

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



SNAICC
National Voice for our Children

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Acronyms and abbreviations

ACAC	Aboriginal Children in Aboriginal Care (program)
ACCO	Aboriginal and Torres Strait Islander Community-Controlled Organisation
AFLDM	Aboriginal Family-Led Decision-Making
CCYP	Commission for Children and Young People
CYFA	<i>Children, Youth and Families Act 2005 (Vic)</i>
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
Department	Department of Families, Fairness and Housing
Marram-Ngala Ganbu	Marram-Ngala Ganbu Koori Family Hearing Day
OOHC	Out-of-home care
Roadmap	Victorian Government's <i>2016 Roadmap for Reform</i>

Introduction

This report reviews the progress of the Victorian Government, through the Department of Families, Fairness and Housing (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 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 series¹, the 2018 Baseline Analysis of Child Placement Principle², 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;

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).

Protection Australia 2020-21 report.⁴ OOH figures in this review comprise ‘out-of-home care’ and ‘third party parental responsibility orders’ from the AIHW report. Data on ‘children of unknown Indigenous status in out-of-home care’ have not been included in this review’s figures, where relevant.

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

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

Overview

Prevention: Over the reporting period, the Victorian Government continued to progress its long-term reforms to the children, youth and family services system. Victoria has prioritised early intervention and prevention through the *Roadmap for Reform* and the *Wungurilwil Gapgapduir* agreement (discussed below and noted in the 2020 Victorian Child Placement Principle review⁵). This prioritisation is reflected in the growing proportion of Victoria’s child protection expenditure allocated to early support and prevention. In 2020-21, this accounted for 27.4% of its total expenditure. In spite of these efforts, the rate at which Aboriginal and Torres Strait Islander children are overrepresented in the system continues to climb.

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).

⁵ SNAICC (2020) *Reviewing implementation of the Aboriginal and Torres Strait Islander Child Placement Principle – Victoria 2020*. Available at: www.snaicc.org.au/reviewing-implementation-of-the-aboriginal-and-torres-strait-islander-child-placement-principle-2020

At 30 June 2021, the Victorian rate per capita of Aboriginal and Torres Strait Islander children in out of home care was 17.2 times the rate for non-Aboriginal children.⁶ This is partially explained by the ongoing underrepresentation of Aboriginal and Torres Strait Islander children in intensive family support services. Aboriginal and Torres Strait Islander children made up only 10.6% of children commencing an intensive family support service in 2020-21, yet accounted for 23.8% of children entering OOHC in the same year.⁷

Partnership: The transfer of case management of Aboriginal and Torres Strait Islander children in OOHC to ACCOs has progressed over this period, albeit slowly. The number of authorisations under the Aboriginal Children in Aboriginal Care (ACAC) program has increased by almost 30%. At 30 June 2021, 181 Aboriginal and Torres Strait Islander children and young people were authorised to ACCOs under ACAC. However, in the past year there has only been a 1% increase in the proportion of children case managed by ACCOs, so overall progress has been slow. As of 30 June 2021, 50% of Aboriginal and Torres Strait Islander children in care are now case managed by an ACCO.⁸

Placement: Positively, Victoria continues to experience an upward trajectory in placing Aboriginal and Torres Strait Islander children with family, kin or Aboriginal and Torres Strait Islander carers. At 30 June 2021, 80.6% of Aboriginal and Torres Strait Islander children in OOHC in Victoria were living with family, kin or other Aboriginal and Torres Strait Islander carers, compared to 55.2% in 2012. This is well above the national average of 63.8%. Unfortunately, the proportion of children placed exclusively with Aboriginal and Torres Strait Islander carers stands at 41.2% as at June 30 2021. This represents a drop since the 2018 Child Placement Principle Baseline Analysis when, at 30 June 2017, 48.3% of children were placed with Aboriginal and Torres Strait Islander carers.⁹

