

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



**SNAICC**  
National Voice for our Children

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## Acronyms and abbreviations

ACCO	Aboriginal and Torres Strait Islander Community-Controlled Organisation
The Act	<i>Children and Community Services Act 2004 (WA)</i>
AFLDM	Aboriginal and Torres Strait Islander Family-Led Decision-Making
Child	Aboriginal and Torres Strait Islander Child Placement Principle
The Bill	<i>Children and Community Services Amendment Bill 2021 (WA)</i>
The Department	Department of Communities
NFSWC	Noongar Family Safety and Wellbeing Council
OOHC	Out-of-home care
WA	State of Western Australia

## Introduction

This report reviews the progress of the Western Australian Government, through the Department of 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 systems.

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

The annual jurisdictional reviews are developed by SNAICC – National Voice for our Children (SNAICC) with input from Aboriginal and Torres Strait Islander Community-Controlled Organisations (ACCOs) and state and territory governments. The reviews are informed by the best practice approach set out in SNAICC's Child Placement Principle resource series<sup>1</sup>, the 2018 Baseline Analysis of Child Placement Principle<sup>2</sup>, 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)<sup>3</sup> and the Australian Institute of Health and Welfare (AIHW) *Child*

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<sup>1</sup> 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](http://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](http://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf)

<sup>2</sup> 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](http://www.snaicc.org.au/policy-and-research/child-safety-and-wellbeing/baseline-analyses-of-child-placement-principle)

<sup>3</sup> 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](http://www.pc.gov.au/research/ongoing/report-on-government-services/2022/community-services/child-protection) (Steering Committee).

*Protection Australia 2020-21* report.<sup>4</sup> Out-of-home care (OOHC) 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.

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

In 2020-21, Aboriginal and Torres Strait Islander children in Western Australia were 18.1 times more likely to be placed in OOHC than their non-Indigenous peers.<sup>5</sup> This is an increase from the previous year (17.6), and Aboriginal and Torres Strait Islander children now represent 57% of children in care.<sup>6</sup>

Since the 2019 Child Placement Principle implementation review,<sup>7</sup> the Western Australian Government has been progressing legislative amendments to the *Children and Community Services Act 2004* (WA) (the Act) to give full effect to the intent and direction of the recommendations of the statutory review of the Act in 2017. As legislative amendments were passed on 19 October 2021, outside of this review period (1 July 2020–30 June 2021), the full scope of the changes and their impact on implementation of the Child Placement Principle will be discussed in more detail in the

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<sup>4</sup> 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).

<sup>5</sup> Steering Committee, n 3, Table 16A.2

<sup>6</sup> Ibid.

<sup>7</sup> A 2020 implementation review for Western Australia was not able to be published.

2022 implementation review. Key reforms to the Act and feedback from Aboriginal and Torres Strait Islander sector leaders are, however, included where appropriate.

**Prevention:** Throughout 2020-21, the WA Government continued to maintain a policy focus on early intervention and prevention through the *Building Safe and Strong Families: Earlier Intervention and Family Support* strategy. Despite a continued policy focus on early intervention and prevention, this has not been matched by the necessary resourcing of programs to support policy implementation. The proportion of Western Australian spending on intensive family support services and family support services in relation to total child protection spending remains extraordinarily low – by far the lowest proportional investment in the country. In 2020-21, spending on these services accounted for only 5.6% of the state’s total expenditure on child protection services, which is a decrease from 6.7% in 2016-17 when *Building Safe and Strong Families* was announced.<sup>8</sup>

