

REVIEWING IMPLEMENTATION OF
THE ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILD PLACEMENT
PRINCIPLE
NEW SOUTH WALES
2021



SNAICC
National Voice for our Children

Contents

Acronyms and abbreviations	3
Introduction	4
Overview	5
Prevention.....	7
Partnership.....	9
Placement	11
Participation.....	12
Connection.....	14

Acronyms and abbreviations

AbSec	NSW Child, Family and Community Peak Aboriginal Corporation
ACCO	Aboriginal and Torres Strait Islander Community-Controlled Organisation
ACMP	Aboriginal Case Management Policy
AFLDM	Aboriginal Family-Led Decision Making
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
CSP	Cultural Support Plan
The Department	Department of Communities and Justice (New South Wales)
OOHC	Out-of-home care
FGC	Family Group Conferencing

Introduction

This report reviews the progress of the New South Wales (NSW) Government, through the Department of Communities and Justice (Department), 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 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,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*

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-CHILD_PLACEMENT_PRINCIPLE-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

Protection Australia 2020-21 report (AIHW Report).⁴ OOHC figures in this review comprise ‘out-of-home care’ and ‘third party parental responsibility orders’ as defined in the AIHW Report. Data on ‘children of unknown Indigenous status in out-of-home care’, as defined in the AIHW Report, have not been included in this review’s figures.

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 governments reported that progress in implementing the Child Placement Principle during this review period 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 associated operational challenges, 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*, will go further by embedding a stronger focus on and promoting and enabling full implementation of the Child Placement Principle.

Overview

Prevention: The NSW Government’s *Aboriginal Outcomes Strategy 2017-2021* sets out its commitments to increase access to early intervention for Aboriginal⁵ families and reduce the overrepresentation of Aboriginal children in OOHC. This strategy lapsed over this review’s reporting period. Despite the commitments laid out in the strategy for 2020-21, only 14.99% of child protection funding was spent on family support and intensive family support services.⁶ This represents a slight decrease since the strategy came into effect in 2016-17 when the proportion of

⁴ Australian Institute of Health and Welfare (AIHW) (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>

⁵ References to Aboriginal people refer to Aboriginal and Torres Strait Islander peoples.

⁶ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table16A.8.

spending on family support and intensive family support services equated to 15.86% of total child protection expenditure.⁷

Further, as part of this strategy, the Department committed to delivering 30% of early intervention funding to ACCOs by 30 June 2021.⁸ This goal has not been met, with *Targeted Earlier Intervention Program* funding to ACCOs increasing by less than one percentage point between 2017 and 2021, bringing the total to just 14.71%.⁹

At 30 June 2021, 42.5% of the children and young people in care were Aboriginal – an increase from 41% the previous year.¹⁰ At 30 June 2021, Aboriginal children in NSW were 10.5 times as likely to be living in OOHC than their non-Indigenous peers;¹¹ this represented a slight increase from the previous year's rate of 9.9%.¹²

Partnership: Aboriginal sector leaders in NSW continue to report limited compliance with the *Partnership* element, including a lack of follow-through in fully implementing reforms that will enhance the involvement of ACCOs and communities in the design and delivery of child protection services. For example, according to the Department's data, almost half of the organisations who received funding to deliver Aboriginal-specific programs under the *Targeted Earlier Intervention Program* in 2020-21 were non-Indigenous organisations.¹³ During the 2011-12 financial year, the Department made a commitment to transition the OOHC case management of all Aboriginal children to ACCOs by 2022.¹⁴ Increasing numbers of Aboriginal children are being placed with ACCOs, but not at a rate high enough to meet the target; as at 30 June 2021, the proportion was only at 20.6%.¹⁵

Placement: At 30 June 2021, 72.4% of Aboriginal children in OOHC (not including Aboriginal children on long-term orders including long-term custody, guardianship and third-party parental responsibility orders) were living with family, kin or other Aboriginal carers.¹⁶ Of these children, just 48.9% were placed exclusively with Aboriginal kin or other Aboriginal carers.¹⁷ While this is still higher than the national average, NSW is experiencing a slight decline in the placement of Aboriginal children with their family, kin or other Aboriginal carers, dropping by one percentage point since the previous year.