Participation: The expansion of the Marram-Ngala Ganbu Koori Family Hearing Day (Marra-Ngala Ganbu) to the Shepparton Children's Court in 2021 is an important development in strengthening implementation of the participation element. A 2019 evaluation¹⁰ found that families' involvement in Marram-Ngala Ganbu led to greater engagement of families with court processes and services and in complying with court orders. Aboriginal and Torres Strait Islander sector leaders have argued that Marram-Ngala Ganbu is hugely empowering for families and have called for the program to be expanded to all courts in Victoria. Marram-Ngala Ganbu is also leading to improved consideration by the child protection system, including the courts, of cultural connection when assessing the needs of children, as well as in the system's greater compliance with the Child Placement Principle and the Department's strengthened accountability to court process.

Connection: Victoria has expanded a number of initiatives to strengthen connection for Aboriginal and Torres Strait Islander children in OOHC, including the *Aboriginal Family Preservation and Reunification Response* and the ACCO-led cultural planning model. Evidence suggests that these programs are leading to some change, albeit slowly. At 30 June 2021, 58% of Aboriginal and Torres

⁶ Steering Committee, n 3, Table16A.2.

⁷ Ibid, Table16A.34 and 16A.4.

⁸ SNAICC (2021) *The Family Matters Report 2021*, p. 54. Available at: www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

⁹ Steering Committee, n 3, Table16A.22.

¹⁰ Arabena, K. et al (2019) *Evaluation of Marram-Ngala Ganbu*. Available at: www.childrenscourt.vic.gov.au/sites/default/files/2020-11/Evaluation%20of%20Marram-Ngala%20Ganbu.pdf

Strait Islander children had an endorsed cultural support plan, in comparison to 44% at 30 April 2020.¹¹

Aboriginal and Torres Strait Islander sector leaders continue to be concerned by the permanency amendments passed through the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), which legislated a rigid two-year timeframe for reunifying children with their families. The overrepresentation of Aboriginal and Torres Strait Islander children in OOHC in Victoria means that these children disproportionately feel the impacts of permanency planning trends. At 30 June 2020, Victoria had the highest rate of Aboriginal and Torres Strait Islander children on long-term or permanent care orders; at 80.1 per 1,000 children.¹²

Prevention

The Victorian Government's 2016 *Roadmap for Reform; strong families, safe children* (Roadmap) is Victoria's strategy to transform the child and family system and focuses on earlier intervention and prevention.¹³ Additionally, *Wungurilwil Gaggapduir Aboriginal Children and Families Agreement* links in very strongly with the Roadmap and outlines the strategic direction of the Victorian Government to reduce the number of Aboriginal children in OOHC by building their connection to culture, Country and community. During the reporting period, the Department released the Roadmap's *Pathways to support for children and families - Priority Setting Plan 2021–2024*,¹⁴ which sets out the next stages for shifting the child and family system towards a prevention and early intervention model.¹⁵ The plan will be supported by a series of annual action plans.

The priorities of the 2021-2024 plan are to:

- shift the system to intervene earlier to improve family functioning, keep children with their families and safely reunify, with a priority focus on Aboriginal families;
- build evidence across the system to enable effective services, targeted to the needs of priority groups of children and families;
- strengthen partnerships between child protection, family violence, sexual assault and child and family services to enable improved experiences and outcomes for children and families; and
- advance Aboriginal self-determination and self-management, including through care and case management of Aboriginal children by ACCOs and Aboriginal-led service offerings.