**Partnership:** The amendments to the Act include several provisions that formally recognise the role of ACCOs in delivering child and family support services and thus have the potential to strengthen implementation of the partnership element. These reforms reflect a shift by the Department of Communities (the Department) to increase the priority on ACCO-led solutions. Specifically, the *Children and Community Services Amendment Bill 2021* (the Bill) amends section 14 of the Act to require that a kinship group, community or Aboriginal representative organisation is given the opportunity, wherever appropriate, to be involved in all significant decisions about a child and introduces more specific provisions relating to ACCO participation in placement decisions and cultural support plans. The provisions fall well short of best practice in requiring ACCO involvement in all significant decisions but are a step in the right direction. The Department has initiated a process to pilot this approach, which will be reported on in the 2022 implementation review. It is of some concern that despite the legislative changes, implementation is moving slowly through a pilot phase rather than fully resourced implementation in line with the legislation, which applies across the state. The success of such efforts is highly dependent on ACCOs being appropriately resourced to undertake this important work. Only 1.9% of care services funding was invested through ACCOs in 2020-21 despite Aboriginal and Torres Strait Islander children making up 57% of the OOHC population. A higher proportion was invested in ACCO family support and intensive family support services (21.1%), however this was in the context of the lowest proportion of spending of any state or territory on family support services.<sup>9</sup>

**Placement:** Western Australia (WA) is experiencing a decline in the number of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers. In 2020-21, 61.1% of Aboriginal and Torres Strait Islander children were placed with kin or other Aboriginal and Torres Strait Islander carers, compared to 62% in 2019-20. Still, placement with Aboriginal and Torres Strait Islander kin or other carers is slightly higher than the national average.<sup>10</sup> 45.8% of children are placed with Aboriginal and Torres Strait Islander relatives or other Aboriginal and Torres Strait Islander carers in WA, compared with 41.6% nationally.<sup>11</sup> The new legislative provisions that come into effect after the current reporting period will introduce mandatory requirements for ACCO

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<sup>8</sup> Steering Committee, n 3, Table 16A.8.

<sup>9</sup> SNAICC (2022) *The Family Matters Report 2022*, p. 42. Available at: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>

<sup>10</sup> Steering Committee, n 3, Table 16A.22.

<sup>11</sup> Ibid.

and family participation in placement decisions, and so significantly increase legislative alignment with the Child Placement Principle.

**Participation:** The WA Government is taking positive steps to enhance the involvement of children and their families in child protection decision-making using formal programs such as Aboriginal and Torres Strait Islander Family-Led Decision-Making models (AFLDM). In August 2020, the Department announced that it would commit \$715,000 to establish a two-year AFLDM pilot.<sup>18</sup> The pilot will be implemented in the Midwest/Gascoyne region and the Perth suburb of Mirrabooka by Streetwork Aboriginal Corporation and Wungening Aboriginal Corporation.<sup>12</sup> Whilst a promising step, the minimal amount of funding committed to the pilot has been described as ‘tokenistic’ and ‘several years behind other jurisdictions’ by the Noongar Family Safety and Wellbeing Council (NFSWC).<sup>20</sup> SNAICC and the NFSWC have also criticised the failure to include AFLDM in the scope of legislative reforms, in line with best practice.

**Connection:** Aboriginal and Torres Strait Islander sector leaders in WA continue to be concerned by the state’s practice of relying on long-term and permanent care orders for managing the rising number of children entering care year upon year. The overrepresentation of Aboriginal and Torres Strait Islander children in OOHC in WA means that they disproportionately bear the impacts of permanency planning trends. At 30 June 2021, WA reported the fifth highest use of permanent care orders (long-term third party parental responsibility orders and finalised long-term guardianship/custody orders) for Aboriginal and Torres Strait Islander children (10.6 per 1,000). While legislative reforms are progressing some measures to strengthen implementation of the connection element, NFSWC and SNAICC have argued that these are grossly inadequate for safeguarding the rights of Aboriginal and Torres Strait Islander children.

## Prevention

In June 2021, the WA Government introduced the Bill to Parliament. This Bill, which was subsequently passed into law in October 2021, improves alignment with the Child Placement Principle’s prevention element as it includes a number of provisions that strengthen recognition of a child’s right to enjoy culture in connection with their family and community.