Participation: Departmental data shows a promising increase in the number of families accessing the Family Group Conferencing (FGC) program. In 2020-21, 51% (463) of the families who participated in

⁷ Ibid.

⁸ NSW Government (2017) *The Aboriginal Outcomes Strategy 2017-2021*. Available at www.facs.nsw.gov.au/download?file=592234

⁹ SNAICC (2021) *The Family Matters Report 2021*, p. 45. Available at www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

¹⁰ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table16A.2

¹¹ SNAICC (2022) *The Family Matters Report 2022*. Available at: <https://www.familymatters.org.au/publications/>

¹² Ibid.

¹³ NSW Government submission to inform this review.

¹⁴ NSW Government (Department of Family and Community Services) Transition Program Office (2013) *Out-of-Home Care Transition Implementation Framework: Stage 2 – 2013-2014*. Available at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0014/320081/tpo_oohc_framework_stage2.pdf

¹⁵ Portfolio Committee No. 5 Legal Affairs (2021) *Examination of proposed expenditure for the portfolio area: Families, Communities and Disability Services*, p. 17. Available at: [https://www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20\(Henskens\)%20-%2029%20October%202021.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20(Henskens)%20-%2029%20October%202021.pdf)

¹⁶ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table16A.22.

¹⁷ Ibid.

FGC were Aboriginal and Torres Strait Islander, compared to 47% in 2019–20. Of those who participated, only 25% proceeded to Children’s Court for interim or final orders. However, Aboriginal sector leaders continue to be concerned by the lack of meaningful involvement of children, their families, and broader kinship and community networks in child protection decision-making. They also argue that raw numbers are not enough to provide an indication of the quality of the FGC process from the perspective of Aboriginal and Torres Strait Islander children and their families.

Connection: The Department maintains a policy that is heavily focused on permanency planning as a means of achieving stability. A high proportion of Aboriginal children on care and protection orders are consequently placed on permanent guardianship and ‘parental responsibility of the Minister’ orders.¹⁸ In 2020–21, NSW had the fourth-highest rate of Aboriginal children on permanent care orders (after South Australia, Victoria and the Australian Capital Territory), with 64.3 per 1,000 Aboriginal children being placed in permanent care, compared to 64.6 children per 1,000 the previous year.¹⁹ This is 10.2 times the rate for non-Indigenous children.

Prevention

The *Prevention* element of the Child Placement Principle aims to ensure that Aboriginal and Torres Strait Islander children grow up healthy, safe, and within their own family and community. Features of this element are broad and can only be achieved through a whole-of-government approach.

Aboriginal people and cultures are strong and resilient, and they have kept children safe and strong in their identities for countless generations. Despite these strengths and the NSW Government’s stated focus on addressing the overrepresentation of Aboriginal children in OOHC, there continued to be an annual increase in the number of children entering care. At 30 June 2021, 41.5% of the children and young people in care in NSW were Aboriginal – an increase in both number and percentage from the previous year (40.2%).²⁰ At 30 June 2021, Aboriginal children in NSW were 10.5 times more likely to be living in OOHC than their non-Indigenous peers.²¹ This is an increase from the previous year’s rate of 9.9 times.²²

The *Aboriginal Outcomes Strategy 2017–2021* set the Department’s approach to improving outcomes for Aboriginal people in NSW. It included goals of increasing access to early intervention for families and reducing the overrepresentation of children in OOHC (including by moving 1,200 Aboriginal children and young people from OOHC to guardianship orders).²³ This strategy lapsed during this review’s reporting period.

¹⁸ New South Wales uses different language to most other jurisdictions for the two kinds of permanent care orders. ‘Guardianship orders’ transfer the legal responsibility for a child’s care to an adult other than the child’s parent/s (in other jurisdictions, and in national reporting, these are referred to as third-party parental responsibility orders). Under ‘parental responsibility of the Minister’ orders, the legal responsibility for the child’s care continues to rest with the Minister for Families and Communities (in other jurisdictions, and in national reporting, these are referred to as guardianship orders).

