

# Response to Issues Paper 4: Preventing sexual abuse of children in out- of-home care

Joint submission by:

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## 1. Introduction

We appreciate the opportunity to inform the work of the Royal Commission to investigate what is required to prevent the sexual abuse of children in out-of-home care. This submission brings forward the knowledge and experience of Aboriginal and Torres Strait Islander peoples and organisations. It is made by peak bodies and lead agencies advocating for and supporting the best interests of Aboriginal and Torres Strait Islander children in out-of-home care across the country.

We address national priority issues in preventing sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care. A number of organisations contributing to this submission will also submit separately to the Royal Commission to ensure that specific issues impacting Aboriginal and Torres Strait Islander children in out-of-home care within their respective states are highlighted.

A detailed focus is required in Australian child protection law, policy and practice on the specific protection needs of Aboriginal and Torres Strait Islander children in out-of-home care. This is because of the special place and unique rights of Aboriginal and Torres Strait Islander peoples as the First Peoples of this land and their distinct and continuing cultures, child rearing values and practices. It is also because of the relative marginalisation of Aboriginal and Torres Strait Islander peoples in Australian society; the inter-generational impacts of colonisation, assimilation and forced child removal; and the resulting continuing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. Despite representing only 4.72% of all children in Australia, Aboriginal and Torres Strait Islander children make up 33.6% of all children in out-of-home care, at a rate of 10 times that of non-Indigenous children.<sup>1</sup>

We assert, based on evidence, our experience, and the knowledge of our communities, that Aboriginal and Torres Strait Islander children are safest when:

- they are cared for in their own culture, by family or community members;
- they have a strong understanding of their cultural identity;
- Aboriginal and Torres Strait Islander people who know the children's culture and community participate in decisions for their care and protection; and
- they and their families have equitable access to culturally appropriate services that promote their social and emotional wellbeing.

This submission presents the arguments and evidence that support these claims. It most strongly addresses question 1 in the discussion paper circulated by the Royal Commission, which requests input on core strategies that support safety and security for children in out-of-home care. The submission highlights culturally strong and connected out-of-home care placements as key to creating safety for Aboriginal and Torres Strait Islander children. It also recognises that a human rights-based approach that supports self-determination for Aboriginal and Torres Strait Islander peoples in child protection will ultimately contribute to better outcomes and support stronger, healthier, and safer communities for children.

## 2. Culture as a strong protective factor

*Whenever Aboriginal or Torres Strait Islander children need to be removed from home to protect them from harm, we must rise to the challenge of protecting their cultural identities. If we neglect this aspect of our children's best interests we deny them the cultural and spiritual life that is their birthright. We also risk fundamentally damaging their well-being, growth, education and life prospects.*

**Prof Muriel Bamblett, AM<sup>2</sup>**

### **Discussion paper question addressed:**

- Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

Connections for Aboriginal and Torres Strait Islander children to their family, community and culture are vital to ensure children who cannot live with their parents are protected from abuse. Conversely, children who become isolated from cultural and community networks when in out-of-home care are more vulnerable to being abused, and less able to seek help.

This is supported by the evidence that indicates that positive self-identity for Indigenous children is reinforced by cultural and community connections.<sup>3</sup> Canadian studies have linked cultural continuity at the community-level to positive self-identity, reflected in reduced rates of youth suicide.<sup>4</sup> Review of data emerging from the Longitudinal Study of Indigenous Children (LSIC) in Australia by Colquhoun and Dockery (2012) considers what Aboriginal and Torres Strait Islander people say about how culture contributes to grow children up strong. They draw links between the key themes identified as culturally supportive and factors that contribute to resilience for Aboriginal and Torres Strait Islander children.<sup>5</sup> The role of culture in reinforcing positive self-identity connects with the literature that identifies links between identity, resilience and self-protective behaviours. High self-esteem and strong social networks are recognised as significant protective factors against child maltreatment.<sup>6</sup> Children who are part of a broader community with an interest in their well-being are more likely to be noticed when they are in danger and have networks of support to draw upon when they feel unsafe.

