

REVIEWING IMPLEMENTATION OF
THE ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILD PLACEMENT
PRINCIPLE
AUSTRALIAN CAPITAL
TERRITORY
2021



SNAICC
National Voice for our Children

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Acronyms and abbreviations

ACCO	Aboriginal and Torres Strait Islander community-controlled organisation
ACT	Australian Capital Territory
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
CYPS	Children and Youth Protection Services
Directorate	Community Services Directorate
FFT-CW	Functional Family Therapy - Child Welfare program
FGC	Family Group Conferencing
OBOW IOC	<i>Our Booris Our Way</i> Implementation Oversight Committee
OBOW Review	<i>Our Booris Our Way</i> review
OBOW SC	<i>Our Booris Our Way</i> Steering Committee
OOHC	Out-of-home-care

Introduction

This report reviews the progress of the Australian Capital Territory (ACT) Government, through the Community Services Directorate (Directorate) and its Child and Youth Protection Services (CYPS), in implementing the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle (Child Placement Principle).

The five elements of the Child Placement Principle are: *Prevention, Partnership, Placement, Participation, and Connection*.

The aim of the Child Placement Principle is to:

- embed an understanding that culture is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children and young people and is embedded in policy and practice;
- recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child safety matters;
- support self-determination of Aboriginal and Torres Strait Islander people in child safety matters; and
- reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care (OOHC) systems.

This year's review analyses implementation efforts over the past financial year; 1 July 2020-30 June 2021 (2020-2021). This change from the previous May-April reporting period better aligns with jurisdictions' data and activity reporting cycles, and with policy and legislative changes made during the year. While the change has meant that May-June 2020 may have been missed, stakeholders were strongly encouraged to provide any pertinent information that occurred in these two months.

The annual jurisdictional reviews are developed by SNAICC – National Voice for our Children (SNAICC) with input from Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) and state and territory governments. The reviews are informed by the best practice approach set out in SNAICC's Child Placement Principle resource series,¹ the 2018 Baseline Analysis of Child Placement Principle implementation,² and subsequent annual reviews of the Baseline Analysis undertaken by SNAICC.

Quantitative and qualitative analysis is used to measure and review jurisdictions' progress against the five elements and across five interrelated systems elements – legislation, policy, programs, processes, and practice.

Quantitative data is taken primarily from chapter 16 (Child Protection) of the *2022 Report on Government Services* (ROGS)³ and the Australian Institute of Health and Welfare (AIHW) *Child Protection Australia 2020-21* report.⁴ OOHC figures in this review comprise 'out-of-home care' and 'third party parental responsibility orders' from *Child Protection Australia*. Data on 'children of unknown Indigenous status in out-of-home care' have not been included in this review's figures.

¹ Including: SNAICC (2017) *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle*. Available at: www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf; and SNAICC (2018) *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*. Available at: www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf

² SNAICC (2018) *Baseline Analysis of Child Placement Principle*. Available at: www.snaicc.org.au/policy-and-research/child-safety-and-wellbeing/baseline-analyses-of-child-placement-principle

³ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*. Available at: www.pc.gov.au/research/ongoing/report-on-government-services/2022/community-services/child-protection (Steering Committee).

⁴ Australian Institute of Health and Welfare (2022) *Child protection Australia 2020-21*. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/out-of-home-care/characteristics-of-children-in-out-of-home-care> (AIHW)

These reviews map implementation progress and gaps across Australia, highlight governments' reform successes, and hold governments accountable to their efforts (or lack thereof) in achieving better outcomes for Aboriginal and Torres Strait Islander children and their families. In this way, they align with the priority reform areas of the *National Agreement on Closing the Gap*, including Priority Reform 4 on improving Aboriginal and Torres Strait Islander peoples' access to data that affects them and their communities.

SNAICC issued requests for information to state and territory departments responsible for child protection and family support in each jurisdiction, to provide information that shows significant progress and reforms towards achieving full implementation of the Child Placement Principle between 1 July 2020-30 June 2021. Some of the information requested was not provided and, in some cases, jurisdictions advised that this is because they do not collect or record the data sought. SNAICC also sought clarification from jurisdictions after the initial requests for information and provided them with an opportunity to review the draft reports, add information and/or correct any errors.

State and territory governments reported that progress in implementing the Child Placement Principle during this period of review was impacted by the COVID-19 pandemic. The review therefore acknowledges that delivery and implementation of some programs and initiatives was delayed due to COVID related restrictions and the need to prioritise government resources.