¹⁹ AIHW (2022) *Child Protection Australia 2020–21 – Supplementary Data Tables*, Table S4.10. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

²⁰ Portfolio Committee No. 5 Legal Affairs (2021) *Examination of proposed expenditure for the portfolio area: Families, Communities and Disability Services*, p. 17. Available at: [www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20\(Henskens\)%20-%202029%20October%202021.pdf](http://www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20(Henskens)%20-%202029%20October%202021.pdf)

²¹ SNAICC (2022) *The Family Matters Report 2022*. Available at: <https://www.familymatters.org.au/publications/>

²² SNAICC (2021) *The Family Matters Report 2021*. Available at: <https://www.familymatters.org.au/publications/>

²³ NSW Government (2017) *Aboriginal Outcomes Strategy*. Available at: www.facs.nsw.gov.au/download?file=592234

Despite the Government's stated commitment in this strategy to increase access to family support and intensive family support services, in 2020-21 only 14.99% of child protection funding was spent on these services.²⁴ This reflects a decrease in proportional spending since the *Aboriginal Outcomes Strategy* came into effect in 2016-17, when the proportion of spending on family support and intensive family support services equated to 15.86% of total child protection expenditure.²⁵

Aboriginal sector leaders report that the lack of funding for ACCOs to deliver early intervention and prevention services remains a serious issue, despite this being central to implementation of the *Prevention* element.

In July 2020, the NSW Government delivered its response to the 2019 *Family Is Culture* report (an independent review of Aboriginal children in the NSW OOHC system).²⁶ In its response, the Government indicated that it would be recommissioning the \$160.2 million *Targeted Earlier Intervention Program* to provide better supports to families with children at risk of entering care.²⁷

This policy was announced in 2017 as part of the *Aboriginal Outcomes Strategy*, with the Department committed to delivering 30% of early intervention funding to ACCOs by 30 June 2021.²⁸ This goal has not been met, with *Targeted Earlier Intervention Program* funding to ACCOs increasing by less than one percentage point between 2017 and 2021, bringing the total to just 14.71%.²⁹

The Department reported that during 2020-21, 18% of children accessing Targeted Earlier Intervention services were Aboriginal.³⁰ Aboriginal children in NSW also accounted for 33.1% of children commencing an intensive family support service in 2020-21.³¹ Given Aboriginal children in NSW were 10.5 times as likely to be living in OOHC than non-Indigenous children, further efforts are needed to ensure increased access to quality, culturally safe prevention services.

The Government continued positive investment in nine Aboriginal Child and Family Centres throughout NSW. Aboriginal leaders reported that these centres were seeing success in delivering culturally embedded prevention services to families. Aboriginal organisations that have been leading family preservation and restoration services have also seen positive impacts. For example, through its *Nabu Aboriginal Family Preservation and Restoration Program*, Waminda South Coast Women's Health and Welfare Aboriginal Corporation has managed to support a significant number of children and their families. Of the 292 children provided with prevention supports along with their families, 160 children stayed with their families.³²

²⁴ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table 16A.8.

²⁵ Ibid.

²⁶ Davis, M., et al (2019) *Family is Culture final report: Independent review into Aboriginal out-of-home care in NSW*. Available at www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

²⁷ NSW Government (2021) *New South Wales Government response to the Family is Culture review report*. Available at www.facs.nsw.gov.au/download?file=784517

²⁸ NSW Government (2017) *The Aboriginal Outcomes Strategy 2017-2021*. Available at www.facs.nsw.gov.au/download?file=592234

²⁹ Family Matters (2021) *The Family Matters Report 2021*, p. 45. Available at www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

³⁰ NSW Government submission to inform this review.

³¹ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table 16A.34.

³² SNAICC (2022) *Waminda - South Coast Women's Health and Welfare Aboriginal Corporation Nabu Aboriginal Family Preservation and Restoration Program*. Available at: <https://www.snaicc.org.au/wp-content/uploads/2022/02/SNAICC-Early-Intervention-WAMINDA-final.pdf>

With additional funding directed toward the ACCO sector, there is an opportunity to build on positive approaches and enable communities to drive their own family support and prevention services. Aboriginal people and organisations in NSW have long called for the child protection system to better support the safety and holistic wellbeing of Aboriginal children and young people by shifting away from a focus on child removal and crisis intervention, toward prevention and family support.