The strengths of Aboriginal and Torres Strait Islander cultures in creating protective environments for children are evident and strongly recognised. Protective factors common to Aboriginal and Torres Strait Islander cultures have been identified to include:

- Kin and community caring systems where many people are caring, looking out for and supporting children;<sup>7</sup>
- Strong kin and community networks through which Aboriginal and Torres Strait Islander parents and carers are more likely to have support for parenting and less likely to be isolated;<sup>8</sup> and
- Autonomy and community socialisation for young children supporting development of independence, self-confidence and self-protective behaviours.<sup>9</sup>

This understanding of cultural strengths in caring must be contrasted with the pervading myth, fuelled by the rhetoric that surrounded the Northern Territory Emergency Response, that Aboriginal and Torres Strait Islander people are more likely to sexually abuse children than non-Indigenous people. There is no evidence to suggest that sexual abuse of children is in any way a part of Aboriginal or Torres Strait Islander cultures. In fact, statistics show that substantiated harm for Indigenous children is less likely to be as a result of sexual abuse

than for non-Indigenous children (9.3% as compared to 13.7%), and that the most common cause of harm is neglect (39.7%),<sup>10</sup> which is strongly linked to the poverty that many Aboriginal and Torres Strait Islander communities are experiencing. As was described in the *Little Children are Sacred* report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse,

Sexual abuse of children is not restricted to those of Aboriginal descent, nor committed only by those of Aboriginal descent, nor to just the Northern Territory. The phenomenon knows no racial, age or gender borders. It is a national and international problem.<sup>11</sup>

What is true is that risk factors for sexual abuse occur more commonly in communities that experience social disadvantage, and that Aboriginal and Torres Strait Islander people are, as a result of historical and continuing discrimination, more often exposed to those risk factors. Stanley et al (2003) also identify that violence and sexual abuse in Aboriginal and Torres Strait Islander communities is commonly linked to inter-generational trauma, and loss of social networks, and social capital for Aboriginal and Torres Strait Islander communities.<sup>12</sup> Healing, reconnecting and strengthening Aboriginal and Torres Strait Islander families and communities must, therefore, be at the core of a response to preventing sexual abuse that addresses the broader social issues confronting Aboriginal and Torres Strait Islander people.

The importance of cultural connection to well-being for Aboriginal and Torres Strait Islander children is reflected in legislation and policy that enacts and drives implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle). The Principle is at the core of efforts in Australia to support and maintain family and community connection for Aboriginal and Torres Strait Islander children in out-of-home care.

Despite the adoption of the Principle nationwide, 31.2% of Aboriginal and Torres Strait Islander children in out-of-home care across Australia are placed with non-family, non-Indigenous carers.<sup>13</sup> Poor understanding of the Principle and inadequate commitment to the efforts necessary for its realisation are apparent in Australia's child protection systems.<sup>14</sup> The Principle has been narrowly conceptualised in legislation and child protection practice with a focus only on a hierarchy of out-of-home care placement options, undermining its broader intent. There has been limited additional focus on the detailed processes required to identify and respond to the cultural support and connection needs of Aboriginal and Torres Strait Islander children who come into contact with Australia's child protection systems.

Very limited review of compliance with the Principle is itself indicative of inadequate commitment. In Queensland, the only state where compliance has been independently audited, only 15% of the most recent audit sample showed full compliance with legislative requirements.<sup>15</sup>

For Aboriginal and Torres Strait Islander children who are placed in out-of-home care outside of their families and communities, efforts to support and maintain connections are especially vital to their ongoing well-being and safety. Important aspects of cultural care include both the mapping of cultural connections through accurate genealogies, and the practical supports and resourcing for Aboriginal and Torres Strait Islander children in out-of-home care to connect with and participate in the cultural life of their families and communities.<sup>16</sup> Requirements commonly exist for cultural care planning and support in Australia's child protection systems, but limited completion of plans, and limited resourcing and practical supports for implementation are endemic to these systems.<sup>17</sup>

In Queensland, where high compliance with cultural support planning is reported, review by the Aboriginal and Torres Strait Islander Legal Service (2012) has found significant deficiencies in quality of cultural support plans, and limited engagement of family and community in the development and implementation of plans. They describe that:

Consultations with the state wide non-government child protection agencies provided advice and information indicating the majority of plans are incomplete and fail to meet children's cultural retention needs.<sup>18</sup>

It is clear that not enough is being done to ensure Aboriginal and Torres Strait Islander children are in out-of-home care placements that support positive self-identity and draw on protective strengths of community and culture. Significant work is required to build the understanding, commitment and mechanisms that will promote cultural, emotional and physical safety for Aboriginal and Torres Strait Islander children through culturally strong and connected placements.

