

REVIEWING IMPLEMENTATION OF  
THE ABORIGINAL AND  
TORRES STRAIT ISLANDER  
CHILD PLACEMENT  
PRINCIPLE  
AUSTRALIAN CAPITAL  
TERRITORY  
2021-23



**SNAICC**  
National Voice for our Children

## Acknowledgement

SNAICC shows respect by acknowledging the Traditional Custodians of Country throughout Australia and their continuing connections to land, waters and communities. SNAICC head office is located on the lands of the Wurundjeri People of the Kulin Nation, and SNAICC operates nationally. SNAICC acknowledges Traditional Owners of all lands and waters across this continent and pays respects to Elders past and present. We acknowledge and respect their continued connection to Country, care for community and practice of culture for generations uncounted.

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## Acronyms and abbreviations

Acronym	Full name of acronym
ABS	Australian Bureau of Statistics
ACCO	Aboriginal and Torres Strait Islander community-controlled organisation
ACT	Australian Capital Territory
AEDC	Australian Early Development Census
AIHW	Australian Institute of Health and Welfare
ALS	Aboriginal Legal Service
ASDB	Aboriginal Service Development Branch
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
CPLAS	Care and Protection Legal Advocacy Service
CSD	Community Services Directorate
CYPP	Child and Youth Protection Professional
CYPS	Children and Youth Protection Services
Embedding the ATSI CPP Report	Embedding the ATSI CPP in the Children and Young People Act 2008 (ACT): Final Report
EPR	Enduring Parental Responsibility
FFT–CW	Functional Family Therapy – Child Welfare program
FGC	Family Group Conferencing
FNFSST	First Nations Family Support Team
FSS	Family Support Service
GCO	guardianship custody orders
IFSS	Intensive Family Support Service
MRF	Monitoring and Review Framework
National Agreement	National Agreement on Closing the Gap
OBOW	Our Booris, Our Way Review
OOHC	out-of-home care
RoGS	Report on Government Services
Safe and Supported	Safe and Supported: the National Framework for Protecting Australia’s Children 2021–2031
SNAICC	SNAICC – National Voice for our Children
TPPRO	third-party parental responsibility orders

## Introduction

This report reviews the progress of the Australian Capital Territory (ACT) Government, through the Community Services Directorate (CSD) and its Child and Youth Protection Services (CYPS), in implementing the full extent 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 law, 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
- reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care (OOHC) systems.

This year's review analyses implementation efforts over 1 July 2021 – 30 June 2023. Quantitative data for 2022–2023 are included where available. The qualitative analysis considers developments occurring to 30 June 2024.

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 (SNAICC 2017, SNAICC 2018A), a 2018 baseline analysis (SNAICC 2018b), and subsequent annual reviews 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 the 2024 Report on Government Services (ROGS) Chapter 16 – Child Protection (SCRGSP 2024), the Australian Institute of Health and Welfare (AIHW) *Child Protection Australia 2022–23* report (AIHW 2024a), and the AIHW *Aboriginal and Torres Strait Islander Child Placement Principle Indicators 2021–22* report (AIHW, 2024). OOHC figures in this review comprise 'out-of-home care' and 'third-party parental responsibility orders' from the AIHW report or, where indicated, 'out-of-home care' and other supported placement data from ROGS. 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 arise from *Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031* (Safe and Supported). 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 (National Agreement), including Priority Reform 4 on improving Aboriginal and Torres Strait Islander peoples' access to data that affects them and their communities.

## Overview

In November 2022, the ACT Government committed to fully embedding the Child Placement Principle within its legislative framework, the *Children and Young People Act (ACT) 2008* (CYP Act). A discussion paper released in June 2023 detailed that the reforms would explicitly incorporate all five elements of the Child Placement Principle as guiding principles.

The proposed legislative reforms will also emphasise that:

- the government has a responsibility to protect and promote the cultural identity of Aboriginal and Torres Strait Islander children and young people
- Aboriginal and Torres Strait Islander people should participate in the care and protection of their children and young people with as much self-determination as possible
- the Director General should be required to record whether a child or young person is Aboriginal or Torres Strait Islander at the earliest opportunity.

## Prevention

Aboriginal and Torres Strait Islander families and communities have been raising happy, healthy and resilient children who enjoy a strong connection to culture for generations. Despite these strengths, Aboriginal and Torres Strait Islander children continue to be seen in concerning numbers across all aspects of the child protection system in the ACT. In June 2022, the ACT Government released the latest OOHG Strategy, *Next Steps for Our Kids 2022–2030*. This framework builds on its predecessor *A Step Up for Our Kids 2015–2020* and emphasises the importance of early family supports and prevention services in the child protection system (ACT Government 2022).

Whilst it is promising to see the ACT Government's commitment to focusing more effort towards building stronger families and preventing the need for statutory child protection involvement, there is an urgent need to increase funding for culturally safe and appropriate early support services. In 2022–2023, 9.0% of the total child protection system funding in the ACT was spent on Intensive Family Support Services (IFSSs) and Family Support Services (FFSs), a decrease from 12.0% in 2021–22 and 11.1% in 2020–21 (SCRGSP 2024, Table 16A.8).

## Partnership

The systemic racism and failure to engage in meaningful partnerships with Aboriginal and Torres Strait Islander peoples is again highlighted in the proportion of funding that is allocated to ACCOs in the ACT. In 2021–22, 26% (\$709,824) of the funding for FSS, and 14% (\$1,184,000) of the funding for IFSS was provided directly to ACCOs, though noting that the entirety of the 14% of IFSS funding was provided to a partnership between a non-Indigenous agency and an ACCO rather than an ACCO alone (ACT Government 2023b). Most of the funding for preventative and early support services is provided to non-Indigenous service providers, which are often not culturally safe for Aboriginal and Torres Strait Islander families. In total, 2% (\$1,893,824) of the CYPs recurrent expenditure was on ACCOs (SNAICC 2023b).