Partnership

As experts in their experience and local solutions, Aboriginal communities and organisations have continued to call for the NSW Government to genuinely partner with them to drive real change for Aboriginal children, young people and families. However, ACCOs report that the majority of reforms underway in 2020-21 across the child and family welfare system continued to be government-led, with limited opportunities for leadership by Aboriginal communities and organisations.

As reported in the previous year's Child Placement Principle implementation review,³³ the NSW Government continued the implementation of limited policies relating to the *Partnership* element, including the Aboriginal Case Management Policy (ACMP) and the trial of an Aboriginal community-led commissioning approach through a pilot of the *Aboriginal Guardianship Support Model*. Both are being implemented in partnership with AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (the state peak body for Aboriginal children and families).³⁴

According to the Department, the ACMP is in the process of being implemented, and online training has been developed and distributed by AbSec to all Department practitioners and funded non-government service providers.³⁵ If implemented in partnership and backed by meaningful, ongoing resourcing, the ACMP's measures – including localised Aboriginal Community Controlled Mechanisms – could enable better child protection decision-making at local levels.

These initiatives demonstrate a level of willingness to reform policy and practice to better centre the voices, knowledge, and expertise of Aboriginal families, communities, and organisations. However, Aboriginal sector leaders in NSW continue to report a lack of follow-through in fully implementing the actions, investments and shared decision-making structures that will enhance the involvement of ACCOs and communities in the design and delivery of child protection services.

Sector leaders argue that the Department's approach to implementing the recommendations of the *Family is Culture* report has been government-led and focused on internal reforms. This is at odds with the spirit and intent of the review, which prioritised embedding independent Aboriginal oversight of the child protection system and community-led responses to child safety and wellbeing. As AbSec has noted, 'implementation has focused on limited, piecemeal adjustments to business-as-usual, with no additional funding allocated to enable change. Critically, the NSW government has failed to adequately partner with Aboriginal people as key decision-makers'.³⁶

³³ SNAICC (2020) *Reviewing Implementation of the ATSICPP 2020 – New South Wales*. Available at: www.snaicc.org.au/reviewing-implementation-of-the-aboriginal-and-torres-strait-islander-child-placement-principle-2020

³⁴ NSW Government submission to inform this review.

³⁵ Ibid.

³⁶ Family Matters (2021) *The Family Matters Report 2021*, p. 45. Available at www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

For example, Recommendation 9 of the *Family is Culture* report called upon the NSW Government to establish a new independent child protection commission to oversee and monitor the child protection system in NSW, as well as at least one Aboriginal Commissioner and an Aboriginal advisory body appointed in consultation with Aboriginal communities.³⁷ Instead, the Department established an Aboriginal Deputy Children’s Guardian position (with limited independence or powers to undertake systemic oversight and monitoring) and an Aboriginal Knowledge Circle (a government-led advisory body that provides advice to the Department’s Minister and Secretary on implementation of the *Family is Culture* report and other strategies to improve outcomes for Aboriginal children and young people in the child protection system). As an advisory body rather than a genuine shared decision-making structure, the Aboriginal Knowledge Circle does not fulfil the *Partnership* element.