The reviews come out of the *National Framework for Protecting Australia's Children 2009-2020*. The next ten-year framework, *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031*, expects to go further by embedding a stronger focus on, and promoting and enabling full implementation of the Child Placement Principle.

Overview

Prevention: During the reporting period, the ACT Government took steps to implement recommendations from the *Our Booris Our Way* review (OBOW Review) the Territory's Aboriginal and Torres Strait Islander co-designed and led review on ways to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC.

As part of this, the ACT committed \$5.7 million over five years to fund delivery of the *Functional Family Therapy - Child Welfare* program (FFT-CW), through a partnership between Gugan Gulwan Youth Aboriginal Corporation and OzChild. FFT-CW seeks to provide Aboriginal and Torres Strait families with the supports needed to prevent children from entering or remaining in care. A total of 39 Aboriginal and Torres Strait Islander families, including 120 children, successfully completed the program.⁵ Despite this, Aboriginal and Torres Strait Islander children in the ACT were 13 times more likely to be in OOHC than non-Indigenous children.⁶ This is well above the national rate of 10.4 times for the same period.⁷ This is an unacceptable rate of overrepresentation that must be addressed.

In addition, the proportion of child protection funding provided to culturally safe prevention services was minimal compared to the need. The ACT's spending on family support and intensive family support services comprised only 10.72% of total funding spent on child protection in 2020-21.⁸ This is a decrease from 12.26% during the last reporting period (2019-20) and well below the national average of 16.95%.⁹

⁵ Input provided by the ACT Government to inform this implementation review.

⁶ AIHW, n 4, Table T3.- children-in-out-of-home-care.

⁷ Ibid.

⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, n 3, Table 16A.33.

⁹ Ibid.

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

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

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

There remains no peak body for Aboriginal and Torres Strait Islander children nor a dedicated children's commissioner to ensure government accountability and protect Aboriginal and Torres Strait Islander children's rights. The Government reported that it is taking steps to progress the appointment of a dedicated Aboriginal Children's Commissioner.

Placement: In 2020-21, 41.4% of Aboriginal and Torres Strait Islander children in OOHC in the ACT were placed with Aboriginal and Torres Strait Islander relatives/kin.¹⁰ This is above the national average of 32.1% and higher than the ACT's 2019-20 rate of 37.8%.¹¹ Community leaders reported that many placements were being listed as kinship placements when children are placed with non-Aboriginal family members. Community leaders felt strongly that this is kinship care but not Aboriginal kinship care.

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

Participation: From the commencement of the *Family Group Conferencing* (FGC) program in November 2017 to 30 June 2021, 49 Aboriginal and Torres Strait Islander families were involved in FGC, including 106 children and young people.¹² A total of 64 of the children and young people did not subsequently enter OOHC (at January 2021).¹³ It is promising that many children that participated in the program were not placed in OOHC. However, community leaders expressed concern about the lack of any Aboriginal and Torres Strait Islander-led process that is independent from government. For FGC to bring about the best results for families, the program must be delivered by ACCOs with Aboriginal and Torres Strait Islander facilitators, as this will create a culturally safe space for families and children to have a genuine say in decisions about the care of children.¹⁴

¹⁰ Ibid Table16A.22.

¹¹ Ibid.

¹² Input provided by ACT Government to inform this review.

¹³ Ibid.

¹⁴ SNAICC (October 2017) *Evaluation: Aboriginal and Torres Strait Islander Family Led Decision Making Trial*. Available at: www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation_Report_ATSIFLDM-2018.pdf

Connection: The percentage of Aboriginal and Torres Strait Islander children in OOHC with a current cultural care plan in place declined in the reporting period. At 30 June 2021, 84.8% of Aboriginal and Torres Strait Islander children had a current cultural care plan in place.¹⁵ Although this was above the national average of 73.4%, the rate is gradually declining in the ACT (86.5% in 2019-20 and 91.9% in 2018-19).¹⁶ According to community leaders, the information being included in cultural care plans is tokenistic and plans are not fit for purpose.