**What is needed to prevent sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care?**

- Enhanced implementation of the Aboriginal and Torres Strait Islander child placement principle.
- Recognition and value for protective strengths of Aboriginal and Torres Strait Islander families, cultures and communities, in child protection system design and operation.
- Developing an educative training strategy to enhance the attitudes and understanding of government and non-government child protection practitioners and non-Indigenous carers about the significance of maintaining cultural connections and kinship care structures.
- Requirements for the completion and implementation of cultural support plans for every Aboriginal and/or Torres Strait Islander child in out-of-home care; ensuring that an Aboriginal and Torres Strait Islander agency is involved in the process to develop the plan.
- Making appropriate resources available to carers of Aboriginal and Torres Strait Islander children to implement cultural plans, supporting family and cultural contact for children.

## 2. Importance of kinship care and providing support to kinship carers

### Discussion paper questions addressed:

- Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?
- Is there evidence for having different strategies to keep children in OOHC safe from sexual abuse depending upon whether a child is in relative or kinship care, foster care or one of the forms of residential care?
- Is there adequate and effective training and information available to carers who are caring for children who have sexually abused other children?

Kinship care is a vital component of the response to the high need for alternative care options for Aboriginal and Torres Strait Islander children. Currently, 52.4% of Aboriginal and Torres Strait Islander children in out-of-home care are cared for by relatives and kin.<sup>19</sup> This cohort of 6,913 children represent 17.4% of all children in out-of-home care in Australia, and therefore, the specific measures needed to ensure that they are safe should be a strong focus of the Royal Commission's work. We wish to draw the attention of the Royal Commission to the fact that highly limited evidence exists on outcomes and support needs for these children and their carers.<sup>20</sup>

We assert that kinship care, with its strong potential for maintaining cultural, community and family ties for Aboriginal and Torres Strait Islander children, is premium care for Aboriginal and Torres Strait Islander children. Inversely, kinship carers receive second-rate resourcing and support within Australia's child protection systems. McHugh and Valentine (2011) link increasing use of kinship care in Australia positively to cultural and family continuity benefits. They also identify negative implications of cost-saving measures driven through the use of kinship care that contribute to risks for children. Cost saving comes in the form of little or no training for kinship carers, perfunctory assessments, and commonly absent ongoing case planning and caseworker support.<sup>21</sup> McHugh and Valentine (2011) note that, *'with minimal systematic attention to meeting the needs of children and their carers, costs associated with service provision are contained.'*<sup>22</sup>

Limited research into kinship care in Australia indicates that risks of abuse may be higher than for foster care. As was reported by the Victorian Ombudsman (2010):

The combination of weaker screening processes and less ongoing monitoring appears to be creating vulnerability in the oversight of children placed in kinship care ... children can remain in dangerous placements for lengthy periods of time where the system fails to adequately identify and assess the risk of a kinship placement.<sup>23</sup>

These weaknesses reflect support gaps and stress factors for carers that need to be addressed to ensure the potential of kinship care to create safe and culturally strong care for Aboriginal and Torres Strait Islander children can be more fully realised.

Aboriginal and Torres Strait Islander families are shouldering a large burden of alternative care responsibility in Australia.<sup>24</sup> While this is desirable from a cultural strengths and care perspective, it is also placing additional strain on families that are often experiencing poverty and multiple stress factors. As Kiraly and Humphreys (2011) describe in reporting on extensive consultations with kinship carers:

The acute unmet support needs of kinship carers are nowhere seen as vividly as in the

Aboriginal community, where larger numbers of children are being cared for by carers living in straitened circumstances.<sup>25</sup>

The availability of safe and culturally connected kinship care placements is further impacted by a shortage of Aboriginal and Torres Strait Islander carers.<sup>26</sup> This shortage is not linked to the unwillingness of Aboriginal and Torres Strait Islander people to provide care, though it has been commonly associated with a reluctance to engage with child welfare authorities that were centrally involved in creating the Stolen Generations. In fact, the recent Queensland Child Protection Inquiry noted that Aboriginal and Torres Strait Islander people were 5 times more likely to be carers than non-Indigenous people.<sup>27</sup>

Richardson et al (2007) identify multiple Australian studies indicating that community-based strategies undertaken by Aboriginal and Torres Strait Islander people are most effective for recruiting Aboriginal and Torres Strait Islander carers:

