

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



SNAICC
National Voice for our Children

Contents

Acronyms and abbreviations	2
Introduction	3
Overview	4
Prevention.....	6
Partnership.....	8
Placement	11
Participation.....	12
Connection.....	14

Acronyms and abbreviations

ACCO	Aboriginal and Torres Strait Islander Community-Controlled Organisation
AFLDM	Aboriginal Family-Led Decision Making
ACS	Aboriginal Carer Services
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
FGC	Family Group Conferencing
NPY Women’s Council	Ngaanyatjarra Pitjantatjara Yankunytjatjara Women’s Council
OOHC	Out-of-home care

Introduction

This report reviews the progress of the Northern Territory Government, through the Department of Territory Families, Housing and Communities (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 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 developments in 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 ACCOs and state and territory governments. The reviews are informed by the best practice approach set out in SNAICC's Child Placement Principle resource series¹, 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*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

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;

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).

parental responsibility orders' as defined in *Child Protection Australia*. Data on 'children of unknown Indigenous status in out-of-home care' 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, these reviews 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*, goes further by embedding a stronger focus on and promoting and enabling full implementation of the Child Placement Principle.

Overview

Prevention: There was some promising progress on initiatives that aim to prevent Aboriginal children from entering OOHC. For example, the Department released seven regional grant rounds for Aboriginal organisations, or non-Indigenous organisations in partnerships with Aboriginal and Torres Strait Islander-led organisations, to deliver Family Support Services. Further, at 30 June 2021, there were seven ACCO-led Child and Family Centres across the Northern Territory providing prevention and early intervention supports to families. Despite this, 90.7% of all children in OOHC in the Northern Territory were Aboriginal and Torres Strait Islander children – the highest percentage in any jurisdiction.⁵ Aboriginal and Torres Strait Islander children were 13.8 times more likely to be placed in OOHC than non-Indigenous children in 2020-21.⁶ This was substantially higher than in 2019-20, when Aboriginal and Torres Strait Islander children were 11.0 times more likely to be placed in OOHC than non-Indigenous children, and 2018-19 when they were 12.2 times more likely to be in OOHC than non-Indigenous children.⁷ ACCOs report that this is unsurprising in the context of demand for early intervention services far outstripping supply.

Partnership: During 2020-21, the Department increased its level of investment in Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs) providing prevention and early intervention services, and in ACCOs supporting the recruitment and training of kinship carers.

⁵ Ibid, Table T3. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about>

⁶ Ibid.

⁷ Ibid.

However, the Department did not report on the proportion of funding granted to ACCOs in comparison to non-Indigenous organisations in the child protection context. Despite this overall increase in funding, many ACCOs reported that their services were operating at or beyond capacity and increases in funding were still not sufficient to meet demand. While ACCOs now have increased power to provide certain services to children and families, they are still unable to provide OOHC services. Given that Aboriginal and Torres Strait Islander children are significantly overrepresented in the child protection system in the Northern Territory, it is essential that ACCOs are provided with the necessary funding and autonomy to carry out work across the child protection spectrum, from early support and prevention to the provision of OOHC services, to reunification services.

Placement: The Northern Territory's rate of placing Aboriginal children in care with their Aboriginal and Torres Strait Islander kin or other Aboriginal and Torres Strait Islander carers has worsened since the last reporting period. In 2020-21, 240 Aboriginal and Torres Strait Islander children (27.3% of all Aboriginal and Torres Strait Islander children in care) were placed with Aboriginal and Torres Strait Islander kin compared to 266 (29.0%) in 2019-20.⁸ Given that over 90% of children in care in the Northern Territory are Aboriginal and Torres Strait Islander, this data indicates a continued and widespread failure to ensure that OOHC placements adhere to the hierarchy. ACCOs argued that the apparent shortage of Aboriginal and Torres Strait Islander kinship carers reflected by this placement data was not congruent with the broad kinship structures present in Aboriginal and Torres Strait Islander communities in the Northern Territory. On a promising note, seven ACCOs are now funded to find, assess, train and/or support kinship carers. However, further supports to ACCOs to deliver these services are necessary to redress the declining number of Aboriginal and Torres Strait Islander children being placed with kin, and who are at risk of losing ties to their families, communities and culture.

Participation: There remain no legislatively mandated Aboriginal Family-Led Decision-Making (AFLDM) processes in the Northern Territory to support active participation of children and their families in child protection decision-making. This is highly problematic. ACCOs reported that, while mediations that include families are provided for in the legislation, these rarely occurred in practice. Further, while the Department stated that the Signs of Safety practice model centres around 'family support network meetings' in which all key stakeholders (including parents, extended family members, case managers and service providers) agree on safety goals, many Aboriginal and Torres Strait Islander families reportedly feel that they have no substantive input into the welfare of their children and that the 'goal posts' for reuniting with their children are continually shifting.