Notably, the Bill amends section 8 of the Act to recognise the child’s need to develop and maintain a connection with the culture and traditions of their family or community. However, a notable gap in the Bill is the lack of enabling provisions for the *Prevention* element. There are no requirements for the provision of support services to families to prevent child removal or reunify children who have been removed from their families.

The Western Australian Government’s policy documents maintain a focus on early intervention and prevention. The *Building Safe and Strong Families: Earlier Intervention and Family Support* strategy continues to be a key aspect of the WA Government’s reform of the OOHC system, particularly through the *Building a Better Future: Out-of-Home Care Reform*.

This strategy included the establishment in 2018 of *Wungening Moort*, a culturally safe, intensive in-home support and parenting program. Currently, *Wungening Moort* is delivered by a partnership of four ACCOs and is the only early intervention service exclusively for Aboriginal and Torres Strait

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<sup>12</sup> See WA Government (21 October 2021) *Aboriginal Family Led Decision Making begins in WA*. Available at: <https://www.wa.gov.au/government/announcements/aboriginal-family-led-decision-making-begins-wa>

Islander families. Data indicates that *Wungening Moort* is helping to keep children safely at home - in 2020-21, 91% of children who were referred to the service remained at home.<sup>13</sup> In a promising move, in May 2021, the WA Government announced \$10.3 million in funding over two years to extend *Wungening Moort* and fund its expansion into regional areas through a co-design process.<sup>14</sup>

Still, NFSWC has indicated that the effectiveness of the service is limited by the fact that only the Department can refer a family and that once case closure occurs, families are unable to seek follow-up supports through the service.<sup>15</sup> Another limitation is that *Wungening Moort* only operates in the Perth metropolitan area, leaving families outside with limited access to specific ACCO-led family supports.

The continued policy focus on early intervention and prevention has not been matched by the necessary resourcing of programs to support policy implementation. The proportion of WA spending on intensive family support services and family support services in relation to total child protection spending remains extraordinarily low. In 2020-21, spending on these services accounted for only 5.6% of WA's total expenditure on child protection services. This is a decrease from 6.7% in 2016-17 when the *Earlier Intervention and Family Support Strategy* was announced.<sup>16</sup>

Of all children commencing an intensive family support service in 2020-21, Aboriginal and Torres Strait Islander child accounted for just under 60%.<sup>17</sup> In fact, the number of Aboriginal and Torres Strait Islander children commencing an intensive family support service nearly doubled between 2019-20 and 2020-21, from 544 to 909.<sup>18</sup>

Aboriginal and Torres Strait Islander children in WA were 18.2 times more likely to be placed in OOHC than a non-Indigenous child.<sup>19</sup> This remains one of the highest rates of over-representation in the country and increased slightly on the overrepresentation rate from the previous year (17.6 times more likely in 2019-20). Aboriginal and Torres Strait Islander children now represent 57% of the number of children in care in WA.<sup>20</sup>

## Partnership

The Bill contains amendments that formally recognise the role of ACCOs in delivering child protection and family support services to Aboriginal and Torres Strait Islander families and communities. Specifically, the Bill amends section 14 of the Act to require that a kinship group, community or representative Aboriginal and Torres Strait Islander organisation is given the opportunity to be involved in all significant decisions about a child. The strength of the language used in the new provision raises significant concerns regarding legislative alignment with the *Partnership* element of the Child Placement Principle. The use of the word 'or' in section 14 makes it optional to exclude any of these critical parties from consultations. The provision also includes

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<sup>13</sup> Department of Communities (2021) *Annual Report 2020-21*, p. 8. Available at: [www.wa.gov.au/system/files/2021-10/Department-of-Communities-Annual-Report-2020-21.pdf](http://www.wa.gov.au/system/files/2021-10/Department-of-Communities-Annual-Report-2020-21.pdf)

<sup>14</sup> Government of Western Australia (26 May 2021) *State government acts to address overrepresentation of Aboriginal kids in care*. Available at: [www.mediastatements.wa.gov.au/Pages/McGowan/2021/05/State-Government-acts-to-address-overrepresentation-of-Aboriginal-kids-in-care.aspx](http://www.mediastatements.wa.gov.au/Pages/McGowan/2021/05/State-Government-acts-to-address-overrepresentation-of-Aboriginal-kids-in-care.aspx)

<sup>15</sup> SNAICC (2021) *The Family Matters Report 2021*, p. 57. Available at: [www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf](http://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf)

<sup>16</sup> Steering Committee, n 3, Table 16A.8.