Aboriginal sector leaders in NSW also argue that government rhetoric is not being matched with appropriate investments. For the ACMP to effectively embed a new way of working in partnership with Aboriginal peoples it needs ongoing resourcing, which the Government has not committed to at this stage. For example, according to the Department’s data, almost half of the organisations receiving funding to deliver Aboriginal-specific programs under the *Targeted Earlier Intervention Program* are non-Indigenous organisations (37 out of a total 79 organisations).³⁸ Furthermore, the Department made a commitment during the 2011-12 financial year to transition the OOHC case management of all Aboriginal children to ACCOs by 2022.³⁹ Increasing numbers of Aboriginal children are being case managed by ACCOs, but not at a rate high enough to meet this target; as of 30 June 2021, the proportion of Aboriginal children being case managed by ACCOs was only 20.6%.⁴⁰ The Department’s input to the *Family Matters Report 2022* stated that 10.94% of all child protection grants expenditure (\$139 million out of a total \$1.27 billion) was allocated to ACCOs in 2020-21, representing 5.42% of *all* child protection expenditure (\$2.57 billion)⁴¹. In terms of grant expenditure to non-government organisations for specific elements of child protection, the proportion allocated to ACCOs ranged from 5.59% for intensive family support services, to 7.36% for family support services, to 12.29% for care services. The latter represents the highest proportion of any jurisdiction’s investment in ACCOs to deliver care services.⁴² However, these percentages are still well below the proportion of children in care who are Aboriginal. Better progress in transitioning to investment that achieves real outcomes for Aboriginal children and families can only be achieved when self-determination is at the heart of partnerships.

³⁷ Davis, M., et al (2019) *Family is Culture final report: Independent review into Aboriginal out-of-home care in NSW*, p. 127. Available at www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

³⁸ NSW Government submission to inform this review.

³⁹ NSW Government (Department of Family and Community Services) Transition Program Office (2013) *Out-of-Home Care Transition Implementation Framework: Stage 2 – 2013-2014*. Available at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0014/320081/tpo_oohc_framework_stage2.pdf

⁴⁰ Portfolio Committee No. 5 Legal Affairs (2021) *Examination of proposed expenditure for the portfolio area: Families, Communities and Disability Services*, p. 17. Available at: [https://www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20\(Henskens\)%20-%202029%20October%202021.pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/2734/Transcript%20-%20CORRECTED%20-%20Families,%20Communities%20and%20Disability%20Services%20(Henskens)%20-%202029%20October%202021.pdf)

⁴¹ SNAICC (2022) *Family Matters 2022 Report*

⁴² State and Territory Government submissions to inform *The Family Matters Report 2022*.

Placement

Aboriginal sector leaders report that there were no major changes over the reporting period to improve implementation of the *Placement* element.

Section 13 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) sets out preferred placement options for Aboriginal children in alignment with the Child Placement Principle placement hierarchy if ‘practicable’. However, implementation of the *Placement* element requires a suite of broader measures – including requirements to ensure that Aboriginal children are identified at the earliest possible point. Without correct and early identification, Aboriginal children are at risk of being deprived of culturally safe support and placements. In 2019, the *Family is Culture* report raised several concerns about the delayed identification, and the de-identification, of Aboriginal children.⁴³

In this regard, the Department commenced work during the 2020-21 reporting period on an update to its internal policy framework in relation to cultural planning for Aboriginal children under Departmental case management (via the *Identity and Culture Practice Mandate*). This update includes expanded procedures and practice advice to support a child to determine their Aboriginal identity, based on a NSW Court of Appeal decision in *Hackett (a pseudonym) v Secretary, Department of Communities and Justice* [2020] NSWCA 83.⁴⁴ The Department’s Legal Services branch also published a legal fact sheet concerning this decision.⁴⁵ The policy update was finalised during the 2021-22 reporting period and will be examined in more detail in the next implementation review. While the Department did not provide further information on the scope and content of the policy, SNAICC has argued that identification policies should specify that:

- minimum requirements for identification occur at least by the completion of an investigation of suspected child harm;
- client records require mandatory completion of the Aboriginal and/or Torres Strait Islander status fields for the child and his or her parents; and
- de-identification can only occur with senior department oversight and consultation of ACCOs.⁴⁶

The Department also reported that it commenced work during the 2021-22 reporting period to develop a new *Aboriginal Identification and De-Identification Policy*, which is slated to be developed in partnership with Aboriginal sector and community stakeholders during 2022-23 (as recommended in public consultations for the 2022 *Family is Culture* Legislative Review).⁴⁷

In addition, implementation of the *Placement* element requires the resourcing of a strong ACCO-led child and family service system that enables family and community involvement in identifying and supporting kinship carers. A lack of resources, culturally inappropriate assessment tools, difficulty in meeting eligibility criteria, and mistrust of child protection agencies are all barriers for potential

⁴³ Davis, M., et al (2019) *Family is Culture final report: Independent review into Aboriginal out-of-home care in NSW*, p. 127. Available at www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

⁴⁴ NSW Government submission to inform this review.