On a positive note, 33.3% of eligible Aboriginal and Torres Strait Islander children in care were reunified with their families in 2020-21 (noting that children on long-term orders, including long-term custody, guardianship and third-party parental responsibility orders, are not eligible for reunification).¹⁷ This is the highest rate of reunification compared to other jurisdictions, and well above the national average of 16.4%.¹⁸ There has generally been a significant increase in reunification rates in the ACT over the past few years (11% in 2019-20 and 26.4% in 2018-19).¹⁹

In 2019-20,²⁰ 12 Aboriginal and Torres Strait Islander children between 0-16 years of age exited OOHC to a permanency agreement.²¹ While this is a relatively small number of children, community leaders expressed a strong concern that long-term orders were being used too often and without proper time and investment in family preservation and restoration/reunification.

Prevention

The ACT Government engaged SNAICC to consult with Aboriginal and Torres Strait Islander communities and organisations in the ACT on how best to embed the Child Placement Principle in the *Children and Young People Act 2008* (ACT) (CYP Act). SNAICC has since completed this work and submitted a final report of recommendations for legislative reform in 2022. There were no changes to the CYP Act in the reporting period across all elements of the Child Placement Principle.

The ACT's dedicated strategy to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC, *A Step Up for Our Kids Strategy 2015-2020*, concluded during the reporting period. A post-strategy evaluation was carried out by the Directorate and externally evaluated by the University of Technology Sydney.²² The evaluation was published in 2021, with the ACT Government claiming that it establishes a strong evidence base to inform the next iteration of the ACT's OOHC strategy. The *Next Steps for Our Kids Strategy 2022-2030* was released in June 2022.²³ This strategy will be discussed in the next implementation review.

As part of its commitment to implementing recommendations of the OBOW Review, a wholly Aboriginal and Torres Strait Islander-led review into the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC, the ACT committed \$5.7 million over five years to fund delivery of the FFT-CW. This is a program implemented through a partnership between Gugan Gulwan Youth Aboriginal Corporation and OzChild. The program addresses safety concerns in the family environment with a holistic psychotherapy framework where families are supported to take practical actions to reduce the risk of their children entering OOHC. During 2020-21, the program received

¹⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, n 3, Supplementary Table S2.2a.

¹⁶ Ibid.

¹⁷ Ibid Supplementary Table S2.3a.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid Table 16A.40. Data for 2020-21 not yet available.

²¹ Ibid, Table 16A.40.

²² ACT Government Community Services Directorate (2021) *A Step Up for Our Kids: Out-of-home care strategy 2015-2020 - Post-Strategy Evaluation Stage 1*, p 30. Available at: www.communityservices.act.gov.au/__data/assets/pdf_file/0008/1949462/ASUFOK-Post-Strategy-Evaluation-Stage-1-Report.pdf

²³ ACT Government Community Services Directorate (2022) *About A Step Up for Our Kids*. Available at: www.communityservices.act.gov.au/ocfys/children/child-and-youth-protection-services/a-step-up-for-our-kids/out-of-home-care-strategy-2015-2020

\$1,030,000. 39 Aboriginal and Torres Strait Islander families, including 120 children, successfully completed the program.²⁴ Nine families disengaged (five chose to withdraw, three relocated out of state, and one family's children were moved to kinship arrangements).²⁵ The remaining families continue with the program.

Despite these developments, Aboriginal and Torres Strait Islander children in the ACT were 13 times more likely to be in OOHC than non-Indigenous children.²⁶ This is well above the national rate of 10.4 times for the same period.²⁷ This is an unacceptable rate of overrepresentation that must be addressed.

Of the 236 children commencing intensive family support services in 2020-21, 42.4% were Aboriginal and Torres Strait Islander.²⁸ This is a slight increase from 40.5% in 2019-20.²⁹ Community leaders expressed concern that families wanting to access early supports are required to have an open case with Child and Youth Protective Services (CYPS). This was seen as a significant barrier to families wanting to engage in these programs for fear of having children removed, and was not seen as 'early support' if the circumstances already required an open case with CYPS. Families should be able to access early support services without needing to be involved with CYPS.

In addition, the proportion of child protection funding provided to culturally safe prevention services was minimal compared to the need. The ACT's spending on family support and intensive family support services comprised only 10.72% of total funding spent on child protection in 2020-21.³⁰ This is a decrease from 12% during the last reporting period (2019-20) and well below the national average of 17%.³¹ The lack of spending on ACCOs to provide early intervention and prevention services remains an ongoing issue. Community leaders reported that ACCOs are significantly under resourced for family support services and that funding was primarily directed to non-Indigenous organisations.