Connection: On 30 June 2021, just 43.8% of Aboriginal and Torres Strait Islander children who were required to have a *current* cultural support plan had one.⁹ This was lower than 47.1% in 2020 and 51.7% in 2019.¹⁰ On a promising note, the Department's reunification policy was updated in May 2021 to stress that when a child is removed from their parents, all possibilities for reunification must be explored.¹¹ In 2020-21, 15.4% of eligible Aboriginal and Torres Strait Islander children in OOHC (those not on finalised long-term care orders) were reunified with their families.¹² This was slightly less than the 17% reunited in 2019-20, but more than the previous years (from 2016-17 to 2018-19).¹³ While Aboriginal and Torres Strait Islander children in OOHC were slightly more likely to be reunified with their families than non-Indigenous children (1.11 times),¹⁴ neither rate of reunification

⁸ Steering Committee, n 3, Table 16A.22.

⁹ Australian Institute of Health and Welfare (2022) *Aboriginal and Torres Strait Islander Child Placement Principle Indicators 2020-21*, Supplementary Data Tables, Table S2.2a. Available from: (AIHW CPP Indicators).

¹⁰ Ibid.

¹¹ Northern Territory Government input to inform this review.

¹² AIHW CPP Indicators, n 9, Table S2.3b.

¹³ Ibid.

¹⁴ Ibid.

is promising. Given over 90% of children in care are Aboriginal and Torres Strait Islander children, further effort is needed to safely reunify more children with their families and ensure familial and cultural ties are meaningfully maintained.

Prevention

Initiatives to prevent children entering OOHC cut across broad areas of government responsibility, including health, education, housing and economic development. This review primarily focuses on the child protection-focused activities of the Department, while noting that holistic prevention can only be achieved with a whole-of-government approach. During the review period, the cost of living increased substantially in the Northern Territory¹⁵ and a shortage of safe, affordable and quality housing continued, particularly in remote and very remote areas.¹⁶ These factors have a significant impact on families' ability to care for their children and provide essential shelter, nutrition, healthcare, clothing and school supplies.

There were no relevant legislative changes in the reporting period. However, amendments to the *Care and Protection of Children Act 2007* (NT) (CPC Act), to enable families to access voluntary pre-birth family support services when an unborn child is assessed to be at risk of being placed in OOHC were passed on 30 November 2021.¹⁷ As this is outside the reporting period, the impact of these amendments will be discussed in the 2022 implementation review.

There were several promising developments in the primary prevention and early intervention space that aim to support Aboriginal and Torres Strait Islander children to grow up safe and supported with their families, and ultimately reduce the likelihood of Aboriginal and Torres Strait Islander children entering OOHC. For example, the Department funded and supported the establishment of an additional Aboriginal Child and Family Centre (run by an ACCO) since the 2019-20 period.¹⁸ At the time of drafting this implementation review, there were seven ACCO-led centres across the Northern Territory and several further centres were being progressed, in line with the recommendations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*. Ultimately, the Department is working towards signing service agreements for the ACCO-led operation of the remaining four Aboriginal Child and Family Centres by 30 June 2023.¹⁹ Progress against this goal will be assessed in the next two implementation reviews.

The Department also released seven regional grant rounds for Aboriginal and Torres Strait Islander organisations, or non-Indigenous organisations working in formal partnership with Aboriginal and Torres Strait Islander-led organisations, to deliver Family Support Services (FSS) during the reporting period.²⁰ Funding decisions published in December 2021 were coordinated by grant panels that included Aboriginal and Torres Strait Islander members. Originally, \$7.2 million was released per year for five years, with an eventual increase to \$8.2 million per year across the life of the grants.²¹ Because the outcomes of this grant process were published after the end of the reporting period, these funding streams will be assessed in more detail in the next implementation review.

¹⁵ NT Government Department of Treasury and Finance (2021) *Consumer Price Index 2021 June*. Available at: https://treasury.nt.gov.au/_data/assets/pdf_file/0004/1030819/Consumer-Price-Index-2021-June.pdf

¹⁶ Australian National Audit Office (ANAO) (2021) *Remote Housing in the Northern Territory*. Available at: <https://www.anao.gov.au/work/performance-audit/remote-housing-the-northern-territory>

¹⁷ Northern Territory Government input to inform this review.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

The Department reported that 1,262 clients were referred to FSS during the reporting period.²² However, it is unclear how many clients were Aboriginal and Torres Strait Islander families and how many were referred to ACCO-led services.