Despite the government's claim that the Roadmap is reorienting the child protection system to focus on preventing children from entering OOHC, the rate of overrepresentation of Aboriginal and Torres Strait Islander children in OOHC in Victoria has continued to climb by approximately 66% since the Roadmap was released in 2016.¹⁶ The rate of Aboriginal and Torres Strait Islander children in care in Victoria was the highest in Australia in 2020-21, at 103 per 1000 children, far above the national rate

¹¹ SNAICC (2021) *Reviewing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Victoria 2020*. Available at: www.snaicc.org.au/wp-content/uploads/2021/03/Reviewing-Implementation-of-the-ATSICPP_2020_VIC.pdf

¹² SNAICC (2021) *The Family Matters Report 2021*, p. 32. Available at: www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

¹³ Department of Health and Human Services (2016) *Roadmap for Reform: strong families, safe children – the first steps*. Available at: www.dhhs.vic.gov.au/sites/default/files/documents/201905/Roadmap-for-reform-28-4-2016.pdf

¹⁴ The Department (2021) *Roadmap for Reform: pathways to support for children and families – Priority setting plan 2021-2024*. Available at: www.dffh.vic.gov.au/publications/roadmap-reform-strong-families-safe-children

¹⁵ Ibid.

¹⁶ Steering Committee, n 3, Table16A.2.

of 57.6 per 1000 children.¹⁷ In 2020-21, Aboriginal and Torres Strait Islander children were admitted to OOHC at a far higher rate in Victoria than in any other state or territory.¹⁸ At 30 June 2021, Aboriginal and Torres Strait Islander children in Victoria were 17.2 times more likely to be living in OOHC than their non-Indigenous peers.¹⁹

At the same time, while the rate of overrepresentation continues to climb, the proportion of Victorian spending on intensive family support services and family support services has not kept pace. The proportion of total child protection expenditure that went to family support services and intensive family support services was 27.4% in 2020-21.²⁰ Promisingly, this is an increase from 2019-20, when spending on these services accounted for 25% of the total expenditure on child protection services, and further resource allocations have been promised in the Victorian Budget Forward Estimates to 2023-24.²¹ Yet, while annual expenditure on family support services and intensive family support services has increased by 25% since the introduction of the Roadmap (2016),²² this remains significantly below the rising number of Aboriginal and Torres Strait Islander children in care year-on-year, which has increased by 81% since 2016.²³

The majority of initiatives outlined in the 2021-22 Victorian State Budget are allotted to tertiary child protection services. This includes additional Departmental child protection workers and funding to continue the delegated authority of ACCOs for the protection, care and case management of Aboriginal and Torres Strait Islander children in OOHC.²⁴ Similarly, the Victorian Government has allocated \$335 million over four years, for initiatives such as the expansion of the Family Preservation and Reunification Response (Response) from 2021-22, which has been described as 'earlier intervention'. This follows an initial investment of \$39.6 million for the establishment of the model in 2020-21. To support the implementation of the model, the department has established a new function, through the creation of Child Protection Navigators, to work proactively with Child Protection practitioners and child and family services, to connect families to supports in a timely way, in circumstances where children are at risk of removal or have recently entered care.

This highlights the fact that there is currently a lack of shared understanding about what constitutes early intervention or early help within the broader context of 'early intervention and prevention'. The Department of Families, Fairness and Housing (DFFH) has used this terminology to refer to intensive services for families who are already in contact with Child Protection, (e.g. the previously mentioned intensive family preservation and reunification program), whereas some ACCOs see 'early intervention and prevention' as supports with the capability to reduce risk of future contact with Child Protection, regardless of whether families are already in contact with the system. In addition, the DFFH conceptualisation of early intervention or early help also often differs from that of other departments (for example, the Department of Education and Training). This lack of a shared definition operates as a barrier to government, ACCOs, and community partnering to take

¹⁷ Ibid

¹⁸ SNAICC (2021) *The Family Matters Report 2021*. Available at: www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

¹⁹ Steering Committee, n 3, Table 16A.2.

²⁰ Ibid, Table 16A.8.

²¹ Victorian Government (2020) *State Budget 2020-21, Budget Paper 3: Service Delivery*, p. 64. Available at: <https://www.dtf.vic.gov.au/2020-21-state-budget/2020-21-service-delivery>

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

²³ Ibid, Table 16A.2.

²⁴ Victorian Government (2021) *Victorian Budget 2021/22: Creating Jobs, Caring for Victorians, Service Delivery, Budget Paper No 3*, p. 46. Available at: <https://www.dtf.vic.gov.au/2021-22-state-budget/2021-22-service-delivery>

coordinated and aligned action supporting the needs of Aboriginal and Torres Strait Islander children.