## Placement

Placement of Aboriginal and Torres Strait Islander children with family, kin or Aboriginal and Torres Strait Islander carers remains relatively unchanged. As of 30 June 2023, 68.9% of Aboriginal and Torres Strait Islander children in OOHC in the ACT were living with family, kin or other Aboriginal and Torres Strait Islander carers, compared to 71.3% in 2022 and 69% in 2021 (SCRGSP 2024, Table 16A.23).

Over the reporting period, the ACT Government introduced several new policies, such as the *Recording the cultural identity of Aboriginal and/or Torres Strait Islander child or young person* policy that aims to better educate CYPs staff about the importance of the identification of Aboriginal and Torres Strait Islander peoples and aims to ensure that more Aboriginal and Torres Strait Islander children are placed in accordance with the Child Placement Principle placement hierarchy. While these policies are a welcome step, there must be accountability around ensuring they are well implemented.

## Participation

Many Aboriginal and Torres Strait Islander families do not feel that programs such as Family Group Conferencing (FGC) and Functional Family Therapy – Child Welfare (FFT–CW) are culturally safe or independent, and often opt out of these services (SNAICC 2022a). From January 2021 to December 2023, CSD reported that 40 FGCs have been held for Aboriginal and Torres Strait Islander families (ACT Government 2023b). The ACT community welcomed the appointment of the inaugural Commissioner for Aboriginal and Torres Strait Islander Children, Vanessa Turnbull-Roberts, who commenced her role in February 2024 (SNAICC 2023). This new role, along with the legislated powers, will strengthen Aboriginal voices and accountability in the ACT child protection system.

## Connection

As of June 30, 2022, 80% (173 of 216) of Aboriginal and Torres Strait Islander children in OOHC care were recorded as having a cultural support plan (ACT Government 2023b). Following recommendations 26a and 26b of the *Our Booris, Our Way* (OBOW) report, CSD has engaged SNAICC to provide independent advice on the applications and orders for adoption or enduring parental responsibility by kinship carers of Aboriginal and Torres Strait Islander children (ACT Government 2023a).

## Prevention

The prevention element of the Child Placement Principle aims to ensure that Aboriginal and Torres Strait Islander children and their families grow up healthy and safe and within their own family and community. Preventing children and families from entering the child protection system requires collaboration among various services and programs that span multiple government sectors, such as health, education, housing and economic development. This review primarily focuses on the child protection-focused activities of the CSD, while noting that holistic prevention can only be achieved with a whole-of-government approach.

Aboriginal and Torres Strait Islander children living in the ACT had contact with the child protection system at the third highest rate in Australia (200.2 per 1,000 Aboriginal and Torres Strait Islander children in the population), behind Victoria and the Northern Territory (SNAICC 2023, page 24).

### Over-representation in child protection

The *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028* reaffirmed the ACT Government's commitment to the National Agreement's target to reduce the over-representation of Aboriginal and Torres Strait Islander children in OOHC by 45% by 2031.

In 2021, the ACT government released the *ACT Impact Statement*, which provided a statement of performance for the 2020–21 financial year (ACT Government 2021). Notably, the Government reported a decrease in the number of Aboriginal and Torres Strait Islander children and young people entering OOHC (ACT Government 2021). In 2020, 28% of children entering OOHC were Aboriginal and Torres Strait Islander compared to 34% in 2018 (ACT Government 2021).

As of 30 June 2023, Aboriginal and Torres Strait Islander children in the ACT were placed into OOHC and other supported placements<sup>1</sup> at 11.6 times the rate of non-Indigenous children, compared to 13.9 times in 2022 and 12.5 in 2021 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42).<sup>2</sup>

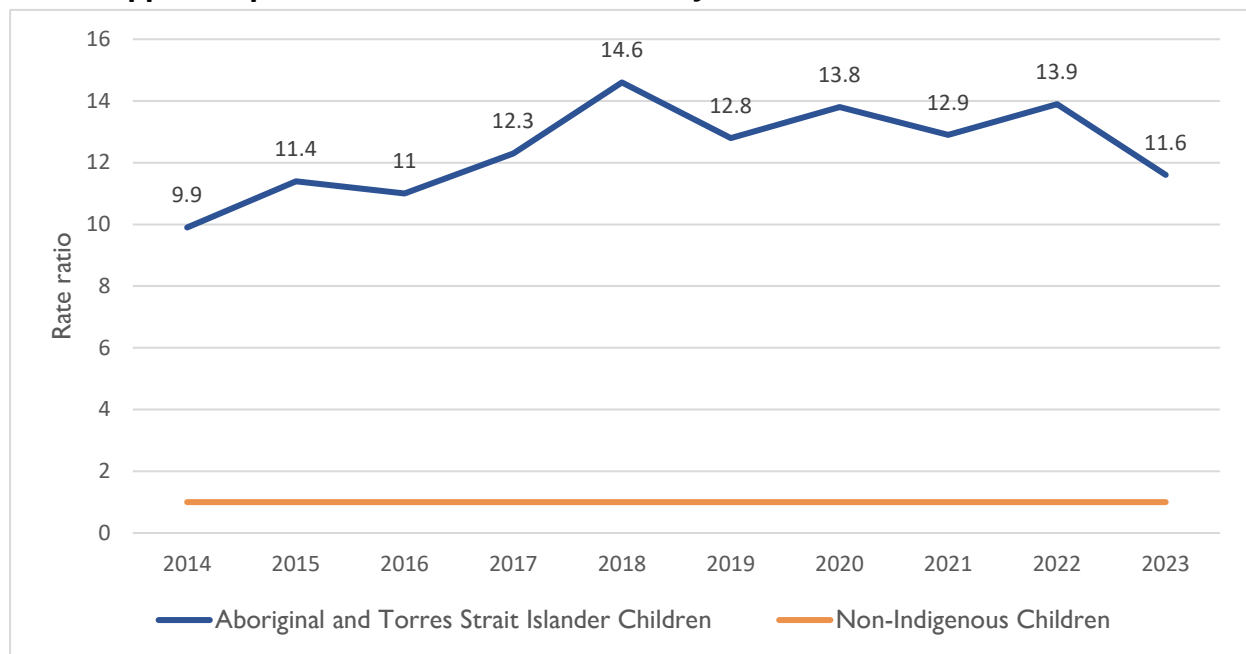
Figure 1 shows the trend in rate ratios of Aboriginal and Torres Strait Islander children in OOHC and other supported placements in the ACT over the past ten years and highlights that the ACT are far from achieving its target in reducing the rates of over-representation of Aboriginal and Torres Strait Islander children in OOHC.