In 2020-21, the Department's total real recurrent expenditure on Intensive Family Support Services (IFSS) totalled \$5.18 million, a decrease from 2019-20 (\$5.66 million).²³ The Australian Government's real recurrent expenditure on IFSS (which is primarily targeted at the Northern Territory, but also supports the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPY Women's Council) to deliver services to families living on the Ngaanyatjarra, Pitjantjatjara and Yankunytjatjara lands that stretch across the South Australian and Western Australian borders) also decreased, from \$8.47 million in 2019-20 to \$8.15 million in 2020-21.²⁴ In contrast, real recurrent expenditure on family support services in 2020-21 (\$48.82 million) increased significantly from 2019-20 (\$45.68 million).²⁵ The Department's total expenditure on early intervention and prevention services (\$54 million) represented 25.5% of all Northern Territory Government expenditure on child protection services. This was the second-highest percentage spent on early intervention and prevention efforts among all jurisdictions, after Victoria's 27.4%.²⁶

While there was greater investment in prevention efforts than previously, this did not always translate to increased access for families. In the reporting period, 393 Aboriginal and Torres Strait Islander children commenced IFSS.²⁷ This represented 85% of all children who started IFSS in the Northern Territory in the reporting period – the highest in percentage of all jurisdictions that reported for the period. However, in terms of absolute numbers, this was the lowest number of children who had started IFSS in any year since 2016-17 (330 children).²⁸

In addition, several ACCOs expressed concern about families experiencing significant wait times to access prevention and early intervention services – particularly in remote areas – and noted that families were still being referred to services too late, when children were already at significant risk of being removed. Housing and homelessness supports (funded jointly by the Northern Territory Government and the Australian Government under the *National Partnership for Remote Housing in the Northern Territory*) and family violence prevention and recovery services (also funded by both the Territory and Australian Governments) were of particular concern to the ACCOs who participated in the development of this review. Some ACCOs noted that the Department had seemingly expressed a willingness to refer families to services much earlier in the future, but no significant improvements had been made to wait times, and the scale of much-needed services – including mental health supports, family violence prevention, and alcohol or drug rehabilitation – remains inadequate compared to demand.

NPY Women's Council expressed concerns that culturally safe programs for parents to develop their parenting skills, particularly if they have children from birth to 5 years of age, remained limited despite parents indicating a need for them. There were also concerns that the Department continues to have limited understanding and recognition of differences in child-rearing practices, such as community care, in Aboriginal and Torres Strait Islander communities.

The Northern Territory continued to have the highest percentage of Aboriginal and Torres Strait Islander children in OOHC in the reporting period. At 30 June 2021, 880 Aboriginal and Torres Strait Islander children were in OOHC in the Northern Territory, making up 90.7% of all children in OOHC in

²² Ibid.

²³ Steering Committee, n 3, Table 16A.8.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid Table 16A.34.

²⁸ Ibid.

the jurisdiction at this date.²⁹ The jurisdiction with the next highest percentage was Western Australia, 34 percentage points lower, where 56.5% of children in OOHC at 30 June 2021 were Aboriginal and Torres Strait Islander.³⁰ In the Northern Territory, this proportion has reached its highest level in several years (from 89.3% in June 2018, 89.8% in June 2019 and 88.8% in June 2020), despite the actual number of Aboriginal and Torres Strait Islander children in OOHC showing a gradual decrease over this timeframe (from 953 in June 2018, 948 in June 2019, and 916 in June 2020).³¹ The Department pointed to this decrease as a key improvement, noting that it occurred despite a significant rise in total child protection notifications and investigations (in 2020-21 there were 2,802 more notifications and 2,172 more children subject to investigations than in 2019-20).³²

Aboriginal and Torres Strait Islander children were 13.8 times more likely to be placed in OOHC in 2020-21 than were non-Indigenous children.³³ This was substantially higher than 11.0 times more likely in 2019-20, and 12.2 times more likely in 2018-19.³⁴ Aboriginal and Torres Strait Islander children's overrepresentation in OOHC appears to be increasing at an accelerating rate in the Northern Territory – indicating that, while there has been greater investment in prevention efforts, more must be done to ensure families can access the necessary culturally safe services, especially before the Department intervenes.

Partnership

The Department reported that it progressed amendments to the CPC Act that strengthen the importance of government and non-government organisations, including ACCOs, working together collaboratively. Again, as these amendments were passed in November 2021, outside the reporting period, their impact will be discussed in the 2022 implementation review.

An Aboriginal Cultural Security Advisory Committee (Advisory Committee) was established within the Department in 2019 to oversee the implementation of the *Aboriginal Cultural Security Framework*, which includes a commitment to partnerships with ACCOs. This Advisory Committee continued its work throughout 2020-21. The *Aboriginal Cultural Security Framework* seeks to ensure the Department designs and delivers services to Aboriginal and Torres Strait Islander children and their families that are culturally safe. The Department also appointed its first Aboriginal Elder in Residence, Dr Christine Fejo-King, during the reporting period. The role of the Elder in Residence is to deliver high-level advice on building stronger relationships with Aboriginal and Torres Strait Islander communities and families; provide strategic cultural policy and program advice, and support the implementation of the *Aboriginal Cultural Security Framework* in all aspects of the agency's service delivery.

The Department pointed to the *Multi-Agency Community and Child Safety Framework* (MACCSF), introduced in 2020, as a key example of its commitment to meaningful partnerships with ACCOs.³⁵ According to the Department's website:

²⁹ Ibid, Table 16A.2 and 16A.3.

³⁰ Ibid.

³¹ Ibid.

