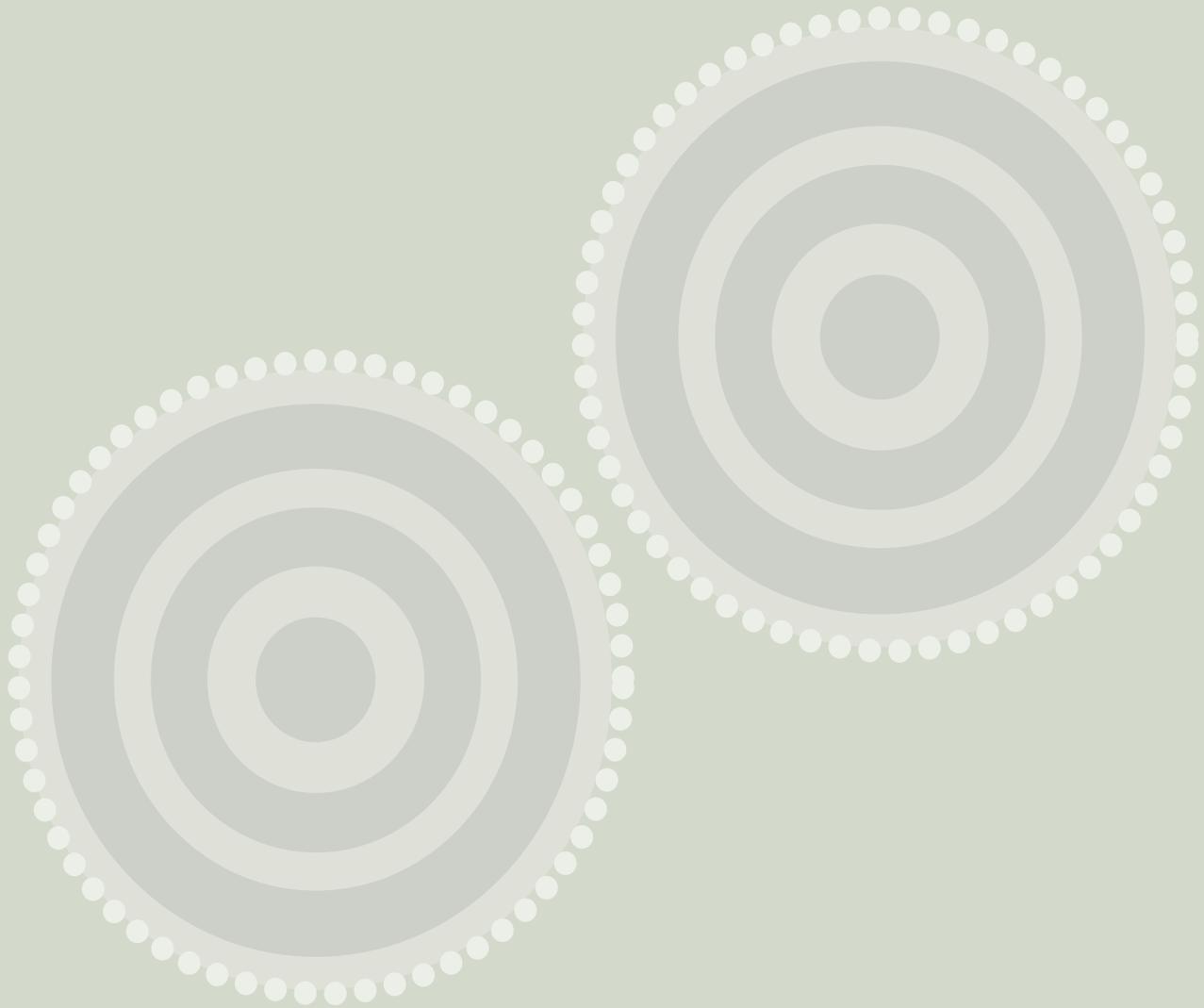
Placement: The act of placing a child into an out-of-home care arrangement.

Public health approach: For the purposes of this report, a public health approach to child protection involves the provision of universal support to whole communities and accessible early intervention services for vulnerable families to prevent or minimise child protection risk factors, alongside the provision of targeted and therapeutic intervention services for families where child abuse, neglect or harm has occurred to help with mitigating the long-term effects.

Residential care: ‘Residential care’ is care provided to a child in a residential facility, usually a house with other children, and involves the use of paid staff rather than an individual carer matched with the child.

Systemic racism: Systemic racism refers to the history, ideology, culture and interactions of institutions and policies that work together to perpetuate inequity. It describes the way in which institutions and structures fail to provide adequate service provision and equal opportunities to people because of their racial or cultural background.

Trauma-informed approach: Trauma-informed practice is a strengths-based framework grounded in an understanding of and responsiveness to the impact of trauma, that emphasises physical, psychological, and emotional safety for everyone, and that creates opportunities for survivors of trauma to rebuild a sense of control and empowerment.



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