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<sup>1</sup> National out-of-home care counting rules changed for all states and territories in 2018-19 and now exclude children on third-party parental responsibility orders (TPPROs) from the count of children in OOHC. SNAICC believes that this change seriously undermines transparency and accountability, effectively rendering these children invisible in the system. The number of children on TPPROs is reported in the annual AIHW Child Protection Australia publication. Children in 'other supported placements' includes TPPROs and certain types of immigration orders. SNAICC has elected to use data on other supported placements for 2022-23 as disaggregated data about children on TPPROs has not yet been released. Past years' data are included for comparison. Because these calculations are based on other supported placements, they will differ slightly from over-representation data which only includes children in out-of-home care and on TPPROs. For calculations of over-representation rates based on only children in out-of-home care and on TPPROs, see the annual Family Matters Reports.

<sup>2</sup> The source of this data is different from the Family Matters 2024 report and numbers will therefore differ

**Figure 1 – Rate ratios of Aboriginal and Torres Strait Islander children in OOHC and other supported placements in the ACT as of 30 June 2014–2023.**



Source: SNAICC calculation of rate ratios, with data drawn from – Report on Government Services 2024, Part F, Section 16 Child Protection Services. Table 16A.2, 16A.3 and 16A.42

Whilst it appears that there has been a significant decrease in the over-representation of Aboriginal and Torres Strait Islander children in OOHC in the ACT from 2022 to 2023, it is important to look at the reason behind this decrease. When looking more closely at the data, we can see that the number of children entering and exiting care fluctuates from year to year. As the total number of children in care in the ACT is quite small (866 children), even slight changes in the total number of Aboriginal and Torres Strait Islander children entering and exiting care will cause a significant change to the over-representation rate ratio calculation (SCRGSP 2024, Table 16A.2 and 16A.3).

Whilst the total number of children in OOHC in the ACT has increased since 30 July 2021, the number of Aboriginal and Torres Strait Islander children in OOHC has fluctuated. As of 30 June 2023, Aboriginal and Torres Strait Islander children made up 27.5% (238 out of 866 children) of the total OOHC population, compared to 31% (256 out of 825 children) in 2022 and 29.2% (235 out of 806 children) in 2021 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.4).

As of 30 June 2023, 17 Aboriginal and Torres Strait Islander children entered OOHC in the ACT. This is a significant drop in admissions compared with previous years, with 42 Aboriginal and Torres Strait Islander children entering OOHC in 2022 and 35 Aboriginal and Torres Strait Islander children entering OOHC in 2021 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.4).

It is worth noting the introduction of new policies in the ACT Government, such as Recording the cultural identity of Aboriginal and/or Torres Strait Islander child or young person, which may have contributed to a decrease in the number of Aboriginal and Torres Strait Islander children recorded as



entering OOHC. This drop also coincides with the opening of Yerrabi Yurwang – Child & Family Aboriginal Corporation, an ACCO in the ACT which delivers culturally appropriate services to Aboriginal children and families.

As of 30 June 2023, there were 40 Aboriginal and Torres Strait Islander children exiting OOHC in the ACT, this is a slight increase in the number of children exiting OOHC from previous years, with 36 Aboriginal and Torres Strait Islander children exiting OOHC in 2022 and 58 in 2021 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.4).

### Social determinants of child protection involvement

Some of the key drivers of children and families entering the child protection system relate to social determinants of health. Access to adequate housing, education, employment and affordable food has a significant impact on an individual's health and wellbeing. For Aboriginal and Torres Strait Islander families, these factors are further complicated by the enduring effects of colonisation and intergenerational trauma.

The relationships between social determinants and the primary reasons for child protection involvement are complex. There is a multi-faceted dynamic relationship between social determinants and child protection processes of notifications, investigations, substantiations, making of care and protection orders, and removal into OOHC. For example, poverty can often be conflated with neglect during child protection investigations and can result in inappropriate child protection interventions. The interplay between social and economic factors that can contribute to children being mistreated, abused and neglected is complex, and is intertwined with ongoing institutional biases and systemic racism. When looking at the level of child protection involvement in Aboriginal and Torres Strait Islander families, it is important to consider the factors around the family and community and whether they are creating enabling environments for children to thrive.

The ACT is a geographically small jurisdiction. In 2021, Aboriginal and Torres Strait Islander people made up 2% of the total population in the ACT (ABS 2023) and Aboriginal and Torres Strait Islander children and young people made up just 3.2% of the population of children aged 0–17 (SCRGSP 2024, Table 16A.42).