³² AIHW, n 4, Table S3.1 and S3.2. AIHW (2021) *Child protection Australia 2019–20*, Supplementary Data Tables, Table S3.1 and S3.2. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2019-20/summary>

³³ Steering Committee, n 3, Table 16A.2 and 16A.3.

³⁴ Ibid.

³⁵ The Department indicated that work commenced in 2022 to replace the MACCSF with a *Child Wellbeing and Safety Partnership Framework*. As this falls outside of the reporting period, this new Framework will be assessed in more detail in future implementation reviews.

*MACCSF brings together community members with cultural authority, locally based heads of government agencies, and non-government organisations through MACCS Teams (MACCSTs) to identify issues, create action plans for child, family and community safety, and carry out actions together. MACCST Members are responsible for collaboratively addressing issues such as youth crime, education, health, or child safety.*³⁶

According to the Department, MACCSTs will be established in 27 communities across the Northern Territory to collaboratively address child and family safety challenges through locally-built solutions. However, several ACCOs considered MACCSTs to be problematic, noting that:

- there is no specific means for families to be involved or to articulate their needs, resulting in a power imbalance that acts to shift more control away from families and communities and into the hands of statutory authorities;
- some key ACCOs – including those delivering Aboriginal Carer Services (**ACS**) – have not been included in their local MACCSTs, even though they would provide valuable input; and
- MACCSTs are generally dominated by city-based representatives from government agencies, with the inclusion of *any* Aboriginal and Torres Strait Islander community members being rare in some locations. One ACCO noted that the MACCST structure required only two Aboriginal and Torres Strait Islander members of ACCOs, local Aboriginal and Torres Strait Islander staff of Northern Territory Government agencies, and/or Aboriginal and Torres Strait Islander community members with cultural authority.

ACCOs also expressed concerns about a proposal to legislate information-sharing protocols between MACCST members, noting that this posed risks to privacy and confidentiality, would act as a mechanism for increased surveillance of families, and could discourage families from engaging with services due to fears of statutory involvement and child removal, leaving them unsupported and at a higher risk. Some other ACCOs were more positively inclined towards the general concept of MACCSTs, though they specified that the structure of each team needs to include representatives from local community governance mechanisms and this is not always the case at present. Overall, the MACCSF does not appear to meet the requirements of the Partnership element as set out in SNAICC's Child Placement Principle resource series, which clearly state that *Partnership* must extend beyond consultation and participation – to involve the exercise of genuine decision-making power by Aboriginal and Torres Strait Islander organisations and communities – if it is to support self-determination.³⁷

In the reporting period, the Children and Families Tripartite Forum continued to progress the *10 Year Generational Strategy for Children and Families* (Generational Strategy), a policy framework to improve outcomes for children, including Aboriginal and Torres Strait Islander children in (or at risk of being in) the child protection system.³⁸ The Tripartite Forum is a partnership between the Northern Territory Government, Australian Government and the community sector, including ACCOs. The Generational Strategy was set to be finalised in November 2021 and was open to public consultation. According to the Department, the Generational Strategy has a renewed focus on

³⁶ Australian Government (Department of Social Services) (2022) *Creating Collaborative and Sustainable Partnerships and Networks: Children and Family Intensive Support (CaFIS) Factsheet*. Available at: https://www.dss.gov.au/sites/default/files/documents/04_2022/cafis_2a_-_creating_collaborative_and_sustainable_partnerships_and_networks.docx

³⁷ SNAICC (2018) *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, pp. 31–33. Available at: www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf.

³⁸ Northern Territory Government (Reform Management Office) (2022) *Children and Families Tripartite Forum*. Available at: <https://rmo.nt.gov.au/tripartite-forum>

partnerships with ACCOs.³⁹ Given November 2021 is outside the relevant review period, further analysis of the Strategy's focus on partnerships will be discussed in the 2022 implementation review.

It is promising that there are now seven Aboriginal and Torres Strait Islander organisations that deliver the ACS program, through which they have varying levels of authority in identifying potential kinship carers, conducting kinship assessments, and training and supporting kinship carers to ensure that Aboriginal and Torres Strait Islander children in care are placed with their Aboriginal and Torres Strait Islander kin. The Department noted that \$4.2 million was allocated to fund this work (which applies the *Aboriginal Carers Growing Up Aboriginal Children* model developed by Tangentyere Council Aboriginal Corporation and the Victorian Aboriginal Child Care Agency).⁴⁰

However, regulation 5 of the *Care and Protection of Children (Placement Arrangement) Regulations 2010* (enlivened by section 78 of the CPC Act) stipulates that the Department must approve – or decline to approve – each proposed kinship care placement, meaning that the recommendations made by the ACCOs delivering these programs are not binding and can be overruled by the Department. Some ACCOs delivering the ACS program provided feedback that this creates a significant power imbalance and frustrates their efforts to identify the best possible carer for each child.