Community-based...strategies were reported by participants as being the most effective ways of recruiting Indigenous carers. Such strategies were also more effective when undertaken by Indigenous people.<sup>28</sup>

Despite these findings, limited availability of culturally appropriate carer recruitment and assessment processes continues to impact the engagement of Aboriginal and Torres Strait Islander people in caring roles, further limiting options for culturally connected and safe care.<sup>29</sup> We also identify the common occurrence that Aboriginal and Torres Strait Islander people are excluded from providing kinship care because of perceived risks, and inadequate focus on identifying supports that could manage those risks to enable culturally connected care. When cultural care for Aboriginal and Torres Strait Islander children is under-valued, the 'easier' option of placing children with a pre-approved foster carer can be too easily taken. Some promising approaches to culturally appropriate kinship care assessment have been developed, including through the Winangay Kinship Care Assessment Tools that have been recognised for their culturally appropriate design and the involvement of carers as participants in the assessment process.<sup>30</sup>

The importance of kinship placement identification that is informed by the knowledge of caring strengths and risks in the community has also been clearly identified and is addressed in further detail in section 3 below.

It is clear that to create a safe and supportive out-of-home care system for Aboriginal and Torres Strait Islander children in Australia, significant reform is needed to the way kinship care is supported. As noted throughout this submission, reform must be linked to ongoing efforts to strengthen Aboriginal and Torres Strait Islander communities, addressing the causes of the significant disadvantage that stretches their capacity to provide care.

**What is needed to prevent sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care?**

- Increased investment to support Aboriginal and Torres Strait Islander families to provide quality kinship care.
- Aboriginal and Torres Strait Islander community participation in the identification of safe and supportive placements.
- Culturally appropriate and tailored, community-based recruitment and assessment of Aboriginal and Torres Strait Islander carers.
- Prioritising supports for kinship carers to provide safe and culturally connected care, rather than 'easier' placement options with non-kin or non-Indigenous carers.

### 3. Quality of casework and placement decision-making

*When we are making decisions about community people, their present and future, to do that in the absence of community and family, you are not doing a service.*

**Sharron Williams, SNAICC Chairperson**

#### **Discussion paper questions addressed:**

- Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

Quality decision-making that ensures Aboriginal and Torres Strait Islander children are cared for in safe and supportive environments must be informed by Aboriginal and Torres Strait Islander people with knowledge of each child's community. This is critical to ensure that the identification of care options and ongoing placement support draws on knowledge of culture, caring strengths and risks in the local Aboriginal and Torres Strait Islander community.<sup>31</sup> This was a key finding of the *Bringing them Home* report into the experience of the Stolen Generations which recommended that in child protection matters:

the appropriate accredited Indigenous organisation is consulted thoroughly and in good faith. In care and protection matters that organisation must be involved in all decision making from the point of notification and at each stage of decision making thereafter including whether and if so on what grounds to seek a court order.<sup>32</sup>

The United Nations Committee on the Rights of the Child highlights that respecting Indigenous children's rights and making decisions in the best interests of Indigenous children requires an Indigenous perspective in decision-making.<sup>33</sup> This is recognised as important to ensure a culturally informed understanding of what a child's best interests are, as well as the impact of decision-making on a child's enjoyment of cultural rights in community with members of her/his cultural group.<sup>34</sup>

Recent SNAICC (2013) research has again highlighted the importance of independent, representative participation of Aboriginal and Torres Strait Islander peoples to improving quality child-protection decision-making and respecting human rights. The research finds that the critical recommendation of the *Bringing them Home Report* to involve Indigenous agencies in all decision-making remains largely unimplemented.<sup>35</sup>

Legislative requirements for participation of Aboriginal and Torres Strait Islander peoples in child protection systems are variable. Commonly, legislative frameworks include a strong in-principle commitment to participation and/or self-determination for Aboriginal and Torres Strait Islander peoples in child protection matters. Libesman (2008) identifies that the common lack of definition of 'self-determination' and other participatory principles undermines legislative objectives by leaving the means and extent of participation enabled to the interpretation of government departments.<sup>36</sup>

This conclusion is evident in very limited systems supporting the effective participation of Aboriginal and Torres Strait Islander communities in decision-making for their children. Those systems that do exist are significantly undermined by a lack of detailed implementation standards, accountability and resourcing.<sup>37</sup> Independent Aboriginal and Torres Strait Islander agencies have only advisory roles, and commonly cite limited capacity to influence decisions.<sup>38</sup>