Across 2021 to 2023 in the ACT, there continued to be a range of social, economic and health challenges that can contribute to Aboriginal and Torres Strait Islander children entering OOHC. These challenges, as well as recent activities to address them, are outlined below.

### **Barriers to education**

In 2021, 27.3% of Aboriginal children in the ACT were assessed as being developmentally 'on track' for all five domains of the Australian Early Development Census (AEDC), compared with 48% of non-Indigenous children (Productivity Commission 2023). This was the second-lowest rate of any state or territory in Australia and is a significant drop from 41% in 2009 (Productivity Commission 2023).

The ACT launched its early childhood strategy, *Set up for Success*, in 2020 which is a ten-year plan for

early childhood education and care in the ACT. As part of the strategy, the ACT developed the *Koori Preschools Cultural Safety Framework*, *Koori Pre-Curriculum* in partnership with Aboriginal and Torres Strait Islander communities, to ensure that Koori Preschools are providing culturally safe care for Aboriginal and Torres Strait Islander children in the ACT (ACT Government 2023d).

In June 2023, the ACT Government released the *Set up for Success: Phase One Evaluation Report* which reported some pleasing results for the number of three- and four-year-old Aboriginal and Torres Strait Islander children accessing Early Childhood Education and Care (ECEC) and Koori Preschool services (ACT Government 2023e). The report noted the proportion of Aboriginal and Torres Strait Islander children accessing ECEC services increased from 73% in 2020 to 82% in 2022 (ACT Government 2023e).

### **Early contact with youth justice**

Aboriginal and Torres Strait Islander young people aged 10–17 living in the ACT were placed in detention at 14.4 times the rate of non-Indigenous young people in 2022–23, an increase from 13.1 in 2021–22 (SCRGSP 2024, Table 17A.5).

In May 2023, the ACT Government introduced the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* which saw the minimum age of criminal responsibility raised to 12 years old, and to 14 years old by 1 July 2025 (ACT Government 2023f). Aboriginal and Torres Strait Islander communities raised concerns about the delay in introducing this Bill, noting the ACT Government first announced its intention to raise the age of criminal responsibility in 2020.

In response to the Productivity Commission's 2023 Report on Government Services, the ACT Government has commissioned the Jumbunna Institute to conduct an independent review on the over-representation of Aboriginal and Torres Strait Islander people in the ACT criminal justice system (ACT Government 2023c). Whilst this review was prompted by the over-representation rate of adult prisoners, it is essential that the over-representation of young Aboriginal and Torres Strait Islanders is addressed in this review. It is well-known that many young people involved in the criminal justice system have had previous contact with the child protection system (SNAICC 2023).

### **Drug and alcohol abuse**

Recommendation 9(A) of the OBOV Report was that the ACT Government fund specific programs for drug and alcohol rehabilitation, family violence, mental health and trauma.

In the 2022–23 budget, the ACT Government provided Winnunga Nimmityjah Aboriginal Health and Community Services with \$1,998,000 in funding over two years to establish the first Aboriginal and Torres Strait Islander Alcohol and Other Drug Residential Rehabilitation service (ACT Government 2023a).

### **Domestic and family violence**

In 2023, as part of the Women's Service Grant, Yerrabi Yurwang – Child & Family Aboriginal Corporation received \$530,000 in funding to establish the *NaraGanaWali – Strong Pathways for Families*

program (ACT Government 2023a). The program will support Aboriginal and Torres Strait Islander women who have experienced or are at risk of experiencing family or domestic violence.

In 2022–23, there were six Aboriginal and Torres Strait Islander projects that were successful recipients of a Family, Domestic, and Sexual Violence (FDSV) Grant (ACT Government 2023a). The Aboriginal and Torres Strait Islander projects and recipients were:

- Clybucca Dreaming – Women's Outreach Program, \$325,000
- Sisters in Spirit – Establish ACT Aboriginal Women's Advocacy organisation, \$325,000
- Whispers Aboriginal and Torres Strait Islander Softball Corporation – Community Healing Our Way, \$81,000
- Yeddung Mura (Good Pathways) Aboriginal Corporation – Family, Domestic and Sexual Violence Aboriginal Support Program \$425,000
- Women's Legal Centre – Building First Nations Workforce Capacity, \$49,000
- Legal Aid Commission ACT – Culturally Responsive Legal Services to Family, Domestic and Sexual Violence amongst Aboriginal and Torres Strait Islander Peoples, \$100,057.

### Family Support and Intensive Family Support Services

In June 2022, the ACT Government released the latest OOH Strategy, *Next Steps for Our Kids 2022–2030*. This framework builds on its predecessor *A Step Up for Our Kids 2015–2020* and emphasises the importance of early family supports and prevention services in the child protection system (ACT Government 2022).

In October 2022, SNAICC released *Embedding the ATSICPP in the Children and Young People Act 2008 (ACT): Final Report* (Embedding the ATSICPP Report), which provided advice to the ACT government on how the Child Placement Principle could be included in the legislation following the release of the OBOW Report in 2019. This work was undertaken under the guidance of the OBOW chair and Implementation Oversight Committee and reported that stakeholders within the CYPS and community members felt that prevention was one of the most important, yet least invested in elements of the Child Placement Principle (SNAICC 2022a).