Although there was increased funding for Aboriginal and Torres Strait Islander organisations to provide prevention and early intervention services (see Prevention section) and for the recruitment and support of kinship carers, the proportion of funding for ACCOs in comparison to non-Indigenous organisations in the child protection context was not provided by the Department. Many ACCOs noted that their services were operating at or beyond capacity and increases in funding through the reporting period were not sufficient to meet the demand for their programs. Furthermore, there were reports that in certain circumstances ACCOs felt they could not deliver efficient services for the prices set in funding tenders, which resulted in larger non-Indigenous organisations being awarded the funding.

While ACCOs now have increased power to provide certain services, there are still no ACCOs funded or authorised to provide OOHC services (unlike some non-Indigenous organisations). Given that Aboriginal and Torres Strait Islander children are significantly overrepresented in the child protection system in the Northern Territory, it is essential that ACCOs are provided with the necessary funding and autonomy to carry out work across the child protection spectrum, from early intervention/prevention work to the provision of OOHC services, to reunification services.

In the cross-border region where South Australia, Western Australia and the Northern Territory intersect, and the Anangu residents often move between communities in the three jurisdictions, the NPY Women's Council has long advocated that the existence of three different child protection systems creates duplication, communication breakdowns, information-sharing difficulties and substantial delays. A promising step towards better practice in this region is the finalisation of a tristate child protection Memorandum of Understanding between NPY Women's Council and the three governments, which will seek to improve coordination, collaboration and community engagement.⁴¹ However, NPY Women's Council reported that they continued to face major difficulties in obtaining information from the Department regarding Anangu children who had experienced child protection engagement in the Northern Territory and one or both of the other states during the reporting period. Without the Department demonstrating genuine commitment to

³⁹ Northern Territory Government input to inform this review.

⁴⁰ Ibid; Northern Territory Government (Department of Territory Families) and Tangentyere Council Aboriginal Corporation (2019) *Children Safe, Family Together: A model and implementation guide for Aboriginal family and kin care services in the Northern Territory*. Available at: <https://apo.org.au/node/258306>.

⁴¹ NPY Women's Council (2022) *Working together to ease border complexity heartbreak*. Available at: <https://www.npywc.org.au/news/working-together-to-ease-border-complexity-heartbreak/>

cross-border engagement, NPY Women’s Council fears that Anangu children will face increased disadvantage and a lower likelihood of the Child Placement Principle being fully implemented.

Finally, there remains no dedicated Aboriginal and Torres Strait Islander peak body leading the design of policies and services that impact on Aboriginal and Torres Strait Islander children and families, nor a dedicated children’s commissioner for Aboriginal and Torres Strait Islander children and young people, which have been key priorities for several ACCOs in the Northern Territory.

Placement

The Northern Territory’s rate of placing Aboriginal and Torres Strait Islander children in care with their Aboriginal and Torres Strait Islander kin or other Aboriginal and Torres Strait Islander carers has declined since the last reporting period. In 2020-21, 240 Aboriginal and Torres Strait Islander children (27.3% of all Aboriginal and Torres Strait Islander children in care) were placed with Aboriginal and Torres Strait Islander kin, compared to 266 (29.0%) in 2019-20.⁴² Just 40 children were placed with other Aboriginal and Torres Strait Islander (non-kin) carers.⁴³ This was 4.5% of all Aboriginal and Torres Strait Islander children in care and was lower than the rate of 5.0% (or 46 children) in 2019-20.⁴⁴ There was no data on Aboriginal and Torres Strait Islander children placed with non-Indigenous kin. Given that over 90% of children in care in the Northern Territory are Aboriginal and Torres Strait Islander, the data indicates a continued failure to ensure that placements adhere to the hierarchy. ACCOs mentioned that they struggled to believe there are not more Aboriginal and Torres Strait Islander kinship carers available to look after Aboriginal and Torres Strait Islander children in care, given the broad kinship structures present in communities in the Northern Territory. Further, some ACCOs delivering the ACS program noted that they had observed very long wait times for ACS referrals to be made by child protection practitioners within the Department.

The Department has attempted to address some of these concerns in the reporting period, though further reform and funding is necessary. The Department has implemented practice guidance – such as the *Family and Significant Other Carer Assessment* – and noted that guidance for practitioners stresses the importance of placing Aboriginal and Torres Strait Islander children with their kin and ‘provides a consistent language and framework for practitioners across the Agency to assess family members in order to become Authorised Carers.’⁴⁵ The Department was also in the process of developing another guide, *Implementing the Aboriginal and Torres Strait Islander Cultural Security Framework in Practice*, which seeks to highlight the importance of ensuring children are in placements where they are connected to culture.

Further, to ensure more carers are supported and retained, the Department implemented the *Foster and Family Carer Training Program*. This program aims to ‘provide support to foster and kinship carers, including through implementation of training targeting specific populations in out of home care.’⁴⁶

Finally, as mentioned in the Partnership section above, the Department continued to fund the ACS initiative, through which seven ACCOs are now funded to find, assess, train and/or support kinship carers. While this is promising, ACCOs noted that the funding is not sufficient to keep up with demand for kinship carers and that organisations delivering the program have no authority in decisions about children’s care and protection, so their work on identifying appropriate kinship

⁴² Steering Committee, n 3, Table 16A.22.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Northern Territory Government input to inform this review.