Resourced and independent advisory roles across the spectrum of statutory child protection decision-making only exist state wide in Queensland and Victoria. Even in these states, available review has described the limits of effective input and participation. The recent report of the Queensland Child Protection Inquiry concluded on the variable operation of 'Recognised Entities' as the primary service model for Aboriginal and Torres Strait Islander participation, noting that:

Departmental data on the activities of recognised entities suggest that their participation in most aspects of statutory services is indeed fairly limited and skewed toward the intake phase.<sup>39</sup>

An audit of relevant decisions in Queensland in 2012 indicated only 62% compliance with legislative consultation requirements at the critical stage of deciding on where and with whom a child is placed.<sup>40</sup> The *Report of the Protecting Victoria's Vulnerable Children Inquiry* also described the need to address under-resourcing of cultural advice and support services that is limiting their effectiveness in Victoria.<sup>41</sup>

International models have suggested possibilities for reform through the delegation of statutory child protection functions to Indigenous agencies. Delegation models employed in Canada have been recognised for their strengths in contributing to culturally competent practice, community capacity building, and community caring models of service delivery.<sup>42</sup> Weaknesses have also been identified, and linked to funding of delegated authorities for statutory intervention without resourcing preventative family support functions to provide Indigenous communities with the means to strengthen family and community caring capacity.<sup>43</sup>

Decision-making roles for Aboriginal and Torres Strait Islander communities in child protection have also been linked to potential risks where poverty, disadvantage, and colonising factors have undermined community capacity for just decision-making in a minority of Aboriginal and Torres Strait Islander communities.<sup>44</sup> We assert that policy and practice development has too commonly emphasised these risks to justify limited roles for Aboriginal and Torres Strait Islander peoples in decision-making. In doing so, there has been inadequate recognition of the enormous strengths in caring for children that exist in every Aboriginal and Torres Strait Islander community, and the significant service and leadership capacity that could be drawn upon in many communities.

We believe that an approach that rather focuses on building capacity and transferring authority to Aboriginal and Torres Strait Islander communities in child protection matters would increase safety for Aboriginal and Torres Strait Islander children in out-of home care. This view is supported by Australian and international evidence that better outcomes in community well-being and development are achieved where Indigenous communities are empowered to respond to and address the challenges they face.<sup>45</sup>

**What is needed to prevent sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care?**

- Implementation of the *Bringing them Home* report recommendation to ensure an independent Aboriginal and Torres Strait Islander agency participates in all child protection decision-making.
- Supported capacity development for community-level leadership and participation in child protection decision-making.
- Supported development of community-based representative child protection

committees to promote child wellbeing and provide input to decision-making through the appropriate community-controlled organisation.

- Introduction of models that transfer or delegate authority in child protection to Aboriginal and Torres Strait Islander communities, including considering the broader application of the Aboriginal Guardianship Pilot currently under development by the Victorian Aboriginal Child Care Agency (VACCA).

#### **4. Importance of Aboriginal and Torres Strait Islander community-controlled agencies supporting carers and placements**

*Building the capacity of Aboriginal agencies is an essential part of cultural care. It is really hard for a mainstream agency to provide cultural care, even if they have Aboriginal workers. They have a different background and way of relating to and understanding the world.*

*Being with an Aboriginal agency is like being with an extended family. It is like having big brothers and aunties. An Aboriginal child in a mainstream agency is just another child in care.*

**Focus group participants<sup>46</sup>**

##### **Discussion paper questions addressed:**

- Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?
- What are the strengths and weaknesses of having OOHC providers regulated by the child protection department, or regulated by a body separate from the child protection department?
- Which approaches enhance participation by the child, particularly approaches best suited to seeking possible disclosures of abuse (including disclosures that might be inferred from behavioural changes) from children?

Aboriginal and Torres Strait Islander community-controlled organisations are best placed to support safety for Aboriginal and Torres Strait Islander children in out-of-home care. Their strengths to do so are grounded in their cultural knowledge and strong relationships with the communities they serve. The cultural strengths of Aboriginal and Torres Strait Islander agencies can contribute to the identification and selection of safe carers, and to quality in ongoing placement support that responds to family needs and addresses risk.