One of the major barriers identified in the report was that for children and families to access early support programs, they must have an open case with CYPS (SNAICC 2022a). This contradicts the purpose of these programs, which are set up to support and work with families to address the underlying issues that may bring about the attention of CYPS. Not only are families afraid to engage with these services for the fear that it may result in their child being removed, but ACCOs are also unable to provide families with the support that they need unless there is an open CYPS case (SNAICC 2022a). This distrust amongst Aboriginal and Torres Strait Islander peoples towards the CYPS is further highlighted in the proportion of children commencing support services in the ACT (SNAICC 2022a).

Despite being over-represented in every point in the CYPS, only 13% of children and families commencing FSS were Aboriginal and Torres Strait Islander (ACT Government 2023b). By contrast,

41% of children commencing IFSS in 2022–23 in the ACT were Aboriginal and Torres Strait Islander (SCRGSP 2024, Table 16A.35) which is significantly higher than the 27.5% of Aboriginal and Torres Strait Islander children in OOHC or in other supported placements in the same year (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42). Whilst it may seem encouraging to see a high proportion of families accessing these support services, as they are only made available to a family once a CYPS case has been opened, these services should not be labelled as prevention services, but rather as intervention services. Genuine prevention services are those that provide families with the help and support to strengthen family relationships and prevent the removal of children.

There is a real need for CYPS to further expand the preventative services that are available to all children and families that are at risk of involvement with the child protection and youth justice systems. Currently, there are no early referral pathways for children and families to access early legal advice and support. Access to early legal advice and support has been found to be hugely empowering for families and is critical to ensuring that children and families are aware of their rights. An example from another jurisdiction is that in New South Wales, the *Legal Assistance for Families Partnership Agreement* (LAFPA) is a partnership that exists between the Department of Communities and Justice, Aboriginal Legal Service (NSW/ACT) and Legal Aid NSW, and provides families with information on the legal services that are available.

In 2022–23, only 9% of the ACT Government’s real recurrent expenditure on child protection services, was attributed to IFSS and FSS, which is a decrease from 12% in 2021–22 and 11.1% in 2020–21 (SCRGSP 2024, Table 16A.8). This is the second lowest expenditure on IFSS and FSS of all states and territories in Australia, suggesting an urgent need to increase funding into appropriate early support services. In doing this, it is important that these services are not only made available to families prior to a case being made with CYPS but that they are culturally safe to ensure that families will access them much earlier, and services can provide appropriate support for Aboriginal and Torres Strait Islander families and ensure that the removal of children from their families is an absolute last resort.

Functional Family Therapy – Child Welfare (FFT–CW) is a program delivered by OzChild in the ACT that provides families with a series of therapy sessions to help strengthen family relationships and improve outcomes for children and families. In 2018, OzChild partnered with Gugan Gulwan Youth Aboriginal Corporation to deliver FFT–CW for Aboriginal and Torres Strait Islander families. As of 30 June 2021, 39 families (supporting 120 children) had successfully completed the program (OzChild n.d.). No details were provided on the number of families that had re-entered the program or were the subject of re-reporting to CYPS.

In 2021–22, the total investment for FFT–CW was \$1,184,00 (ACT Government 2023b). This program is an example of a prevention/early intervention service that is provided to families; however, it is often only accessed once a child enters the CYPS and is significantly underutilised and underfunded. This program has also been previously criticised by Aboriginal and Torres Strait Islander communities as a ‘transplanted program’ that is simply renamed rather than being updated to ensure

that it is culturally safe and fit for purpose (ALS 2024).

## Embedding the Child Placement Principle

As part of the OBOW Review, the ACT Government committed to embedding the Child Placement Principle in the *Children and Young People Act (ACT) 2008*. As of 30 June 2023, the first draft of the amendments to the CYP Act (Bill 1) was completed. The Act was subsequently passed into law in November 2023, with the five elements of the Child Placement Principle included in the CYP Act. In March 2024, CSD released the *Children and Young People Amendment Bill 2 2024: Listening Report (ACT Government 2024)*, which provided updates to the proposed Stage Two of the amendments. The Listening Report was tabled at the ACT Legislative Consideration for consideration in March 2024.

## Partnership

To improve the wellbeing of Aboriginal and Torres Strait Islander children and families, it is important for governments and key stakeholders to establish and maintain genuine partnerships with Aboriginal and Torres Strait Islander communities.

Ensuring meaningful involvement of Aboriginal and Torres Strait Islander people in all aspects of design, delivery and decision-making within child protection systems is an essential element of the Child Placement Principle, however, there is a need for governments to further prioritise the full implementation of this essential principle. In the Embedding the ATSI CPP Report, SNAICC heard that the relationship between the ACT Government and Aboriginal and Torres Strait Islander peoples and organisations is fractured (SNAICC 2022a). Aboriginal and Torres Strait Islander community members were tired of endless consultations and promises of reform from the government, with no change in the outcomes for Aboriginal and Torres Strait Islander children and families (SNAICC 2022a).

Many families and service providers spoke of the serious power imbalances that exist with the CYPS, with experiences of racism and deliberate exclusion from meetings or information (SNAICC 2022a).

### Funding of CYPS service providers

The systemic racism and failure to engage in meaningful partnerships with Aboriginal and Torres Strait Islander peoples is again highlighted in the proportion of funding that is allocated to ACCOs.

In the ACT, there are 11 ACCOs, of which one is registered as a care and protection organisation. In 2021–22, 26% (\$709,824) of the funding for FSS and 14% (\$1,184,000) of the funding for IFSS was provided directly to ACCOs, though noting that the entirety of the 14% of IFSS funding was provided to a partnership between a non-Indigenous agency and an ACCO rather than an ACCO alone (ACT Government 2023b).