⁴⁶ Ibid.

carers can be – and is – overruled. As discussed above, this is the result of provisions in the CPC Act and the *Care and Protection of Children (Placement Arrangement) Regulations 2010*.

ACCOs mentioned that due to limited resources and miscommunication, some kinship carer assessments were not pursued in a timely manner during the investigation process in certain situations. This resulted in Aboriginal and Torres Strait Islander children being placed outside their communities. Some ACCOs also pointed to the recent death of a nine-year-old girl, Sammy, in the Northern Territory as an example of the Department's failure to adhere to the placement principle. In the recent coronial inquest into Sammy's death, the Coroner criticised the Department for failing to place Sammy in kinship care after she was removed from her parents.⁴⁷

In its Annual Report, the Department reported that '[s]ince 2017–18, the number of children in residential care has reduced from 119 to 55 children on 30 June 2021.'⁴⁸ 89% of the children in residential care in the NT are Aboriginal and Torres Strait Islander.⁴⁹ The Department attributed this reduction to the Intensive Therapeutic Residential Care (ITRC) model. Although these outcomes are promising, there is no evidence that the ITRC model has been designed for Aboriginal and Torres Strait Islander children, and the providers of this program are non-Indigenous NGOs.⁵⁰

Participation

It is disappointing that the Northern Territory Government's commitment to embed Aboriginal Family-Led Decision-Making (AFLDM) in the CPC Act⁵¹ had not progressed past the consultation stage since the last reporting period. Enabling legislation is essential for ensuring that policies, processes, procedures and practice reflect the importance of Aboriginal and Torres Strait Islander families and children being able to meaningfully participate in decision-making. AFLDM must be embedded in the legislation, including provision for family conferences to be independently facilitated by Aboriginal and Torres Strait Islander people.

While the CPC Act currently allows the Department to conduct 'mediations' with all people concerned for the interests and wellbeing of a child, ACCOs indicated that these do not often occur in practice. In fact, it is reported by ACCOs that families with additional complexities, such as disability, have had limited involvement in care planning and in placement decision-making.

The Department reported that in 2020-21, a total of 709 coordination meetings (meetings that allow 'community-based organisations to facilitate family decision-making processes for all families where child safety concerns are identified') were held.⁵² It is unclear how many of these meetings concerned Aboriginal and Torres Strait Islander children. There is no data available on the percentage of coordination meetings for Aboriginal and Torres Strait Islander families that were facilitated by an independent Aboriginal and Torres Strait Islander facilitator for this review period.

⁴⁷ Gibson, J. ABC News Online (2021) *Coroner says Aboriginal girl, 9, who took her life in foster care was 'not sufficiently supported' by Territory Families*. Available at: <https://www.abc.net.au/news/2021-11-25/nt-coroner-suicide-in-foster-care-inquest-findings/100649618>; Justice Armitage, E. (2021) *Inquest into the death of Sammy* [2021] NTLC 032, Northern Territory Coroner's Court. Available at: https://justice.nt.gov.au/_data/assets/pdf_file/0003/1071903/D000402020-Sammy.pdf

⁴⁸ Department of Territory Families, Housing and Communities (2021) *Annual Report 2020-21*, p. 97. Available at: <https://tfhc.nt.gov.au/publications-and-policies/annual-reports>

⁴⁹ Steering Committee, n 3, Table 16A.20.

⁵⁰ Ibid.

⁵¹ SNAICC (2021) *The Family Matters Report 2021*, p. 48. Available at: <https://www.familymatters.org.au/wp-content/uploads/2022/12/FamilyMattersReport2021.pdf>

⁵² Northern Territory Government input to inform this review.

In the 2020 implementation review, SNAICC noted the Department's slow progress in the development and implementation of a family group conferencing (**FGC**) model that seeks to ensure greater participation of children and their families using Aboriginal and Torres Strait Islander facilitators.⁵³ There was no additional progress on this initiative in this reporting period. It appears that this work may have been postponed, as the Department pointed to its introduction of the Signs of Safety practice model (developed in Western Australia and used internationally by governments in several Western nations) as the key vehicle to facilitate parents' and extended family members' participation in child protection decision-making.⁵⁴ The Department reported that this model helps child protection practitioners to work more transparently with families and co-design solutions to keep children safe, as it centres around 'family support network meetings' in which all key stakeholders (including parents, extended family members, case managers and service providers) agree on key concerns and safety goals, and families then have autonomy as to how they reach those goals.

While some *Signs of Safety* materials are publicly available online and make reference to families participating in decision-making, there does not appear to be a high priority placed on families *leading* those processes in a genuine shared decision-making structure.⁵⁵ Further, several ACCOs expressed major concerns about *Signs of Safety* not being an appropriate model for Aboriginal and Torres Strait Islander families in the Northern Territory. In particular, it was reported that the model does not include sufficient contextual information relating to the Northern Territory; highlight the importance of a nuanced approach when working cross-culturally, or support the empowerment of families in substantive decision-making.