⁴⁵ Ibid.

⁴⁶ SNAICC – National Voice for Our Children (2019) *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

⁴⁷ NSW Government submission to inform this review.

Aboriginal kinship carers.⁴⁸ Sector leaders in NSW note that communities have raised significant issues with how the placement hierarchy is implemented in practice. For example, they report issues such as experiencing long wait times to be assessed as carers while children wait in culturally inappropriate placements.

At 30 June 2021, 72.4% of Aboriginal children in OOHC were living with family, kin or other Aboriginal carers.⁴⁹ Around half of these children (34.8% of *all* Aboriginal children in care – excluding children on long-term orders) had been placed according to the preferred option of Aboriginal family/kinship care. Meanwhile, just 48.9% of Aboriginal children in care were placed exclusively with Aboriginal and Torres Strait Islander kin or other Aboriginal carers.⁵⁰ While this is marginally higher than the national average, NSW is experiencing a decline in the placement of children with their family, kin or other Aboriginal carers. Since the previous year's implementation review, placement with family, kin or other Aboriginal carers fell by just over one percentage point, and this proportion has fallen by over seven percentage points since 2017.⁵¹

Aboriginal sector leaders have also raised concerns that 183 children nationwide are in independent / unknown living arrangements, and that 80.9% of the Aboriginal children in these types of placements are in NSW.⁵² Without further detail on where these children are placed, there is little oversight or accountability of whether children in these arrangements have connections to their family, community, culture, and Country.

Action is required to reverse these trends and protect the cultural rights of Aboriginal children in NSW. Sector leaders have advised that one way to improve implementation of the *Placement* element is by increasing the proportion of the Department's Permanency Support Packages delivered through ACCOs. In addition to family preservation and reunification services, these provide individual and targeted supports to children and their carers. As observed in the *Family Matters Report 2022*, Aboriginal organisations are more likely to safeguard the connections of Aboriginal children and young people through AFLDM, finding placements with Aboriginal carers, and implementing other processes to protect cultural connections.⁵³

Participation

The Department reports that it has undertaken a number of initiatives in the reporting period to increase the participation of Aboriginal children and families in child protection decision-making processes. These include reviewing the *Identity and Culture Practice Mandate* to specify the need to involve Aboriginal families in decision-making and in development of cultural support plans, as well as reforms to the FGC program.

⁴⁸ Bromfield, L. et al (2007) *Why is there a shortage of Aboriginal and Torres Strait Islander carers: Perspectives of professionals from Aboriginal and Torres Strait Islander agencies, non-Indigenous agencies, and government departments*. Available at <https://aifs.gov.au/cfca/publications/why-there-shortage-aboriginal-and-torres-strait-isl>

⁴⁹ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table16A.22.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Family Matters (2022) *The Family Matters Report 2022*, pp. 89–95. Available at: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>

In December 2020, the Department opened a tender and recruitment process to increase the number of Aboriginal FGC facilitators. There are now 31 facilitators who identify as Aboriginal⁵⁴ – an improvement from 2016-17, when only 16 of the 100 FGC facilitators were Aboriginal people.⁵⁵ However, the Department did not indicate how many facilitators there are in total in 2020-21.

In addition, the Department developed a specific guide for conducting family group conferences with Aboriginal families to support practice. Departmental data also shows a promising increase in the number of families accessing the FGC program. In 2020-21, 51% (463) of the families who participated in FGC were Aboriginal, compared to 47% in 2019-20. Of those who participated, only 25% proceeded to Children’s Court for interim or final orders.