The majority of funding for preventative and early support services is provided to non-Indigenous service providers, which are often not culturally safe for Aboriginal and Torres Strait Islander families. In total, 2% (\$1,893,824) of the CYPS recurrent expenditure was on ACCOS (SNAICC 2023b). Of the Aboriginal and Torres Strait Islander children in the CYPS:

- only 5% (39 of 711 Aboriginal and Torres Strait Islander families eligible) received FSS from an ACCO (ACT Government 2023b)
- 14% (19 of 129 Aboriginal and Torres Strait Islander families eligible) received IFSS from an ACCO (ACT Government 2023b)
- currently no care or protective intervention services are directly provided by ACCOs (ACT Government 2023b).

### Establishment of the CSD First Nations Family Support Team

The First Nations Family Support Team (FNFST) in CSD commenced in March 2023.

The FNFST has two Aboriginal and Torres Strait Islander identified Child and Youth Protection Professional level 5 (CYPP) staff, an operations manager and a Principal Practitioner, with further funding announced for two further positions in the 2023–24 Budget (ACT Government 2023a). Neither of the two new positions is an identified Aboriginal and Torres Strait Islander position.

Any new notifications that come through CYPS for Aboriginal and Torres Strait Islander children are referred to FNFST to ensure that these families are case managed by Aboriginal and Torres Strait Islander people and have access to culturally safe services. The FNFST is currently developing a new CYPS practice framework which will embed the Child Placement Principle into all child protection services.

### Investment in Aboriginal community-led services

One recommendation of the OBOW Review was to complete a feasibility study of an Aboriginal childcare association, looking into the need to increase the investment in Aboriginal community-led services in the ACT.

In January 2023, in response to the feasibility report that was released in 2020, CSD established the Aboriginal Service Development Branch (ASDB), which is a key step forward in developing the ACCO sector in the ACT (ACT Government 2023a). The ACT Government has advised that the ASDB will lead the engagement with ACCOs across the ACT and will be developing policies to ensure that ACCOs are involved in decision-making processes and receive equitable investments as part of the *Next Steps for Our Kids 2022–2030* strategy.

As of June 2023, the ASDB has been supporting local ACCOs in gaining accreditation as a Care and Protection Organisation (CAPO) and is currently working with Gugan Gulwan – Youth Aboriginal Corporation to implement a new IFS program (ACT Government 2023a). As it stands, Yerrabi Yurwang – Child & Family Aboriginal Corporation is the only CAPO registered ACCO in the ACT.

Whilst it is pleasing to see the establishment of two Aboriginal-led teams within CSD, this should not be confused with the goal of achieving self-determined, community-controlled, culturally safe services which are led by Aboriginal and Torres Strait Islander people and communities.

## Placement

When a child is to be placed in OOHC, the Child Placement Principle placement hierarchy aims to ensure that Aboriginal and Torres Strait Islander children maintain connection to their family, community, culture and Country.

As seen in Table 1, the rates of placement of Aboriginal and Torres Strait Islander children with relatives/kin have remained relatively stable between 2017 and 2023. As of 30 June 2023, 38.3% of Aboriginal and Torres Strait Islander children in the ACT were placed with Aboriginal and Torres Strait Islander relatives/kin, this is the third highest rate in Australia, behind Victoria and Western Australia (SCRGSP 2024, Table 16A.23).

The ACT Government reported that 146 Aboriginal and Torres Strait Islander children were on long-term guardianship orders (ACT Government 2023b). 40 Aboriginal and Torres Strait Islander children were on third-party parental responsibility orders (ACT Government 2023b).

**Table 1 – Aboriginal children in the ACT aged 0–17 in out-of-home care, by caregiver type (per cent), as of 30 June 2017–2023.**

	2017	2018	2019	2020	2021	2022	2023
<b>Placed with relatives/kin or other Aboriginal carer</b>							
Aboriginal relative/kin	37.5	39.6	40.2	37.1	41	42.6	38.3
Non-Indigenous relative/kin	21.4	21.2	22.1	23.5	26	26.9	28.1
Total placed with relatives/kin	58.9	60.8	62.3	60.6	67	69.4	66.3
Other Aboriginal and Torres Strait Islander carer	0.9	1.5	2	2.3	2	1.9	2.6
<b>Total</b>	<b>59.8</b>	<b>62.3</b>	<b>64.3</b>	<b>62.9</b>	<b>69</b>	<b>71.3</b>	<b>68.9</b>
<b>In another care arrangement</b>							
Other non-Indigenous carer	36.2	33.5	31.2	31	26.5	24.1	26.0
Residential care or family group home	3.6	4.2	4.5	4.2	3.5	4.6	5.1
Independent living/living arrangements unknown	0.4	0	0	1.9	1	0	0
<b>Total</b>	<b>40.2</b>	<b>37.7</b>	<b>35.7</b>	<b>37.1</b>	<b>31</b>	<b>28.7</b>	<b>31.1</b>

Source: Report on Government Services 2024, Part F, Section 16 Child Protection Services, Table 16A.23<sup>3</sup>

<sup>3</sup> Note 2017 and 2018 data included % for Aboriginal and Torres Strait Islander residential care and non-Indigenous residential care - these have been added together.

In June 2020, CSD introduced the *Child Youth Protection Services Procedure: Placing a child according to the Aboriginal and Torres Strait Islander Child Placement Principle* to provide CYPS staff with advice on determining the best placement for Aboriginal and Torres Strait Islander children (ACT Government 2023b). As part of this work, CSD engaged SNAICC to deliver mandatory training to all CYPS staff on the Child Placement Principle. As of 30 June 2023, 76% of staff had completed the training (ACT Government 2023a). The training has been developed to ensure an understanding that culture underpins—and is integral to—the safety and wellbeing of Aboriginal and Torres Strait Islander children. The training unpacks the elements of the Child Placement Principle to deepen the understanding and increase capacity of the CYPS staff to effectively implement and adhere to the principles when looking after Aboriginal and Torres Strait Islander children.