ACCOs indicated there was often limited opportunity for input from families in the development of a child's care plan, and that child protection workers frequently changed elements of care plans without genuinely consulting families. It is reported that 'these changes can cause families to feel that they have no input into the welfare of their child and that the 'goal posts' are continually shifting.'⁵⁶ High turnover of child protection workers⁵⁷ resulted in families struggling to build strong relationships with their case managers, feeling as if they must 'repeat their stories over and over again',⁵⁷ and also created difficulties for ACCOs – some of whom reported that they were not typically made aware of changes in case management personnel until they proactively contacted the Department.

Several ACCOs also expressed concerns regarding very low numbers of Aboriginal and Torres Strait Islander people employed as child protection practitioners within the Department, noting that local staff from within each community would offer irreplaceable cultural knowledge and authority. These ACCOs recommended that the Department's recruitment practices should be reviewed in order to better support Aboriginal and Torres Strait Islander people to demonstrate their knowledge, cultural skillsets and experience in working to support children and families.

In addition to limited participation in care planning, stakeholders reported that families and children had limited agency in legal proceedings. One ACCO stated that 'legal representatives for children are frequently practitioners employed by private commercial firms with no connection to Aboriginal and Torres Strait Islander communities, or practitioners in private firms who routinely represent the Department in child protection proceedings.' For children to be adequately represented and

⁵³ SNAICC(2021) *Reviewing implementation of the Aboriginal and Torres Strait Islander Child Placement Principle 2020: Northern Territory*, pp. 21, 26, 27. Available at: https://www.snaicc.org.au/wp-content/uploads/2021/03/Reviewing-Implementation-of-the-ATSICPP_2020_NT.pdf

⁵⁴ Northern Territory Government input to inform this review.

⁵⁵ See, for example, Turnell, A., and Murphy, T. (2017) *Signs of Safety Comprehensive Briefing Paper* (4th edn.). Available at: https://tfhc.nt.gov.au/_data/assets/pdf_file/0007/996199/signs-of-safety-briefing-paper-4th-edition.pdf

⁵⁶ Input provided by ACCOs.

⁵⁷ Input provided by ACCOs.

participate in proceedings, it is important that legal representatives for children in child protection matters be fully independent from the Department and employed by Aboriginal and Torres Strait Islander community-controlled legal services.

Although the Department has flagged MACCSTs as an important initiative for securing families' participation in child protection matters (see Partnership section for more information on this initiative), there are concerns that MACCSTs do not provide specific means for families to be involved or to articulate their needs.

Connection

There were no relevant changes to the CPC Act in the reporting period. ACCOs asserted that amendments should be made to the CPC Act to allow community members to attend court proceedings to provide advice on matters concerning culture and community.

The Department indicated that, as part of its *Aboriginal Cultural Security Framework*, all care plans for children in care contain a cultural care plan element. Internal Department documentation (not publicly available online) indicates that family, clan, community, skin/language group, Country, traditions and customs are integral components of cultural planning for Aboriginal and Torres Strait Islander children. This documentation also states that cultural care plans must include 'reasonable actions to maintain and develop the child's connection to culture, traditions, religion, language and Country', and that case managers should consult with 'people who have cultural expertise specific to the child, their family and their natural support network', including an Aboriginal Community Worker or Aboriginal Practice Advisor.

SNAICC's Child Placement Principle resource series stipulates that best practice for cultural support plans includes involving children and their families in the development of each plan and ensuring that plans commit to specific, current actions for keeping children connected to their family, community and culture while in care.⁵⁸ ACCOs in the Northern Territory have also advocated for cultural care plans to incorporate provisions for a child's access to time with their parents and other family members, as this promotes close connections with culture, language and Country.

On 30 June 2021, just 43.8% of Aboriginal and Torres Strait Islander children in care who were required to have a *current* cultural care plan (per section 70(5) of the CPC Act) had one.⁵⁹ This was lower than 47.1% in 2020 and 51.7% in 2019, but remains much higher than the 31.5% reported at 30 June 2018.⁶⁰ Apart from currency, there are no other indicators published regarding the quality of, or processes involved in developing cultural care plans. One ACCO stated:

*In our experience, fulsome and considered cultural care plans are few and far between. We commonly find that Department case workers do not seem to consider cultural connections of an Indigenous child to form an integral part of their overall health and wellbeing – cultural considerations are often addressed as a secondary issue.*⁶¹

Some ACCOs also reported that once a protection order has been made, the Department appears to have reduced motivation to consider a child's cultural needs.

⁵⁸ See: 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.

⁵⁹ AIHW Indicators, n 9, Table S2.2a. Available at:

⁶⁰ Ibid.

⁶¹ Input provided by ACCOs.