<sup>17</sup> Ibid, Table 16A.34.

<sup>18</sup> Ibid, Table 16A.34.

<sup>19</sup> SNAICC (2021) *The Family Matters Report*. Available at: [www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf](http://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf)

<sup>20</sup> Ibid.



significant qualifiers, only requiring consultation 'where appropriate'. This effectively leaves authority with the government agency to determine where it is appropriate to consult Aboriginal and Torres Strait Islander people. Given the weaknesses of formal legislative requirements, SNAICC's reviews in coming years will seek to monitor whether the legislation is implemented in line with its intent to increase decision-making authority for Aboriginal and Torres Strait Islander communities. Additional provisions of the Bill are stronger in requiring ACCO participation in relation to placement (section 81), cultural support planning (section 89A) and in the review of care planning (section 90).<sup>21</sup> Furthermore, the Bill strengthens section 14 of the Act to recognise that the principle of self-determination is a right.

The Department reported that it is 'currently developing' a 10-year roadmap to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC. This was originally announced in September 2019, when the Western Australian Government stated its intention to develop an action plan in partnership with SNAICC and local Aboriginal and Torres Strait Islander communities.<sup>22</sup> Yet, since this time and over the reporting period, there were several delays in developing the Roadmap, with work on the plan expected to commence in mid-2022, nearly three years after its announcement.

The 2019 *Child Placement Principle Implementation Review* outlined several policies that the Department had initiated to enhance the role of ACCOs in the design and delivery of child and family services. At the time, the Department reported that it had established an Independent Reference Group for its OOHC reform, which had ACCO and community sector representation. It was noted that the reference group would 'advise on the procurement of new models of out-of-home care from community service organisations to deliver agreed outcomes for children, particularly Aboriginal and Torres Strait Islander children'.<sup>23</sup> Aboriginal and Torres Strait Islander sector leaders report that following a restructure of the Department, the Independent Reference Group ceased, the care reform team was defunded, and the board that was governing the reforms was disbanded. They note that this resulted in a significant loss of knowledge, time, and progress in commissioning reformed care services.

In relation to programs, in March 2021, the government announced \$850,000 in funding to support delivery of the *ACCO Capability Building Grants* program. This program aims to assist ACCOs in improving their capacity to procure, lead and deliver more culturally appropriate services for Aboriginal and Torres Strait Islander children, families, and communities. Hopefully, this signals a stronger commitment to addressing the limited opportunities for ACCOs to provide the culturally safe supports needed to keep families together and strengthen connection for children in OOHC.

Although Aboriginal and Torres Strait Islander children making up 57% of the OOHC population, only 1.9% of care services funding was invested through ACCOs in 2020-21. A higher proportion was invested in ACCO family support and intensive family support services (21.1%), however this was in

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<sup>21</sup> Western Australia Government (2021) *Children and Community Services Amendment Bill 2021* (WA). Available at:

[www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=C5BD5CB15CCDE402482586E7001D5F02](http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=C5BD5CB15CCDE402482586E7001D5F02)

<sup>22</sup> Hirini, R., SBS NITV News (4 September 2019) *McGowan government plan to decrease Indigenous foster care rates in WA*. Available at: [www.sbs.com.au/nitv/nitv-news/article/2019/09/04/mcgowan-government-plan-decrease-indigenous-foster-care-rates-wa1](http://www.sbs.com.au/nitv/nitv-news/article/2019/09/04/mcgowan-government-plan-decrease-indigenous-foster-care-rates-wa1)