In consultations informing the Embedding the ATSICPP Report, some stakeholders misunderstood the placement hierarchy as being the only component of the Child Placement Principle (SNAICC 2022a). Further to this, when looking at the placement of Aboriginal and Torres Strait Islander children, placement with non-Indigenous family members was considered to be at the top of the hierarchy alongside placement with Aboriginal and Torres Strait Islander family. Community stakeholders highlighted that this was often used as an excuse to avoid identifying Aboriginal and Torres Strait Islander family members (SNAICC 2022a).

Aboriginal community members in the ACT have called for legislative reform to ensure placement with Aboriginal and Torres Strait Islander kin is the highest priority for Aboriginal and Torres Strait Islander children in OOHC (SNAICC 2022a). The OBOW Review highlighted significant issues around the definition of kinship carers in the ACT (SNAICC 2022a). In 2022, SNAICC developed a paper on Defining Kinship Carers for Aboriginal and Torres Strait Islander children in the ACT, which advised the ACT Government on approaches to improve the identification of Aboriginal and Torres Strait Islander kinship carers based on the views of the ACT Aboriginal community, emphasising that kinship is defined by Aboriginal and Torres Strait Islander people (SNAICC 2022b). This paper is still under consideration by CSD, however, in the interim, the Preliminary Kinship Decision process has seen children placed with kinship carers upon removal whilst comprehensive carer assessments are made (ACT Government 2023a).

In October 2022, the ACT Government released a new policy titled Recording the cultural identity of Aboriginal and/or Torres Strait Islander child or young person. This policy requires that CYPS staff undertake active efforts to identify Aboriginal and Torres Strait Islander children, including proactively engaging with family, Elders and community members that have the cultural authority for the identification of children. In situations where a child's Indigenous status is uncertain, the policy requires referral to the Cultural Services Team to work with the child and family to map cultural connections (ACT Government 2023b). Since the release of this policy, there has been no further information provided by the ACT Government on the implementation of this policy or which services are engaged to ensure the correct identification of Aboriginal and Torres Strait Islander children occurs.



## Participation

It is important that children in contact with the child protection system, along with their families, are actively involved in any decisions concerning their care. This is particularly important for Aboriginal and Torres Strait Islander children and young people.

### Family Group Conferencing

Since it was first introduced in 2017, Family Group Conferencing (FGC) in the ACT has provided an opportunity for families to be more involved in the decision-making for their children. From January 2021 to December 2023, CSD reported that 40 FGCs have been held for Aboriginal and Torres Strait Islander families (ACT Government 2023b). In 2021–22, the total investment into FGC in the ACT was \$396,000 (ACT Government 2023b). The Aboriginal Legal Service NSW/ACT (ALS) has reported to SNAICC that it has received complaints from Aboriginal and Torres Strait Islander families that there is often little follow through of decisions made at an FGC. Families often report that FGC are an ‘extractive consultation’ tool governments use, rather than genuine participation in decision-making. In consultations for the Embedding the ATSI CPP report, SNAICC heard that many Aboriginal and Torres Strait Islander families did not feel that programs such as FGC and FFT–CW were culturally safe or independent, and hence opted out of these services (SNAICC 2022a). Others reported that their voices and concerns were not heard, or that opportunities to participate in decision-making occurred too late (SNAICC 2022a). As reflected in the recommendation of the report, Aboriginal community members in the ACT have strongly called for an independent Aboriginal family-led decision-making model to be established and legislated.

### Other participation activity

In April 2023, the ALS launched the Care and Protection Legal Advocacy Service (CPLAS). CPLAS provides Aboriginal and Torres Strait Islander children and families with culturally safe legal advice when a child is placed in OOHC (ACT Government 2023a). As of June 2023, there were 26 Aboriginal and Torres Strait Islander children and families who are accessing support through CPLAS. The CPLAS program is currently contracted until September 2025 (ACT Government 2023a). ALS noted that with additional funding, demand for services could be met and allow for the involvement in more early intervention opportunities. The current government short-term funding cycles prevent ACCOs from investing in long term infrastructure and human resourcing. The ACT community welcomed the appointment of the inaugural Commissioner for Aboriginal and Torres Strait Islander Children, Vanessa Turnbull-Roberts, who commenced her role in early 2024 (SNAICC 2023). The Commissioner has taken over from Ms Barbara Cason PSM, who has been working as the interim Aboriginal and Torres Strait Islander Children and Families Advocate since November 2022. This appointment has come from years of ongoing advocacy from community members, that will now be realised through the legislative powers of a Commissioner, strengthening Aboriginal voice and accountability in the ACT child protection system.

## Connection

When placing an Aboriginal and Torres Strait Islander child in OOHC, maintaining a strong connection with culture, family and community is a vital component to ensuring a child's ongoing wellbeing and safety.

### Cultural Support Plans

To maintain their connection to culture, one of the most important functions of the child protection system is to ensure Aboriginal and Torres Strait Islander children, their families and communities have the opportunity and resources to develop and fully implement a cultural support plan for every Aboriginal and Torres Strait Islander child. As of 30 June 2022, 80% (173 of 216) of Aboriginal and Torres Strait Islander children in OOHC were recorded as having a cultural support plan (ACT Government 2023b). This has been trending downwards from a peak of 92% which was reported in 2019. ACT Together introduced a Monitoring and Review Framework (MRF) in 2022 to monitor the implementation and quality of cultural support plans for Aboriginal and Torres Strait Islander children (ACT Government 2023a). The MRF ensures that CYPS staff are building strong relationships with families within the system and that all children placed in OOHC maintain a strong connection with their families (ACT Government 2023a). As of 30 June 2023, ACT Together reported that all Aboriginal and Torres Strait Islander children in their care—who were eligible—had an approved cultural support plan (ACT Government 2023a).