The lack of funding for ACCOs to deliver early intervention and prevention services is an ongoing issue, despite this being central to implementation of the Prevention element. ACCOs report that whilst the Victorian Government has committed to proportionate funding and expansion of child and family services run by ACCOs, the government's own procurement processes do not enable this. ACCOs have also noted the constraints imposed on service delivery by short-term, output-oriented funding arrangements, often associated with considerable reporting burdens that take away from the sector's ability to deliver other critical prevention services and programs. Funding that is split between departments, and even within departments, also contributes to a disconnect between the needs and priorities of communities, and does not reflect the integrated and interconnected nature of service delivery within ACCOs. ACCOs have also indicated that in many cases, these processes favour mainstream service providers who, due to the legacy of colonialism, have access to the infrastructure and resources required to respond to and secure tenders.²⁵

In 2020-21, 9,602 children commenced an intensive family support service, of which 10.6% (1,017) were Aboriginal and/or Torres Strait Islander.²⁶ This is a significant increase since the Roadmap was first introduced in 2016, when only 6.35% of children commencing an intensive family support service were Aboriginal and/or Torres Strait Islander children. However, Aboriginal and Torres Strait Islander children made up 23.8% of children entering OOHC in 2020-21,²⁷ highlighting that access to family services is disproportionate to the need for support.

Partnership

ACCOs report varying degrees of participation in the legislative reform process. Members of the Aboriginal Children's Forum – the body responsible for monitoring and implementation of *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement (Wungurilwil Gaggapduir)* – have been consulted on these changes. *Wungurilwil Gaggapduir* is the tripartite agreement between the Victorian Aboriginal and Torres Strait Islander community, the Victorian Government, and community service organisations. It continues to be the primary partnership for enabling community participation in service design and delivery. However, ACCOs which are not registered and funded under the CYFA do not sit on the Aboriginal Children's Forum. These ACCOs have reported very limited engagement in terms of these legislative reforms. Given the significance of the proposed reforms, comprehensive consultation was warranted and limitations in participation opportunities may create challenges for these ACCOs.

In early 2021, signatories to *Wungurilwil Gaggapduir* came together to refresh the Agreement's accompanying Strategic Action Plan for 2021–2024. Implementation of the Child Placement Principle has been identified as a priority in the Action Plan.

The 2021-22 Victorian State Budget committed \$31.5 million over four years to continue implementation of *Wungurilwil Gaggapduir*. The Department reports that this funding will

²⁵ Social Compass Impact Co (2019) *Aboriginal Funding Reform Project Final Report for the Department of Premier and Cabinet*. Unpublished report.

²⁶ Steering Committee, n 3, Table 16A.34.

²⁷ Ibid, Table 16A.4.

contribute to the continued transfer of care and case management of Aboriginal and Torres Strait Islander children to and by ACCOs.

Promisingly, the Victorian Government also announced in December 2020 that it would invest \$11.6 million over four years to enable the Bendigo and District Aboriginal Corporation (BDAC) and the Victorian Aboriginal Child Care Agency (VACCA) to pilot Australia's first ACCO-led child protection investigations.²⁸

ACCOs and the Department continue to work in partnership to increase Aboriginal and Torres Strait Islander self-determination in child protection decision-making through the Aboriginal Children in Aboriginal Care (ACAC) program. Section 18 of the CYFA provides for the Secretary of the Department to authorise the principal officer of an Aboriginal Agency to undertake specified functions and powers conferred on the Secretary in relation to an Aboriginal child, or the sibling of an authorised Aboriginal child, on a protection order. The ACAC is the departmental program that operationalises that legislative provision.