The Department also noted that it commenced work during 2020-21 on an enhancement to the ‘ChildStory’ client information system regarding consultation on the care of Aboriginal children. This enhancement is intended to assist child protection practitioners to request and record Aboriginal consultations and to follow up consultation recommendations. It should also support the provision of more accurate data on Aboriginal consultation for state- and national-level reporting.⁵⁶ As this enhancement was completed during the 2021-22 reporting period, further detail will be provided in the next implementation review.

While some progress has been made, Aboriginal sector leaders continue to be concerned by the lack of meaningful involvement of children, their families and broader kinship and community networks in child protection decision-making. They also argue that raw numbers are not enough to provide an indication of the quality of the FGC process from the perspective of Aboriginal children and their families (including, for example, whether they consider FGCs to be culturally safe and to facilitate meaningful engagement). The issue of quality data and information available around family group conferences was highlighted in the *Family is Culture* report, noting that this undermines effective and independent monitoring, assessment, and accountability in the child protection system.

To address these inadequacies, the *Family is Culture* report and the ACCO sector have called on the Government to work in partnership with the sector to develop a culturally safe family participation model. However, the NSW Government continues to resist calls to invest in ACCOs to lead the development of participation practices. This includes investing in AFLDM (an evidence-based, culturally safe process that supports family participation and has been implemented in Queensland, Victoria and is being trialled in Western Australia),⁵⁷ despite this being included as a core element of the ACMP.⁵⁸

In October 2020, AbSec released its report, *Hearing the Voices of Aboriginal People in Child Welfare*, which highlighted ongoing concerns around the lack of involvement of Aboriginal children, families and communities in decision-making.⁵⁹

⁵⁴ NSW Government submission to inform this review.

⁵⁵ Davis, M., et al (2019) *Family is Culture final report: Independent review into Aboriginal out-of-home care in NSW*, p. 89. Available at: www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

⁵⁶ NSW Government submission to inform this review.

⁵⁷ Winangali & Ipsos (2018) *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

⁵⁸ AbSec (2018) *Aboriginal Case Management Policy*. Available at: <https://absec.org.au/aboriginal-case-management-policy>

⁵⁹ AbSec (2020) *Hearing the voices of Aboriginal people in child welfare*. Available at: <https://apo.org.au/node/309189>

Connection

The *Connection* element of the Child Placement Principle recognises the critical importance of Aboriginal children growing up safe and cared for within their families, communities and culture. In recognition of this right, safely reunifying⁶⁰ Aboriginal children with their families is the priority in permanency planning and the best outcome for children who have been removed under a care and protection order. In 2020-21, only 8.3% of eligible Aboriginal children in OOHC were reunified with their families (noting that children on finalised long-term guardianship or third-party parental responsibility orders are not considered eligible for reunification).⁶¹ This is the lowest reunification rate in Australia, though it is not significantly lower than the reunification rate for non-Indigenous children (9.2%),⁶² suggesting that the Department has a long way to go in terms of overall reunification practices.

The NSW Government's degree of commitment to upholding the rights of Aboriginal and Torres Strait Islander children remains a serious concern for sector leaders. The Department maintains a policy that is heavily focused on permanency planning as a means of achieving stability, and a high proportion of Aboriginal children on care and protection orders are consequently placed on permanent guardianship and 'parental responsibility of the Minister' orders. Section 10A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) sets out a hierarchy of permanent placement principles and states that the first preference is for Aboriginal children to be reunified with their parents, followed by placement with a relative, kin or 'other suitable person' under a guardianship order; placement under the parental responsibility of the Minister; and finally, if a court finds it to be in the best interests of the Aboriginal child or young person, adoption.

This legislative framing (which is operationalised by the Department's Permanency Case Management Policy⁶³ and the ACMP) is far too broad in failing to specify that Aboriginal family members and kin should be the first priorities in identifying any 'other suitable person', given that the section 13 placement hierarchy, as described in the *Placement* section above, only requires Aboriginal children to be placed in accordance with the Child Placement Principle if this is 'practicable'. The continued use of adoption as a permanency option is also deeply problematic – the Department reported that there was one Aboriginal child adopted from OOHC in 2020-21, and that the adoptive foster carer in this case is non-Indigenous.⁶⁴

In 2020-21, NSW had the fourth-highest rate of Aboriginal children on permanent care orders (after South Australia, Victoria and the Australian Capital Territory), with 64.3 per 1,000 Aboriginal children being placed in permanent care, compared to 64.6 children per 1,000 the previous year.⁶⁵ This is 10.2 times the rate for non-Indigenous children (roughly equal to the rate of Aboriginal children's

⁶⁰ Note that the New South Wales Government generally uses the term 'restoration' rather than 'reunification'.