<sup>23</sup> SNAICC (2020) *Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Western Australia 2019*, p. 10. Available at: [www.snaicc.org.au/wp-content/uploads/2020/01/ATSICPP-compliance-review-2019\\_WA.pdf](http://www.snaicc.org.au/wp-content/uploads/2020/01/ATSICPP-compliance-review-2019_WA.pdf)



the context of the lowest proportion of spending of any state or territory on family support services.<sup>24</sup>

## Placement

The Bill contains a number of amendments that relate specifically to the placement element. Section 81 of the Bill stipulates that before making a placement arrangement, the Department is required to consult with Aboriginal or Torres Strait Islander persons who are members of the child's family, an approved representative organisation, and an officer who has relevant knowledge of the child, the child's family, or the child's community. The final text of the Bill, as passed into law in October 2021, is an improvement on earlier versions of the Bill, which only required consultation with *one* family member and did not recognise the important role of extended family and kin in a child's life.

This improvement was in line with a July 2020 submission by SNAICC and NFSWC to the Western Australian Standing Committee on Legislation's Inquiry into the Bill. Amendments to section 12 of the Act will also alter the placement hierarchy, increasing the priority for placement of a child in geographic proximity to the child's community.

Yorganop Association, WA's Aboriginal foster care agency, continues to be the only ACCO that delivers foster care services in Western Australia. In 2020, Yorganop's service area was extended from the Perth metropolitan area to cover most of Noongar Country. However, they received no funding for additional placements. While there was a total of 2,736 Aboriginal and Torres Strait Islander children in care as of 30 June 2020, Yorganop was only funded to provide foster care placements for 123 children that year.

In January 2021, the WA Government committed \$37.2 million dollars to make its trial of the *Home Stretch Service* model permanent. This model extends the age of leaving care from 18 to 21.

Anglicare Western Australia and Yorganop announced in October 2020 that they would partner on a community co-design project to establish a culturally safe model that supports Aboriginal and Torres Strait Islander children and young people transitioning from care.<sup>25</sup> The project is named *Nitja Nop Yorga Ngulla Mia* and will be specifically adapted to support young people connected to Yorganop over a three-year period.

Unfortunately, WA is experiencing a decline in the number of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers. In 2020-21, 61.1% of Aboriginal and Torres Strait Islander children were placed with kin or other Aboriginal and Torres Strait Islander carers, compared to 62% in 2019-20.<sup>26</sup> Still, placement with Aboriginal and Torres Strait Islander kin or other carers is slightly higher than the national average. 45.9% of children are placed with Aboriginal and Torres Strait Islander relatives or other carers in WA, compared with 41.6% nationally.<sup>27</sup>

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<sup>24</sup> SNAICC (2022) *The Family Matters Report 2022*, p. 42. Available at: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>

<sup>25</sup> Anglicare WA (14 October 2020) *Joint Announcement with Yorganop*. Available at: [www.anglicarewa.org.au/news/2020/10/14/joint-announcement-with-yorganop-aboriginal-young-people-to-co-design-home-stretch-wa-mode](http://www.anglicarewa.org.au/news/2020/10/14/joint-announcement-with-yorganop-aboriginal-young-people-to-co-design-home-stretch-wa-mode)

<sup>26</sup> Steering Committee, n 3, Table 16A.22.

<sup>27</sup> *Ibid.*

## Participation

While the Bill provides some strengthened requirements around the participation of representative Aboriginal and Torres Strait Islander organisations, it contains minimal requirements for the participation of families in decision-making. Section 14 seeks to improve participation in all decision-making processes under the Act, and sections 81 and 89A relate to placement decision-making and cultural support planning respectively.

Proposed section 14(1) stipulates that ‘a family, community or representative organisation of Aboriginal people or Torres Strait Islanders must be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act’. Aboriginal and Torres Strait Islander sector leaders have argued that section 14 provides little improvement.