As part of the recommendations from the OBOW Review, ACT Together implemented a *Monitoring and Review Framework* in 2022 which has ensured the review of placements for over 150 children (ACT Government 2023a). Whilst this increase in reviews indicates that the framework is being applied, no data is available on the number of reviews made for Aboriginal and Torres Strait Islander children. In order to ensure that these reviews are undertaken in a culturally safe and appropriate manner—and reflect Aboriginal and Torres Strait Islander community priorities—it is important that Aboriginal and Torres Strait Islander people and organisations are involved in the development and implementation of these review processes.

### Reunification

Whilst removal and placement in OOHC is seen as an absolute last resort, when and if a child is placed in OOHC, all efforts to safely reunify the child with their family must be made.

Children on long-term guardianship custody orders (GCOs) and third-party parental responsibility orders (TPPROs) are not considered to be candidates for reunification, due to the fact they are placed on orders that typically last until they are 18 years old—reflecting policymakers' desires for permanent outcomes. Nationally, 73% of Aboriginal and Torres Strait Islander children in OOHC in 2021–22 were on long-term GCOs and TPPROs (AIHW 2024c, Table S4.10). This means the majority of Aboriginal and Torres Strait Islander children in OOHC are on orders that do not prioritise reunification. SNAICC has calculated the proportions of children reunified using the total number of children in OOHC, including children on long-term GCOs or TPPROs as the denominator (AIHW, 2024a: Table T3). Children on long-term orders have often progressed to long-term care as a result of

inadequate efforts to prioritise reunification or even connection with their families—or inadequate efforts to support families to address the barriers to providing safe care for their children, or as a result of policies that limit reunification due to short and unreasonable legislative or policy-imposed timeframes. Excluding these children from the denominator masks the failures of child protection systems to prioritise reunification and artificially inflates reunification rates. Including these children in these calculations provides a more accurate overview of the proportions of children reunified, even though children on long-term care orders are substantially less likely to be reunified.

As of 30 June 2022, 4.7% of Aboriginal children were reunified from OOHC (including long term Guardianship orders) in the ACT (AIHW 2024a T3, AIHW 2024b: Table 10.18). In comparison, 6.7% of non-Indigenous children were reunified from OOHC in the same time period (AIHW 2024a T3, AIHW 2024b: Table 10.18).

Children who are reunified with their families from OOHC occasionally return to care, but this is not the case for the majority of children. This is significant because it is a potential indicator of whether the supports provided to the family has been sufficient and effective for the family in the long term. AIHW reports this data by whether a child returned to OOHC within 12 months after exiting to reunification.

In the ACT, 76.7% of Aboriginal and Torres Strait Islander children who were reunified did not return to care within 12 months, slightly lower than the non-Indigenous rate of 80.8% (AIHW 2024a T3, AIHW 2024b: Table 10.18).

This was slightly below the national rate, where 83.1% of Aboriginal and Torres Strait Islander children who were reunified did not return to care within 12 months (85.6% for non-Indigenous children) (AIHW 2024a T3, AIHW 2024b: Table 10.18).

**Note:** The source for these calculations has changed from previous reviews, due to changes in AIHW reporting. Source data is from Table 10.18 of the Aboriginal and Torres Strait Islander data table from Child Protection Australia 2021–22 (which includes reunifications for children on long-term orders) while previous reviews drew from Table S2.3a from the ATSI CPP Supplementary Tables 2022 released by AIHW (which excludes reunifications for children on long-term orders). Proportions have been calculated as the total number of Aboriginal and Torres Strait Islander children who exited to reunification (regardless of the type of reunification) each year divided by the number of Aboriginal and Torres Strait Islander children in OOHC and TPROs. The same formula was used for non-Indigenous children.

The Aboriginal-led Restoration Taskforce reviews the circumstances of all Aboriginal and Torres Strait Islander children and young people who have been placed on care orders. Where possible—and with the involvement of the child and family—external Aboriginal assessors are utilised to undertake independent assessments on parenting capacity and Kinship (ACT Government 2023b). CSD has reported that it is currently in the process of strengthening the Restoration Taskforce to reunite children placed in OOHC with their biological parents when safe to do so, with a focus on maintaining connection with Aboriginal and Torres Strait Islander culture through the involvement of ACCOs, community-led decision-making and Aboriginal FLDM (ACT Government 2023b).

The FNFST were due to begin engagement with Aboriginal and Torres Strait Islander peoples in late 2023. The process was set to involve the procurement of the *Winangay Restoration Tool*, a case management tool that has been developed by Winangay, an Aboriginal and Torres Strait Islander organisation (ACT Government 2023b). At the time of publishing this report, no further updates were available.

### Orders for Adoption and Enduring Parental Responsibility

Following recommendations 26a and 26b of the OBOW Review, CSD has engaged SNAICC to provide independent advice on the applications and orders for adoption or enduring parental responsibility (EPR) by kinship carers of Aboriginal and Torres Strait Islander children (ACT Government 2023a). The report is expected to be published in 2025. CSD has made a commitment that no EPR orders for Aboriginal and Torres Strait Islander children would progress until feedback from SNAICC and community members has been received (ACT Government 2023a). A draft policy for EPR for Aboriginal and Torres Strait Islander children has been presented to the OBOW IOC but is yet to be finalised (ACT Government 2023a).

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