Building capacity for Aboriginal and Torres Strait Islander agencies contributes to broader community capacity for responding to the problems of child sexual abuse that confront some Aboriginal and Torres Strait Islander communities. This was identified as a key goal for preventing sexual abuse by the South Australian Commission of Inquiry into the sexual abuse of children on APY Lands which concludes that:

The ultimate goal should be for individual communities and family members to be sufficiently empowered to take control of the issue of child sexual abuse.<sup>47</sup>

The Inquiry reported that child protection services for Aboriginal children and families based on principles of self determination and employing Aboriginal staff, were critical to achieving

better outcomes.<sup>48</sup> Similarly, the recent report of the New South Wales Ombudsman on responding to child sexual abuse in Aboriginal communities concluded that community development approaches within a framework of self-determination are more likely to be effective.<sup>49</sup> The report concludes that developing services that are responsive to child sexual abuse in Aboriginal and Torres Strait Islander communities, must be part of holistic community-led health and well-being strategies that are responsive to community needs.<sup>50</sup>

Aboriginal and Torres Strait Islander agencies have a critical role to play in the development and implementation of cultural support plans for Aboriginal and Torres Strait Islander children in out-of-home care. Commonly Aboriginal and Torres Strait Islander service and community leaders report that children placed with mainstream agencies are far more vulnerable to losing community and cultural connections.<sup>51</sup> They have also expressed views that children are more likely to speak up about their own safety concerns, or to disclose harm, when supported by an agency or worker from their Aboriginal and Torres Strait Islander community.

These views are supported by the evidence of multiple barriers to engaging Aboriginal and Torres Strait Islander families that contribute to their under-utilisation of mainstream services.<sup>52</sup> It is well accepted that service engagement for Aboriginal and Torres Strait Islander families is supported by service systems and providers that develop cultural competence and service delivery that is culturally appropriate.<sup>53</sup> Evaluation of child and family service delivery through the federally funded Communities for Children program identifies that *'Indigenous specific services offer Indigenous families a safe, comfortable, culturally appropriate environment that is easier to access and engage with.'*<sup>54</sup> The importance of Indigenous-led services to family engagement in child protection is also clearly identified in the *Bringing them Home* report:

Evidence to the Inquiry confirms that Indigenous families perceive any contact with welfare departments as threatening the removal of their child. Families are reluctant to approach welfare departments when they need assistance. Where Indigenous services are available they are much more likely to be used.<sup>55</sup>

Despite the strengths of Aboriginal and Torres Strait Islander agencies to support safe and culturally connected care for children, they are under-resourced to perform the necessary functions. Numerous Australian studies and child protection systems reviews recognise their chronic under-resourcing.<sup>56</sup> McHugh and Valentine (2010) note particularly the negative impacts that under-resourcing has on kinship care support:

In the Australian context, a general lack of funding for Indigenous agencies (compared to non-Indigenous agencies) inhibits the provision of adequate supports and services for kinship carers, putting their retention as carers at risk.<sup>57</sup>

Table 1 illustrates the limited extent to which Aboriginal and Torres Strait Islander agencies currently support out-of-home care placements for Aboriginal and Torres Strait Islander children.

**Table 1 – Out-of-home care placements supported by Aboriginal and Torres Strait Islander agencies in New South Wales, Queensland and Victoria at 30 June 2013.**

State	Total number of Aboriginal and Torres Strait Islander children in out-of-home care	Total number of Aboriginal and Torres Strait Islander children in out-of-home care placements with an Aboriginal and Torres Strait Islander agency	Percentage of Aboriginal and Torres Strait Islander children in out-of-home care supported by an Aboriginal and Torres Strait Islander agency.
Queensland <sup>58</sup>	3417	524*	15%*
New South Wales <sup>59</sup>	3944	647	16%
Victoria <sup>60</sup>	1150	253**	22%**
<b>TOTAL</b>	<b>8511</b>	<b>1424</b>	<b>17%</b>

\* Aboriginal and Torres Strait Islander agency placements at 30 September 2013. Figure includes 12 funded placements in Aboriginal and Torres Strait Islander community managed safe houses that have fluctuating occupancy. Percentage is approximate given 3 month variation between total placements figure and Aboriginal and Torres Strait Islander agency placements figure.

\*\*Aboriginal agency placement targets for 2013/14 rather than actual placements at June 2013. Percentage is approximate as actual total placements are compared to placement targets.