SNAICC and NFSWC recommended that the Bill be amended so that section 14 sets out a requirement for family participation in all decision-making processes under the Act and to remove the provision: ‘where appropriate’.<sup>28</sup> Unfortunately, this recommendation was not taken up in the Bill that was put forward to Parliament in June 2021 or the amendments that subsequently passed.

Appropriate recognition of the right to self-determination in child protection matters would also require all three parties – a child’s family group, community and a representative organisation – to participate. The use of the word ‘or’ in section 14 allows for significant decisions to be made under the Act without the participation of family, which is out of step with the participation element.

Still, the WA Government is taking some positive steps to enhance the involvement of children and their families in child protection decision-making, using formal programs such as AFLDM. In August 2020, the Department announced that it would commit \$715,000 to establish a two-year AFLDM pilot.<sup>29</sup> The pilot will be implemented in the Midwest / Gascoyne region and the Perth suburb of Mirrabooka by Streetwork Aboriginal Corporation and Wungening Aboriginal Corporation. Whilst a promising step, the minimal amount of funding committed to the pilot has been described as ‘tokenistic’ and ‘several years behind other jurisdictions’ by the NFSWC.<sup>30</sup>

SNAICC and NFSWC had recommended that AFLDM be legislatively required as early as possible and for all significant decisions. Unfortunately, this recommendation was not taken up by WA Government. In their own submission to the Standing Committee on Legislation, the Department argued that ‘a legislative requirement for AFLDM would be premature in the Western Australian context and suggested legislative change could be re-examined at a later date following a period of implementation and evaluation’.<sup>31</sup> Aboriginal and Torres Strait Islander sector leaders have argued that the existence of well-established AFLDM programs in Queensland and Victoria, and a strong national and international evidence base for the effectiveness of these models, make a trial unnecessary and that a legislative requirement is important for ensuring equity in access to the

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<sup>28</sup> SNAICC and the Noongar Family Safety and Wellbeing Council (2020) *Submission to the Western Australian Standing Committee on Legislation’s Inquiry into the Children and Community Services Amendment Bill 2019 (WA)*. Available at: [www.snaicc.org.au/wp-content/uploads/2020/08/SNAICC-and-NFSWC-Submission-to-CCSA-Bill-Inquiry-July-2020.pdf](http://www.snaicc.org.au/wp-content/uploads/2020/08/SNAICC-and-NFSWC-Submission-to-CCSA-Bill-Inquiry-July-2020.pdf)

<sup>29</sup> Government of Western Australia (10 August 2020) *New trial to help address number of Aboriginal children in care*. Available at: [www.mediastatements.wa.gov.au/Pages/McGowan/2020/08/New-trial-to-help-address-number-of-Aboriginal-children-in-care.aspx](http://www.mediastatements.wa.gov.au/Pages/McGowan/2020/08/New-trial-to-help-address-number-of-Aboriginal-children-in-care.aspx)

<sup>30</sup> SNAICC (2021) *The Family Matters Report 2021*, p. 57. Available at: [www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf](http://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf)

<sup>31</sup> Department of Communities (2020) *Standing Committee on Legislation’s Inquiry into the Children and Community Services Amendment Bill 2019 (WA)*, pp. 8-9. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/3139AC0331FC4E18482585C300064303/\\$file/ls.ccs.547.200724.sub.Department%20of%20Communities.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/lulnquiryPublicSubmissions/3139AC0331FC4E18482585C300064303/$file/ls.ccs.547.200724.sub.Department%20of%20Communities.pdf)

program for all Aboriginal and Torres Strait Islander families in contact with the child protection system.

## Connection

Safely reunifying Aboriginal and Torres Strait Islander children with their families is the first priority in permanency planning and for 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. The Department reported that in 2020-21, there were 215 Aboriginal and Torres Strait Islander children reunified with their parents or former guardians – this is only 8% of the total number of eligible Aboriginal and Torres Strait Islander children in care as of 30 June 2021 (noting that children on long-term orders, including long-term custody, guardianship and third-party parental responsibility orders, are not eligible for reunification).