⁶¹ AIHW (2022) *Aboriginal and Torres Strait Islander Child Placement Principle Indicators – Supplementary Data Tables*, Table S2.3a. Available at: <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data>

⁶² Ibid.

⁶³ NSW Government (2020) *Permanency Case Management Policy: Policy Statement*. Available at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0007/595195/PSP-PCMP-Policy-Statement-2020.pdf

⁶⁴ NSW Government submission to inform this review.

⁶⁵ AIHW (2022) *Child Protection Australia 2020-21 – Supplementary Data Tables*, Table S4.10. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

overrepresentation in OOHC). This is very slightly lower than the figures reported in 2019-20, when 64.6 per 1,000 Aboriginal children were in permanent care.⁶⁶

An increased focus on government-led permanency poses a significant risk to connection for Aboriginal children who are removed from their families. Sector leaders have argued that the Government's focus should instead be on working with Aboriginal communities and organisations to embed community-led approaches to nurturing the lifelong wellbeing of Aboriginal children and young people through enduring connections to family, community, culture and Country.

A promising development during the reporting period has been the implementation of an Aboriginal community-led commissioning approach in the development of an Aboriginal Guardianship Support Model.⁶⁷ Led by AbSec (in partnership with local Aboriginal organisations and communities) and the NSW Government, this model focuses on supporting connections for Aboriginal children and young people on guardianship orders. Using a genuinely co-designed approach involving guardians, carers, community members, service practitioners and government partners, the model was designed to address issues arising from the shift to guardianship orders to develop the types of supports wanted by families in two pilot areas in NSW. In its 2020-21 design and planning phase, building toward implementation in 2022-23, work on this model sought to establish a network of services, supports and resources to be delivered by ACCOs to ensure that Aboriginal children and young people on guardianship orders have access to the culturally embedded supports that they and their families need to stay connected and thrive. This model attempts to address significant issues with guardianship orders which place *Connection* at risk.

For Aboriginal children in OOHC, cultural support planning guided by the child, their family, community (especially those with cultural authority for the child) and ACCOs is integral for ensuring that children remain connected to their culture and community. While Departmental policy requires that all Aboriginal children in OOHC have a Cultural Support Plan (**CSP**), this is not specifically required in legislation. There also are not any specific funded programs to support cultural planning.

According to the Department, at 30 June 2021, 60.3% of Aboriginal children in OOHC had a current CSP in place, compared to 55.9% at the time of the previous review. While it is promising to see this increase, AbSec reports that communities have raised concerns with the quality of CSPs – a factor not yet captured in the data. A key challenge is the Department's lack of quality assurance mechanisms to ensure that plans are implemented and that plans genuinely support cultural connections for Aboriginal children and young people. Sector leaders have recommended that, in alignment with other jurisdictions, there should be greater involvement of ACCOs in the development and implementation of cultural support plans.

The Department noted that an update to its internal policy framework, via the *Identity and Culture Practice Mandate* in relation to cultural planning for Aboriginal children under Departmental case management (as discussed in the *Placement* section above, regarding identification), also includes expanded procedures and practice advice around developing a CSP for every Aboriginal child in a culturally safe, trauma-informed way. This update introduced a requirement that Aboriginal children have access to at least four regular activities to support cultural development and maintain their

⁶⁶ Ibid, p. 63.

⁶⁷ AbSec (2020) *Guardianship*. Available at: <https://absec.org.au/guardianship>

cultural identity, as well as opportunities to learn about the language of their culture.⁶⁸ As this policy update was finalised during the 2021-22 reporting period, it will be examined in more detail in the next implementation review.

⁶⁸ NSW Government submission to inform this review.