As of 30 June 2021, 181 Aboriginal and Torres Strait Islander children and young people were authorised to ACCOs and the program has expanded to ACCOs in three new locations, with six agencies authorised under the CYFA.²⁹ By comparison, 92 Aboriginal and Torres Strait Islander children were under ACAC at 30 June 2020, meaning that the number of children under the guardianship of an ACCO doubled since the 2020 review.³⁰

Furthermore, as of June 2021, 50% of Aboriginal and Torres Strait Islander children on contractable orders in OOHc were transitioned to be case managed by ACCOs, which represents a minimal increase of 1% over the previous year.³¹ Disappointingly, the Victorian Government is now well behind its *Wungurilwil Gappapduir* commitment to transition 100% of children to Aboriginal and Torres Strait Islander case management by 2021.

ACCOs have identified the transfer of funding and services to ACCOs and the continued commitment to strong partnerships amongst themselves and mainstream partners as key enablers to achieving this goal.

There is a pressing need to complete implementation of the self-determination initiatives such as these. This is supported by the findings of a recent evaluation of the Aboriginal Children in Aboriginal Care and Transitioning Aboriginal Children to ACCOs programs. The evaluation indicated that Aboriginal and Torres Strait Islander children managed by an ACCO report being better connected to culture, Country and family.³² Furthermore, ACCOs are achieving greater success in reunifying children with their families – 15.6% of Aboriginal and Torres Strait Islander children case managed by an ACCO were reunified, compared to 12.6% of children case managed by the Department.³³

²⁸ Victorian Government (10 December 2020) *Nation first initiative for Aboriginal child protection*. Available at: www.premier.vic.gov.au/nation-first-initiative-aboriginal-child-protection

²⁹ SNAICC (2021) *The Family Matters Report 2021*, p. 54. Available at: www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

³⁰ Victorian Government (2022) *Victorian Government Aboriginal Affairs Framework Data Dashboard: Aboriginal Children under the direct authority of an ACCO (section 18)*. Available at: firstpeoplesrelations.vic.gov.au/node/26754

³¹ SNAICC (2021) *The Family Matters Report 2021*, p. 54. Available at: www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

³² Reported in the Victorian Government's report for this review, unpublished.

³³ *Ibid*, p. 55.

Placement

The Aboriginal Kinship Finding Service, established in 2018 and delivered by the Victorian Aboriginal Child Care Agency, continues as the state-wide program for identifying kinship carers early and supporting children's connections to family, community and culture.

As specified in the Victorian State Budget, the Department's target for 2020-21 was for 75% of Aboriginal and Torres Strait Islander children in OOHC to be placed with their relatives, kin, other Aboriginal carers or in Aboriginal residential care.³⁴ SNAICC and its membership have consistently raised with all Australian governments that placement in residential care is *a last resort*, and is not an appropriate indicator of compliance with the hierarchy of placement options.³⁵

Currently measures to track the co-placement of Aboriginal siblings are lacking. The co-placement of Aboriginal siblings contributes to their connection to culture through strengthening 'continuity of family connections but also [...] linkage to community and culture'.³⁶ The *Always was, always will be Koori children* inquiry found that '[h]igh numbers of Aboriginal children in OOHC are separated from their siblings and are not provided with adequate opportunity to have contact with them' and that 'over 40 per cent of children with siblings were separated from their brothers and sisters'.³⁷ Similarly, the *In Our Own Words* inquiry (2019) (In Our Own Words) found that as at 31 December 2018, 49% of Aboriginal children and young people in care were living separated from some or all of their siblings.

On a more positive note, Victoria continues to have an upward trajectory in the placement of children with kin or Aboriginal and Torres Strait Islander carers. At 30 June 2021, 80.6% of Aboriginal and Torres Strait Islander children in OOHC in Victoria were living with family, kin or other Aboriginal and Torres Strait Islander carers, compared to 55.2% in 2012. This is also well above the national average of 63.8%.³⁸

Unfortunately, the proportion of children placed exclusively with Aboriginal and Torres Strait Islander carers has dropped since the 2018 Child Placement Principle Implementation Baseline Analysis. At 30 June 2017, 48.3% of children were placed with Aboriginal and Torres Strait Islander carers.³⁹ Efforts must be taken to remedy this situation given that placement with Aboriginal and Torres Strait Islander carers help children maintain connection to culture.