In line with the whole-of-government approach needed to reduce the rate of Aboriginal and Torres Strait Islander children in OOHC, the ACT Government announced the establishment of a \$20 million *Healing and Reconciliation Fund* (the Fund) to support Closing the Gap and deliver on priorities identified through the *ACT Aboriginal and Torres Strait Islander Agreement* in October 2020. The Fund will be administered in partnership with the local Aboriginal and Torres Strait Islander community and will seek to address the drivers of children entering care, among other priorities. Moreover, \$1.6 million was allocated to strengthen support for Aboriginal and Torres Strait Islander families across housing, child protection and other supports for children and families, and domestic and family violence responses.

In relation to family violence prevention, the ACT Government is working with the Domestic Violence Prevention Council's Aboriginal and Torres Strait Islander Reference Group to prioritise and implement recommendations from the *We Don't Shoot Our Wounded* report. The ACT allocated \$790,000 over four years for this work, with an additional \$198,000 rolled over from 2020-21. Despite this progress, it is important to note the *We Don't Shoot Our Wounded* report was released in 2009, which is 14 years ago. It is vital that recommendations concerning improving outcomes for Aboriginal and Torres Strait Islander families and children are implemented in a timely way.

²⁴ Input provided by the ACT Government to inform this implementation review.

²⁵ Ibid.

²⁶ SNAICC (2022) *The Family Matters Report*. Available at: <https://www.familymatters.org.au/publications/>

²⁷ Ibid.

²⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, n 3, Table 16A.34.

²⁹ Ibid.

³⁰ Ibid, Table 16A.8.

³¹ Ibid.

The Directorate reported that CYPs staff commenced *Safe and Together* training, an ‘internationally recognised suite of tools and interventions designed to help child welfare professionals become domestic violence-informed’ in June 2021.³² This training was provided by the Safe and Together Institute. While the training provides child welfare workers with critical practice skills in domestic and family violence, the model was developed for an international audience and there is no evidence that cultural safety for Aboriginal and Torres Strait Islander peoples is embedded in the model.

The ACT allocated funding for two identified positions for Aboriginal and Torres Strait Islander staff to establish a small team dedicated to the establishment of an ACCO-controlled housing organisation. In 2020-21, \$1.22 million was allocated to six programs from the ACT specialist homelessness sector, specifically dedicated to support Aboriginal and Torres Strait Islander people. Approximately \$358,000 (29.3%) of this was provided to ACCOs to deliver services.

Overall, further concerted effort, including greater investment in ACCO-delivered prevention and early intervention services, is required to ensure the full intent of the Prevention element is achieved.

Partnership

The ACT remains the only jurisdiction to have an Aboriginal and Torres Strait Islander elected body established through legislation that is responsible for supporting the ACT Government to develop policy and provide services relevant to the needs of Aboriginal and Torres Strait Islander people. The Aboriginal and Torres Strait Islander Elected Body works with the ACT Government to deliver outcomes in the *Aboriginal and Torres Strait Islander Agreement 2019-2028* (the Agreement). A core objective of the Agreement is to ensure Aboriginal and Torres Strait Islander children and young people grow up safely in their families and communities. However, there were no updates on the implementation of the Agreement since the last Child Placement Principle implementation review.

The ACT committed \$5.4 million over four years in the 2020-21 Budget to continue implementation of the OBOW Review recommendations.³³ In the ACT Government’s July 2020 response to the OBOW Review, it considered the 28 review recommendations and the progress made regarding implementation. The response stated that the ACT Government will continue to act on the review’s recommendations yet did not provide details of intended next steps. The ACT committed to providing an update on progress against each recommendation every six months, however, only one update in the review period (that incorporates July-December 2020) has been made available.³⁴

In a promising development, the government established the *Our Booris Our Way* Implementation Oversight Committee (OBOW IOC), to oversee implementation of the recommendations of the OBOW Review, including legislative and policy reform. The committee is fully comprised of Aboriginal and Torres Strait Islander members. The OBOW IOC has expressed frustration at the lack of progress with implementing review recommendations.³⁵

The Aboriginal and Torres Strait Islander Network (the Network) was established in 2019 and continued to provide input to government reforms. The Network comprises Aboriginal and Torres Strait Islander community members who have lived experience and expertise in the human services

³² Safe and Together Institute (2020) *About the model*. Available at: <https://safeandtogetherinstitute.com/about-us/about-the-model>