Table 1 indicates that for Aboriginal and Torres Strait Islander agencies to provide support for all placements for Aboriginal and Torres Strait Islander children would require an approximate 6 fold capacity increase across the three states based on current figures. Even greater increases are necessary considering the ever-increasing number of Aboriginal and Torres Strait Islander children being placed in out-of-home care.<sup>61</sup> We believe that capacity of Aboriginal and Torres Strait Islander agencies is likely lower in other jurisdictions not represented in Table 1, but have not accessed current statistics.

Recent inquiry recommendations prioritise capacity development for Aboriginal and Torres Strait Islander agencies to deliver out-of-home care services. The Report of the Protecting Victoria's Vulnerable Children Inquiry concludes strongly that:

It is considered that a progressive plan of transferring responsibility for the out-of-home care placements of Aboriginal children in non-Aboriginal placements to ACCOs [Aboriginal community-controlled organisations] will both enhance self-determination and provide a practical means to strengthen the cultural links for those children.<sup>62</sup>

The report recommends a progressive transfer of control to Aboriginal communities, including transfer of guardianship responsibility and the provision of support to Aboriginal community controlled agencies to develop the necessary capacity for service delivery.<sup>63</sup>

Similarly, the recent report of the Queensland Child Protection Commission of Inquiry concludes that:

All else being equal, child protection services are more likely to be effective if they are delivered through Aboriginal and Torres Strait Islander-controlled agencies because these agencies are familiar with local circumstances and have the requisite cultural competence.<sup>64</sup>

This report also recommends significant increases in support and strong capacity building efforts to expand the roles of Aboriginal and Torres Strait Islander agencies.<sup>65</sup>

The New South Wales Ombudsman has also noted that while policy frameworks have long supported self-determination in child protection services, systemic capacity building commitment and support has been absent:

It is of significant concern to us that when community leaders have pushed for a protracted period of time for improved services to their community, the ability of government agencies to mobilise and support community leadership has been so poor.<sup>66</sup>

The New South Wales government has made a strong commitment to transfer all placements for Aboriginal and Torres Strait Islander children to Aboriginal and Torres Strait Islander agencies.<sup>67</sup> Early implementation has shown the potential of this commitment to translate into fast capacity growth in Aboriginal and Torres Strait Islander communities with appropriate supports in place. In the first year of the transition process capacity has almost doubled from approximately 350 to 650 Aboriginal children in out-of-home care with Aboriginal agencies.<sup>68</sup> Strengths of the approach in New South Wales have included direct capacity building support for agencies resourced through AbSec as the state Aboriginal child welfare peak body, and an AbSec role to facilitate capacity building partnerships between mainstream out-of-home care providers and Aboriginal communities. Early success in New South Wales indicates potential for drawing on the model to support capacity growth in other jurisdictions.

In Victoria, early implementation of the Protecting Victoria's Vulnerable Children Inquiry has seen the establishment of a trial of the transfer of guardianship for Aboriginal children in out-of-home care to the Victorian Aboriginal Child Care Agency (VACCA). However, significant capacity building efforts and placement transfer to Aboriginal and Torres Strait Islander agencies remain to be seen.

Of course, out-of-home care is not the only sector in which capacity gaps exist for Aboriginal and Torres Strait Islander led and managed approaches to supporting children and families. Capacity building efforts that have shown promise in New South Wales must be expanded to respond to the broader need for more holistic and community-based responses to child and family needs. The following section addresses this issue in more detailing, recognising the potential for increased community capacity in child and family support to build strong, healthy and safe communities for children.

**What is needed to prevent sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care?**

- Out-of-home care placements for Aboriginal and Torres Strait Islander children supported by adequately resourced Aboriginal and Torres Strait Islander community-controlled agencies.
- Recognition of the existing strengths of Aboriginal and Torres Strait Islander communities and their organisations to provide out-of-home care services and transfer of placements from mainstream agencies.
- Capacity building supports to ensure all Aboriginal and Torres Strait Islander communities can provide out-of-home care services, and placement transfer in line with capacity growth.
- Out-of-home care capacity growth linked to broader community capacity to address child and family needs and put in place preventative supports.

## 5. Prevention focus as the key to reduce risk for children in out-of-home care.

### Discussion paper questions addressed:

- Are there core strategies to keeping children in OOHC safe from sexual abuse and what is the evidence that supports them?