ACCOs also report that kinship placement applications continue to be rejected for arbitrary reasons, such as very old criminal records, size of the carer's family, and delays in gaining a Working with Children's Check.

³⁴ Victorian Government (2021) *Victorian Budget 2021/22: Creating Jobs, Caring for Victorians, Service Delivery, Budget Paper No 3*, p. 46. Available at <https://s3-ap-southeast-2.amazonaws.com/budgetfiles202122.budget.vic.gov.au/2021-22+State+Budget+-+Service+Delivery.pdf>

³⁵ SNAICC (2018) *The Aboriginal and Torres Strait Islander Child Placement Principle*. Available at www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf

³⁶ McDowall J, CREATE Foundation (2015) *Sibling placement and contact in out-of-home care, Policy and Advocacy Unit*, p. 18.

³⁷ Commissioner for Children and Young People (CCYP) (2016) *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, p. 147. Available at: <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>.

³⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission (2022) *Report on Government Services – Chapter 16 – Child Protection*, Table 16A.22. Available at: www.pc.gov.au/research/ongoing/report-on-government-services/2022/community-services/child-protection

³⁹ Ibid, Table 16A.2.

Participation

The Department provided very little information on new efforts to ensure the participation of children, parents and families in decisions regarding the care and protection of their children.

Aboriginal Family-led Decision-Making (AFLDM) continues as the primary model of practice for ensuring that families have a say in decisions about their children. There was no update from the Department or otherwise on the number of AFLDM meetings held over the reporting period nor the impact of these meetings.

The Victorian Aboriginal Legal Service (VALS) noted that culturally safe legal assistance is integral to enabling families' participation in child protection processes. In April 2021, the Victorian Government announced that the Marram-Ngala Ganbu Koori Family Hearing Day (Marram-Ngala Ganbu) at the Broadmeadows Children's Court would be expanded to the Shepparton Children's Court.⁴⁰ Marram-Ngala Ganbu aims to facilitate participation of Aboriginal and Torres Strait Islander families and children in a manner that is respectful of their cultural identity and needs. The proceedings are less formal than standard proceedings, allowing children and families to participate without feeling intimidated. All participating parties are seated in a culturally safe environment, around a table adorned with a traditional possum skin cloak. Families and children are supported by an Aboriginal court worker who acts as a connector between them and the magistrate.

According to the Victorian Government, by April 2021, the program had supported more than 470 Aboriginal and Torres Strait Islander families and resulted in the reunification of families, families remaining together, and children being placed in kinship care.

In 2019, the Children's Court of Victoria commissioned an independent evaluation of Marram-Ngala Ganbu. The evaluation found that, for families, involvement in Marram-Ngala Ganbu led to greater engagement with court processes and services and greater compliance with court orders. For the child protection system, including the courts, Marram-Ngala Ganbu was leading to improved consideration of cultural connection in assessing the needs of children, as well as greater compliance with the Child Placement Principle and the Department's strengthened accountability to the magistrate and the court process.⁴¹

Aboriginal and Torres Strait Islander sector leaders have insisted that Marram-Ngala Ganbu is hugely empowering for families and have called for the program to be expanded to all courts in Victoria.

Connection

Safely reunifying Aboriginal and Torres Strait Islander children with their families is the first priority in permanency planning and in achieving the best outcome for children. This is particularly important for Aboriginal and Torres Strait Islander children in OOHC who are at risk of disconnection from culture, family and community.