On a promising note, the Department’s reunification policy was updated in May 2021 to stress that when a child is removed from their parents, all possibilities for reunification must be explored. The updated policy highlights that for Aboriginal and Torres Strait Islander children, ‘[the “best interest” test] also includes the child’s right to enjoy the culture and tradition of their family and community and maintain ongoing contact with family and connection to country and language.’⁶² The policy asserts that cultural consultation by the Department must be demonstrated in all key decisions; that the Child Placement Principle should be embedded in all decision-making, and that active efforts ‘to explore all possibilities and provide the necessary supports to strengthen, preserve and promote positive relationships between the child and their parent and family in order to reunify the child with family must be evident in the Reunification Plan.’⁶³ Given that this policy was updated recently, more information on how it is implemented in practice will be discussed in the 2022 implementation review.

In 2020-21, 15.4% of eligible Aboriginal and Torres Strait Islander children in OOHC were reunified with their families (noting that children on finalised long-term guardianship or third-party parental responsibility orders are not typically considered to be eligible for reunification).⁶⁴ This was slightly less than the 17% of Aboriginal and Torres Strait Islander children who were reunified in 2019-20, but more than the previous years (from 2016-17 to 2018-19).⁶⁵ The Northern Territory was one of only two jurisdictions in Australia, alongside the Australian Capital Territory, in which Aboriginal and Torres Strait Islander children in care were more likely to be reunified with their families than non-Indigenous children (being reunified 1.11 times more frequently).⁶⁶ Aboriginal and Torres Strait Islander children in the Northern Territory also had a very high rate of *successful* reunifications, with 96.3% of children reunified in 2019-20 having not returned to OOHC within 12 months.⁶⁷

Since the commencement of the CPC Act, the use of permanent third-party parental responsibility orders (TPPROs), which permanently transfer the legal responsibility for a child’s care to an adult other than their parents, has been extremely rare in the Northern Territory.⁶⁸ It is very worrying to see that this is no longer the case, with the Department reporting that there had been ‘a concerted effort to utilise the legislative provisions for Permanent Care Orders finalised TPPROs’ in 2020-21,⁶⁹ resulting in 16 finalised TPPROs being granted in this reporting period compared to zero in each of the previous three years.⁷⁰

⁶² The Department (2021) *Reunification Policy*. Available at: https://tfhc.nt.gov.au/_data/assets/pdf_file/0004/425758/reunification-policy.pdf

⁶³ Ibid.

⁶⁴ AIHW Indicators, Table S2.3b. ; the number of reunifications reported by the AIHW (81 children) differs significantly from that reported by the Department in its *Annual Report 2020–21* (125 children; see p. 97). As the reason for this difference is unclear, this review uses the number reported by the AIHW for national comparability. The Department’s *Annual Report 2020–21* is available at: https://tfhc.nt.gov.au/_data/assets/pdf_file/0005/1073039/territory-families-housing-and-communities-annual-report-2020-21.pdf

⁶⁵ AIHW Indicators, n 9, Table S2.3b.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ The Department (2021) *Annual Report 2020–21*, p. 97. Available at: https://tfhc.nt.gov.au/_data/assets/pdf_file/0005/1073039/territory-families-housing-and-communities-annual-report-2020-21.pdf

⁶⁹ Ibid.

⁷⁰ Ibid; Northern Territory Government input to inform this review; again, there is a marked difference between the Department reporting that 16 TPPROs had been granted in 2020-21 while the AIHW reported zero (Australian Institute of Health and Welfare (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/contents/about>). However, given

The use of finalised TPPROs raises major concerns for the wellbeing of Aboriginal and Torres Strait Islander children, because these orders reflect circumstances where governments have transferred parental responsibility for a child to a kinship or foster carer and typically no longer count the child as being within the definition of OOHC. Governments therefore have no legal responsibility – and arguably face no accountability – for ensuring the maintenance of a child’s family and cultural connections, or for the protection of their cultural rights.⁷¹ As such, children subject to these orders in many cases face an increased risk of losing their connections to family, community, culture and Country. While the Department reported that the majority of permanent care orders in the Northern Territory involve kinship placement,⁷² there is no public data on this matter, and some ACCOs have expressed concerns about the use of these orders.

While permanency planning aims to provide children with stability, for Aboriginal and Torres Strait Islander children, those efforts must recognise that a child’s stability is inherently grounded in the permanence of their identity in connection with family (including extended family and kin networks), community, culture, and Country.⁷³ To support the best interests and ongoing wellbeing of Aboriginal and Torres Strait Islander children, it is critical that those connections are not overridden by Western legal systems that tend to prioritise physical and legal stability over relational permanence and connection to Country.⁷⁴

No Aboriginal and Torres Strait Islander children were adopted from OOHC in the Northern Territory during the reporting period.⁷⁵

the clear evidence of a change in the Department’s approach, the figures cited in the Department’s Annual Report are of relevance here.

⁷¹ SNAICC (2022) *The Family Matters Report 2022*, pp. 31, 35, 36. Available at: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>

⁷² Northern Territory Government input to inform this review.

⁷³ SNAICC (2016) *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care: Policy position statement*. Available at: https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability-1.pdf

⁷⁴ Ibid.

⁷⁵ Northern Territory Government input to inform this review.