Many risks that currently exist for children in out-of-home care are contributed to or inadequately managed and supported because of over-burdened out-of-home care systems. Addressing the factors that cause child abuse and neglect to prevent children entering out-of-home care is key to addressing these risks. Strengthening Aboriginal and Torres Strait Islander family and community capacity to care for children will also increase the availability of safe caring options for children who need to be placed in out-of-home care.

The overwhelming weight of evidence suggests that preventative supports for families, particularly those provided during the early years of children's lives, are most effective to improve outcomes for children, and have significant long-term well-being, productivity and cost benefits for society.<sup>69</sup> This evidence underpins the *National Framework for Protecting Australia's Child 2009-2020* which recognises that:

Australia needs to move from seeing 'protecting children' merely as a response to abuse and neglect to one of promoting the safety and wellbeing of children. Leading researchers and practitioners – both in Australia and overseas – have suggested that applying a public health model to care and protection will deliver better outcomes for our children and young people and their families.

The large proportion of Aboriginal and Torres Strait Islander children removed from their parents for reasons of neglect indicates the reality that many Aboriginal and Torres Strait Islander families do not have the resources and supports needed to grow their kids up strong. Heckman's (2008) research highlights that making resources available to these families is critical:

Policies that supplement the child rearing resources available to disadvantaged families reduce inequality and raise productivity.<sup>70</sup>

Heckman's research in the United States has confirmed that cost benefits of preventative interventions and family supports are higher for disadvantaged groups, and provide greater social and economic benefits the earlier they occur in the life cycle.<sup>71</sup>

The recent report of the New South Wales Ombudsman on responding to sexual assault in Aboriginal communities strongly recognises that required responses should be underpinned by a holistic and community development focussed model that builds capacity and empowers communities to respond to child and family needs they identify.<sup>72</sup> This is aligned with recommendations of recent child protection systems inquiries that have consistently recognised the need to build greater role and capacity for Aboriginal and Torres Strait Islander agencies in early intervention and family support service delivery.<sup>73</sup>

Despite the recognised priority for re-investment in early intervention and prevention focussed service delivery, the investment gap between these service types remains enormous. The Productivity Commission (2013) reports, in its annual review of government services, that annual expenditure on statutory child protection services for 2011-12 is around \$3 billion.<sup>74</sup> This compares with \$357.3 million invested in intensive family support

services connected to the statutory system, and only \$472.2 million spent on the broader suite of earlier intervention family support services.<sup>75</sup>

In the short to medium term significant focussed investment is needed in secondary service functions, including intensive family support for the preservation and reunification of Aboriginal and Torres Strait Islander families. This recognises the current high levels of disadvantage and breakdown experienced by many Aboriginal and Torres Strait Islander families, and the potential that has been identified for culturally appropriate, strengths-based intensive support to improve family functioning and reduce the need for tertiary intervention.<sup>76</sup> It supports the strongly recognised priority in the *National Framework for Protecting Australia's Children* to intervene in the ongoing breakdown of Aboriginal and Torres Strait Islander families to ensure that families and communities can safely care for their own children.<sup>77</sup>

The strengths of Aboriginal and Torres Strait Islander community-controlled early years services and their importance for supporting children and families have long been recognised.<sup>78</sup> However, numerous reports over many years have found that persistent under-funding has limited the capacity of these services to provide integrated support to families, commonly restricting their operation to a more exclusive child care focus.<sup>79</sup> While the Federal Government has supported the development of 38 new Aboriginal and Torres Strait Islander Children and Family Centres to provide integrated early years focussed supports to families, their early development has been impacted by a lack of commitment to sustainable funding and a lack of focussed support for community governance and leadership in some cases.<sup>80</sup> Strengthening these and other community-led integrated service supports for families must be a key platform of efforts to reduce the current over-representation of Aboriginal and Torres Strait Islander children in Australia's child protection systems.

**What is needed to prevent sexual abuse of Aboriginal and Torres Strait Islander children in out-of-home care?**

- Reinvestment from statutory intervention to Aboriginal and Torres Strait Islander community-led, prevention focussed services, including intensive family preservation and restoration supports.
- Commitment to long-term, sustainable funding for Aboriginal and Torres Strait Islander integrated, early years focussed child and family services.
- Investment in building capacity for Aboriginal and Torres Strait Islander community-led governance in child and family service integration initiatives (eg. Communities for Children; Child Aware Local Communities; Aboriginal Children and Family Centres; Child FIRST).

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