In 2020-21, Victoria had the second-highest rate of eligible Aboriginal and Torres Strait Islander children reunified of any jurisdiction (noting that children on long-term orders, including long-term

⁴⁰ Victorian Government (16 April 2021) *Better outcomes for Aboriginal families in Shepparton*. Available at: www.iaclynsymes.com.au/media-releases/better-court-outcomes-for-aboriginal-families-in-shepparton

⁴¹ Arabena, K. et al (2019) *Evaluation of Marram-Ngala Ganbu*. Available at: www.childrenscourt.vic.gov.au/sites/default/files/2020-11/Evaluation%20of%20Marram-Ngala%20Ganbu.pdf

custody, guardianship and third-party parental responsibility orders, are not eligible for reunification); at 32% of Aboriginal and Torres Strait Islander children in OOHC, excluding children on long-term guardianship or custody orders. This is a slight increase from 2020-21 when 31.3% of Aboriginal and Torres Strait Islander children were reunified.⁴² Unfortunately, Victoria also had the highest rate of return to care for children reunified during 2019-20. 18.4% of children who were reunified during 2018-19 were returned to care during 2019-20.⁴³ Data on children returned to care after reunification for 2020-21 have not yet been released by the AIHW.

In the 2020-21 Victorian State Budget, the government announced that the Aboriginal Family Preservation and Reunification Response would be expanded to reach more children and families across the state. ACCOs have spoken positively of the co-design and implementation of this response, highlighting that it has led to an increase in resources to ACCOs (although not to match demand). They have also highlighted that Aboriginal and Torres Strait Islander cultural elements known to support families have been integrated into practice.

Aboriginal and Torres Strait Islander sector leaders continue to be concerned about the permanency amendments passed through the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014* (Vic), which legislated a rigid two-year timeframe for reunifying children with their families. The *Safe and Wanted Inquiry into Permanency Arrangements* (2016) raised similar concerns about the impact of these amendments on Aboriginal children and recommended further legislative amendments including the removal of adoption from the permanency hierarchy.⁴⁴ Sector leaders note that the two-year timeframe fails to account for the trauma resulting from child protection intervention. Aboriginal and Torres Strait Islander leaders and communities have also consistently argued that states and territories, including Victoria, are promoting a narrow construct of attachment theory, which pursues a singular attachment for a child to their carer and does not recognise the importance of kinship relationships and cultural identity.

The overrepresentation of Aboriginal and Torres Strait Islander children in OOHC in Victoria means that these children disproportionately bear the impacts of permanency planning trends. At 30 June 2021, Victoria had the highest rate of Aboriginal children on long-term or permanent care orders; at 79.1 per 1,000 children.⁴⁵

The use of permanent care in Victoria must be considered within the context of the COVID-19 pandemic, which limited people's access to programs and services. In October 2020, the Victorian Government passed the *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (Vic). This Act temporarily amends the CYFA to provide that the Court may make a family reunification order for a child or extend a family reunification order for a child, for a period beyond the usual period. On the 26 April 2021 the government extended this measure for a further two years, through the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Vic). This temporary amendment is due to sunset on 26 April 2023. Nonetheless, the Court must be satisfied that progress of a parent of the child towards reunification has been impeded as a result of the COVID-19 pandemic, for a maximum period of six months. Given the duration of the pandemic and its implications for access to services, this extension is inadequate.

⁴² AIHW (2022) *Child Protection Australia*, Supplementary Data Tables, Table S6.1.

⁴³ Ibid, Table S2.4a.

⁴⁴ CCYP (2017) *Safe and Wanted Inquiry into permanency arrangements*. Recommendation 2, p. 65. Available at <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/permanency-amendments-inquiry/>

⁴⁵ AIHW (2022) *Child Protection Australian 2020-21*, Table S4.10.