Across the country, state and territory child protection systems have taken a focus in recent years on the introduction of legislation, policy and practice that prioritise stability for children through what is commonly referred to as ‘permanency planning’. Aboriginal and Torres Strait Islander leaders and communities have consistently argued that states and territories are promoting a narrow construct of attachment theory based on Western family structures, which pursues a singular attachment for a child to their carer and does not recognise the importance of kinship relationships and cultural identity.

In regard to legislation, the Bill contains amendments that relate to the making of permanent care orders, known as Special Guardianship Orders, which the explanatory memorandum posits are designed to enhance implementation of the Child Placement Principle.<sup>32</sup> Specifically, the Bill proposes a condition on the making of permanent care orders that will require the Court to receive a written report ‘by a person who meets criteria prescribed by the regulations’ if the special guardian is not an Aboriginal or Torres Strait Islander person (section 61(2B)). The explanatory memorandum notes that ‘the intention is that suitably qualified Aboriginal organisations or individuals prepare these reports’.<sup>33</sup>

NFSWC and SNAICC have argued that this measure is ‘grossly inadequate’ for safeguarding children’s ongoing connections to their family, community, culture and Country.<sup>34</sup> They have urged the WA Government to require that an Aboriginal and Torres Strait Islander organisation has the authority to assess and determine whether such an order is in the best interests of the child, and that the order is not made unless recommended by an Aboriginal and Torres Strait Islander organisation. Unfortunately, this recommendation was not taken up.

Aboriginal and Torres Strait Islander sector leaders in WA continue to be concerned by the state’s practice of relying on long-term and permanent care orders for managing the rising number of children entering care year upon year. The overrepresentation of Aboriginal and Torres Strait Islander children in OOHC in WA means that they disproportionately bear the impacts of permanency planning trends. At 30 June 2021, WA reported the fifth highest use of permanent care orders (long-term third-party parental responsibility orders) for Aboriginal and Torres Strait Islander

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<sup>32</sup> Government of Western Australia (2021) *Children and Community Services Amendment Bill 2021 Explanatory Memorandum*, p. 9. Available at: [www.parliament.wa.gov.au/Parliament/Bills.nsf/C5BD5CB15CCDE402482586E7001D5F02/\\$File/EM%2B20-1.PDF](http://www.parliament.wa.gov.au/Parliament/Bills.nsf/C5BD5CB15CCDE402482586E7001D5F02/$File/EM%2B20-1.PDF)

<sup>33</sup> Ibid.

<sup>34</sup> SNAICC and the Noongar Family Safety and Wellbeing Council, n 28, p. 6.

children (10.6 per 1,000).<sup>35</sup> Additionally, WA has the highest overrepresentation of children on permanent care orders in the country – with Aboriginal and Torres Strait Islander children being 14.8 times more likely to be placed on such an order than their non-Indigenous peers.<sup>36</sup>

For Aboriginal and Torres Strait Islander children in OOHC, cultural support planning is integral for ensuring that children remain connected to their culture and community. Cultural support plans must be guided by the child’s family and community - especially those with cultural authority for the child - and overseen by ACCOs. In WA, 70.1% of Aboriginal and Torres Strait Islander children in OOHC who were required to have a cultural support plan had a current plan in June 2021 – down from 80.4% the previous year.<sup>37</sup>

This data cannot indicate the quality of the cultural support plan or whether it has been implemented. However, the data suggests that plans are not being regularly updated, particularly for children in long-term care, who are most at risk of losing their connections.

In a positive development, the proposed amendments to the Act contain a number of provisions - some of which are outlined above - which seek to strengthen cultural support planning through the participation a child’s family and Aboriginal representative organisations. Furthermore, section 63(1) enables the Court to place conditions on a special guardianship order to require that the conditions of a cultural support plan are complied with. While this could potentially increase accountability of special guardians, it is not entirely clear how it will be monitored.

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

<sup>36</sup> AIHW, n 4, Table S4.10.

<sup>37</sup> Ibid, Table S2.2b.