³³ ACT Government (2020) *Budget 2020-21 – Budget Statements G: Community Services Directorate | Housing ACT*, p 25. Available at: <https://www.treasury.act.gov.au/budget/budget-2020-21>

³⁴ The Legislative Assembly for the ACT (May 2021) *Tabling Statement: A Step Up for Our Kids- Snapshot report update and Our Booris Our Way implementation update*. Available at: www.parliament.act.gov.au/__data/assets/pdf_file/0003/1762320/Ms-Stephen-Smith-MLA-A-Step-Up-for-Our-Kids-Snapshot-Report-Update-and-Our-Booris-Our-Ways-Implementation-Update-Tabling-Statement.pdf

³⁵ CBR City News (11 August 2021) *Committee bares teeth at government inaction*. Available at: <https://citynews.com.au/2021/committee-bares-teeth-at-government-inaction>

system in the ACT. According to the ACT Government, during 2020-21 the Network contributed to a range of CYPS policies, procedures and publications. These included sharing experiences and perspectives to inform service and system re-design, practice change, and to make information on child protection accessible and meaningful to the community. Community leaders believe the Network is a positive example of a meaningful partnership between government and Aboriginal and Torres Strait Islander people.

Further, the ACT Government reported that all CYPS policies and practice guides were updated in collaboration with the Ngura Naraganabang Advisory Group, an Aboriginal and Torres Strait Islander advisory committee comprising government and non-government members. This advisory group was established in July 2019 to provide advice and feedback to CYPS in relation to policy and resource development, and to support practice when working with Aboriginal and Torres Strait Islander children, young people, families and communities. CYPS worked with the advisory group to ensure all updates include easy English versions for parents and families.

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

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

There remains no peak body for Aboriginal and Torres Strait Islander children nor a dedicated Aboriginal and Torres Strait Islander children's commissioner to ensure government accountability and that Aboriginal and Torres Strait Islander children's rights are protected. The ACT Government indicated that it is taking steps to progress the model for an Aboriginal children's commissioner through a co-design process. Progress against this commitment will be reported in the subsequent Child Placement Principle review.

Community members and ACCOs indicated that they are fatigued by consultation processes and promises of reform that are not resulting in any changes for families. They noted that where there were strong relationships and informal partnerships between government and community, these were the result of individual actions rather than collective efforts or structural processes. Government can contribute to repairing these relationships by delivering on reforms and investment in formal partnerships with ACCOs and funding ACCOs appropriately.

Placement

Since the last implementation review, the *Child Youth Protection Services Procedure: Placing a child according to the Aboriginal and Torres Strait Islander Child Placement Principle* document was developed. The document was developed in collaboration with the Ngura Naraganabang Advisory Group. According to the Directorate, the document provides CYPS staff with guidance on how to determine the best placement for Aboriginal and Torres Strait Islander children in compliance with the Child Placement Principle. The document highlights that, consistent with section 513 of the CYP

Act, continuing contact with the child's family, community or culture is an important consideration for placement. It also affirms kinship care as the priority placement for Aboriginal and Torres Strait Islander children.

While this practice guidance affirms the importance of placing Aboriginal and Torres Strait Islander children in OOHC with kin, community leaders expressed concern that the co-location of Aboriginal and Torres Strait Islander and non-Indigenous family at the top level on the placement hierarchy was being used to justify not looking at Aboriginal and Torres Strait Islander family members. In addition, it was reported that many placements were being listed as kinship placements when children were placed with non-Aboriginal family members. Community leaders felt strongly that this is kinship care but not Aboriginal kinship care.

For these reasons, it is imperative that legislation is amended to prioritise placements with Aboriginal and Torres Strait Islander kin. There also needs to be a tighter definition of Aboriginal kinship in the legislation. Furthermore, data collection on placement type needs to enable transparency about compliance with the Child Placement Principle hierarchy.

In 2020-21, 41.4% of Aboriginal and Torres Strait Islander children in OOHC in the ACT were placed with Aboriginal and Torres Strait Islander relatives and/or kin.³⁶ This was above the national average of 32.1% and the 2019-20 rate of 37.8%.³⁷ 26.3% of Aboriginal and Torres Strait Islander children in OOHC were placed with non-Indigenous relatives and/or kin, an increase from 23.9% in 2019-20.³⁸ The rate of children being placed with other Aboriginal or Torres Strait Islander carers (non-relative/kin) was only 2%, well below the national average of 9.5%.³⁹

Community leaders expressed confusion about the process for assessing kinship and foster carers and significant concern about how assessment processes disadvantaged Aboriginal and Torres Strait Islander carers because assessments were based on white understandings of child rearing. For these reasons and due to low rates of placement of Aboriginal and Torres Strait Islander children with their Aboriginal and Torres Strait Islander kin, ACCOs must be empowered and funded to find, assess, recruit and support Aboriginal and Torres Strait Islander kinship carers. Currently this work is carried out by CYPS. ACCOs must be supported to undertake this work as they are best placed to find carers at the top of the Placement hierarchy given knowledge of kinship and community ties.