In November 2020, Victoria Legal Aid released its review into the impact of the permanency amendments on its clients. While the stated aim of the permanency amendments is to increase stability for children, the Victoria Legal Aid review found that the legislation was not achieving its objective of finding children ‘certain, permanent homes’.⁴⁶ In particular, Victoria Legal Aid noted that the rigid timeframes are hindering efforts at reunification and ‘may be unfairly penalising parents for circumstances outside of their control’, which has the potential effect of prolonging a child’s time in care.⁴⁷ Additionally, the review raised concerns that the reduced level of judicial oversight arising from the amendments may lead to ‘outcomes that are not always in the best interests of the child and inadvertently prolonging court proceedings’.⁴⁸ Victoria Legal Aid recommended that reunification timeframes be amended to allow the Children’s Court to make decisions in the best interests of the child and that court oversight be increased, including to allow the court to make conditions on any protection orders and name a placement on an order.⁴⁹

For Aboriginal and Torres Strait Islander children in OOHC, cultural support planning is integral to ensuring that children remain connected to their culture and community, when guided by the child, their family, community (especially those with cultural authority for the child) and ACCOs. While the CYFA legislates that Aboriginal and Torres Strait Islander children in care must have a cultural support plan, only 58% of children had an endorsed plan as of 30 June 2021; in comparison to 44% at 30 April 2020.⁵⁰

Even for children who have a plan, quality remains an issue. Aboriginal and Torres Strait Islander sector leaders report that plans are often not developed in a timely manner. When these are, they often are superficial and completed with little involvement of the family. It also remains unclear whether the plans are being implemented by a child’s carers and how implementation is monitored. It is concerning to note that the *In Our Own Words* Inquiry (2019) found that many Aboriginal children and young people have a limited awareness of cultural support plans. *In Our Own Words* also reported that the ‘*Views of Children and Young People in Out of Home Care in Victoria*’ survey, conducted by Viewpoint in 2018, found that 44% of Aboriginal children and young people in Victoria surveyed did not know what a cultural plan was, 44% said they had participated in the preparation of one of these plans, and another 13% said they had not been able to participate.⁵¹

Beginning in early 2021, the Department established a trial for cultural planning at VACCA, Goolum-Goolum and Wathaurong to enable ACCO cultural planning senior advisers to develop the cultural components of cultural plans. Additionally, a concurrent trial - the *One Cultural Plan* - was underway in the Wimmera Southwest Area. These trials were established in response to a 2019 evaluation⁵² of a cultural planning model implemented in 2017, which highlighted a need to improve both the quantity and quality of cultural plans and improve coordination between government agencies. Aboriginal and Torres Strait Islander sector leaders have emphasised the need to be appropriately

⁴⁶ Victorian Legal Aid (2020) *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, p. 2. Available at:

www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla_report_child_protection_permanency_report.pdf.pdf

⁴⁷ Ibid, p. 2.

⁴⁸ Ibid, p. 3.

⁴⁹ Ibid, p. 26.

⁵⁰ Family Matters (2021) *The Family Matters Report 2021*, p. 55. Available at www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf;

SNAICC (2021) *Reviewing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Victoria 2020*. Available at: www.snaicc.org.au/wp-content/uploads/2021/03/Reviewing-Implementation-of-the-ATSICPP_2020_VIC.pdf

⁵¹ CCYP (2019) *In our own words: Systemic inquiry into the lived experience of children and young people in out-of-home care*, p.19.

Available at: <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-In-Our-Own-Words.pdf>

⁵² Reported in the Victorian Government’s report for this review.

resourced to support children's participation in programs and activities that strengthen the children's connection to their families, cultures and communities.

All of these efforts to maintain strong cultural and familial connections rely on Aboriginal and Torres Strait Islander children being identified at the earliest possible point of child protection involvement. Without correct and early cultural identification, Aboriginal and Torres Strait Islander children at all levels of child protection involvement are at risk of being deprived of culturally safe support, case planning and placements. Sector leaders report that a recent audit indicates that this is an increasingly significant problem in Victoria, with identification and de-identification errors occurring most commonly at the intake stage. The Department has committed to work with ACCOs through the *Wungurilwil Gaggapduir Objective One Working Group* on ways to improve the quality of identification. However, there is still an obvious need to improve the timing, frequency and quality of conversations between practitioners, ACCOs and families to prevent the inaccurate status recordings that will risk children growing up uncertain of their culture.