Finally, the Directorate stated that CPYS staff must undergo mandatory core Child Placement Principle training within the first 12 months of employment. CYPS continues to engage SNAICC to deliver this training biannually to all commencing CYPS staff. Notably, though staff have the option to repeat the training, it is primarily a one-off session and therefore insufficient for the development of authentic cultural safety skills. No information was provided on the ongoing monitoring of cultural safety skills of CYPS staff.

Participation

From the commencement of the Family Group Conferencing (FGC) Program in November 2017 to 30 June 2021, 49 Aboriginal and Torres Strait Islander families were involved in FGC, involving 106 children and young people.⁴⁰ 64 of the children and young people did not subsequently enter OOHC

³⁶ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, e, n 3, Table 16A.22.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Input provided by ACT Government to inform this review.

(at January 2021).⁴¹ All Aboriginal and Torres Strait Islander families were supported by an Aboriginal and Torres Strait Islander FGC facilitator.

It is promising that several children who participated in the program were not placed in OOHC. However, it is concerning that FGC is not an independent Aboriginal and Torres Strait Islander-led process as it is delivered by CYPS staff. This is a practice that has been identified as disempowering to families due to the power imbalance between facilitators and families.⁴² Community leaders reported that FGC was not seen as a useful mechanism for family participation because the process is not considered culturally safe or independent. There were also significant concerns about how ACCOs and family members were excluded from these processes either explicitly or through the withholding of relevant information.

Community leaders reported that when families were provided an opportunity to participate in conferences, many families felt silenced and their voices were not reflected in final decisions. This left families feeling disempowered and that the process was pointless. There were also related concerns that FGC was being offered too late in the process. For FGC to bring about the best results for families, the program must be delivered by ACCOs with Aboriginal and Torres Strait Islander facilitators, as this will create a culturally safe space for families and children to have a genuine say in decisions about the care of children.⁴³

Another aspect of the *Participation* element is to increase the cultural competence of staff to engage families in child protection decision-making. The Directorate indicated that the *Cultural Development* program seeks to provide CYPS staff with an understanding of Australia's diverse Aboriginal and Torres Strait Islander peoples, communities, practices as well as the trauma caused to Aboriginal and Torres Strait Islander peoples through government policies. The program is coordinated and facilitated by Aboriginal and Torres Strait Islander staff within CYPS who are in practice leadership positions and the content was updated to embed the Child Placement Principle in the reporting period. Despite this, community leaders described not knowing that they had any right to participate in decision-making throughout engagement with CYPS. In addition, according to ACCOs, families are not being informed either at all or well enough about the Child Placement Principle and their rights, or the Government's obligations to uphold these rights.

In terms of ensuring children and young people can participate in decision-making, the Directorate reported that Aboriginal and Torres Strait Islander children and young people in OOHC have access to the Public Advocate, the Children and Young People Commissioner and the Aboriginal and Torres Strait Islander Official Visitor. The role of the Public Advocate is to speak and act on behalf of children and young people, to promote their rights and to listen and investigate concerns about the services provided to them. Children and young people are also able to make a complaint to the ACT Human Rights Commission, in particular the Children and Young People Commissioner and the Official Visitor. Both provide advocacy and investigate matters raised. The ACT Government did not provide further detail about Aboriginal and Torres Strait Islander children or young people accessing these pathways, whether these are culturally safe for Aboriginal and Torres Strait Islander children and young people, or the outcomes of these programs.

⁴¹ Ibid.

⁴² SNAICC (October 2017) *Evaluation: Aboriginal and Torres Strait Islander Family Led Decision Making Trial*. Available at: www.snaicc.org.au/wp-content/uploads/2018/05/Evaluation_Report_ATSIFLDM-2018.pdf

⁴³ Ibid.

Connection

The *Child and Youth Protection Services Policy: Cultural Plans for Aboriginal and Torres Strait Islander Children and Young People* became effective from 30 June 2020. The policy provides guidance for CYPS staff on the development of cultural care plans for Aboriginal and Torres Strait Islander children in OOHC. The CPYS policy is to 'engage in honest, respectful and culturally appropriate interactions and discussions with children, young people, parents, and families to encourage their active participation and ownership of the child's Cultural Plan'.⁴⁴ Despite this policy, community leaders stated that families are rarely engaged in the development of cultural care plans.

According to the Directorate, the CYPS established a Cultural Panel of Aboriginal and Torres Strait Islander professionals to inform, develop and implement cultural care plans (Cultural Panel). It is reported that the Cultural Panel will also be responsible for reviewing cultural care plans to ensure they are up to date. The ACT Government did not indicate whether there are Aboriginal and Torres Strait Islander representatives on the Cultural Panel independent of CYPS.

The percentage of Aboriginal and Torres Strait Islander children in OOHC with a current cultural care plan in place has declined in recent years. At 30 June 2021, 84.8% of Aboriginal and Torres Strait Islander children had a current cultural care plan in place.⁴⁵ Although this was above the national average of 73.4%, the rate is gradually declining in the ACT (86.5% in 2019-20 and 91.9% in 2018-19).⁴⁶

Community leaders reported that the information being included in cultural care plans is tokenistic and plans are not fit for purpose. There were reports of cultural information being copied and pasted from online sources instead of meaningfully discussed with families. The intention of the *Connection* element is to make sure children in OOHC have their right to grow up strong in culture and identity with family and community protected. It is important that legislation and supporting policy and practice recognise the importance of connection to culture and treat cultural care plans as a living roadmap that is developed with children and their families.

In relation to reunification, 33.3% of eligible Aboriginal and Torres Strait Islander children in care were reunified with their families in 2020-21 (noting that children on long-term orders, including long-term custody, guardianship and third-party parental responsibility orders, are not eligible for reunification).⁴⁷ This is the highest rate of reunification compared to other jurisdictions, and well above the national average of 16.4%.⁴⁸ On a positive note, there has generally been an increase in reunification rates in the ACT over the past few years (11% in 2019-20 and 26.4% in 2018-19).⁴⁹

Further, as mentioned in the *Prevention* section, Gugan Gulwan and OzChild continued to be funded to provide services to families to support the reunification of children in OOHC. From program commencement to 30 June 2021, 32 referrals were made and 20 families were engaged with the program aimed at reunification. The Directorate reported that the CYPS Restoration Oversight Panel supported active efforts to encourage the reunification of children with their families.

Despite this progress, community leaders indicated that not enough was being done to support ongoing contact between children in care and their parents and families. They shared examples of the restrictions placed on parents and families during contact and how this impacts connection. The connection element includes pursuing restoration/reunification early and often for children in

⁴⁴ ACT Government Community Services (30 June 2020) *Cultural Plans for Aboriginal and Torres Strait Islander children and young people*. Available at:

⁴⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Supplementary Table S2.2a.

⁴⁶ Ibid.

⁴⁷ Ibid, Supplementary Table S2.3a.

⁴⁸ Ibid.

⁴⁹ Ibid.

OOHC. Community leaders expressed concern about the use of 18-year orders in situations where families were not first supported to work towards and seek restoration/reunification. In 2019-20,⁵⁰ 12 Aboriginal and Torres Strait Islander children between 0 - 16 years of age exited OOHC to a permanency agreement.⁵¹

The ACT policy position is that adoption is not suitable for Aboriginal and Torres Strait Islander children. Following community consultations undertaken by the OBOW Steering Committee, the review recommended (Recommendation 26) that this policy be formalised in legislation, to remove the possibility of Aboriginal and Torres Strait Islander children being adopted.

While the ACT Government has 'agreed in principle' to this recommendation, no legislative changes have been made to reflect the policy. The *Adoption Act 1993* (ACT) (Adoption Act) was, however, amended to require consideration of the impact of adoption decisions on the relationships that a young person has with significant people in their lives, including family. The Adoption Act also specifies safeguards in relation to ensuring Aboriginal and Torres Strait Islander children maintain connections to family, community, culture and Country during adoption processes. These changes do not go as far as is recommended by the OBOW review.

⁵⁰ Ibid Table 16A.40. Data for 2020-21 not yet available.

⁵¹ Ibid.