

REVIEWING IMPLEMENTATION OF
THE ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILD PLACEMENT
PRINCIPLE
NEW SOUTH WALES
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
ACCO	Aboriginal and Torres Strait Islander community-controlled organisation
AbSec	AbSec – NSW Child, Family and Community Peak Aboriginal Corporation
ACFC	Aboriginal Child and Family Centre
ACMP	Aboriginal Case Management Policy
AFLDM	Aboriginal Family-Led Decision-Making
AIHW	Australian Institute of Health and Welfare
ALS	Aboriginal Legal Service
Child Placement Principle	Aboriginal and Torres Strait Islander Child Placement Principle
CSP	Cultural support plan
DCJ	Department of Communities and Justice
FACS	Family and Community Services
FGC	Family Group Conferencing
IFS	Intensive Family Support
IFSS	Intensive Family Support Service
MAP Group	Ministerial Aboriginal Partnership Group
OCG	Office of the Children’s Guardian
OOHC	Out-of-home care
PCMP	Permanency Case Management Policy
PSP	Permanency Support Program
ROGS	Report on Government Services
Safe and Supported	Safe and Supported: the National Framework for Protecting Australia’s Children 2021–2031
SCRGSP	Steering Committee for the Review of Government Service Provision
SDM	Structured Decision-Making
SFSC	Strong Family, Strong Communities
TEI	Targeted Earlier Intervention
(the) Department	Department of Communities and Justice
TPPRO	Third-party parental responsibility order
SNAICC	SNAICC – National Voice for our Children

Introduction

This report reviews the progress of the New South Wales Government, through the Department of Communities and Justice (the 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 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 from 1 July 2021 – 30 June 2023. Quantitative data for 2022–23 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, 2024b). 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 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. These reviews arise from *Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031* (Safe and Supported). They also 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

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, the proportion of Aboriginal and Torres Strait Islander children in NSW living in OOHC and other supported placements rose from 41.6% as of 30 June 2021 to 42.2% in 2022 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42). This rose again in 2023 with Aboriginal and/or Torres Strait Islander children representing 42.9% of children and young people living in OOHC and other supported placements (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42). Despite reduction in the rate of Aboriginal children in OOHC care over the past three years over-representation persists with Aboriginal children in NSW 10.7 times more likely than their non-Indigenous peers to be living in OOHC as of 30 June 2023 (Productivity Commission 2024).

Partnership

NSW continues to report the highest proportion of expenditure out of any jurisdiction into ACCOs for the delivery of care services with 7.41% in 2021–22 (NSW Government 2023a), NSW reported an investment of 5.6% of total expenditure to ACCOs (NSW Government 2023a). The *Children and Young Persons (Care and Protection) Act 1998* (the Act) was also amended to include the principles of making active efforts to prevent children and young people from entering OOHC and restoring a child or young person with family, kin or community. The Act requires that active efforts be conducted—to the greatest extent possible—in partnership with the child or young person and the family, kin and community of the child or young person (NSW Government 2023a). The ACCO sector and Aboriginal communities have raised concerns over a lack of a clear definition of active efforts within the legislation to ensure that active efforts are completed in a timely and purposeful manner.

Placement

NSW reported the fourth highest rate of Aboriginal and Torres Strait Islander children in OOHC living with Aboriginal and Torres Strait Islander relatives or kin as of 30 June 2023 (33.2%) (SCRGSP 2024, Table 16A.23). The Department is pursuing a redesign of the Structured Decision-Making (SDM) tool despite calls from Aboriginal communities and peak bodies to discontinue its use. The Department is now engaging in a process with Aboriginal peak bodies to design an interim approach that will remove risk assessment components of the toolkit.

Participation

Family Group Conferencing (FGC) received \$3.73m in funding during 2022–23. As of July 2023, 43% of FGC facilitators identified as Aboriginal and Torres Strait Islander (NSW Government 2023a). However, the number of Aboriginal and Torres Strait Islander children participating in FGC is unknown and there are community concerns about reliance on FGC rather than ACCO-designed and delivered Aboriginal Family Led Decision Making (AFLDM) models. In 2022, a special report was released by the Office of the Children’s Guardian (OCG) that raised concerns about the Aboriginal Case Management Policy, stating that the program is unable to be effectively implemented with the current allocation of resourcing (OCG 2022).

Connection

As of 30 June 2022, NSW reported the lowest reunification rate at only 2% of Aboriginal children in OOHC and on long-term guardianship, custody or third-party parental responsibility orders (TPPROs) (AIHW 2024a T3, AIHW 2024b: Table 10.18). There has been an increase in Aboriginal and Torres Strait Islander children in OOHC who have a Cultural Support Plan (CSP) with the proportion increasing from 55.9% in 2020, 60.3% in 2021 and 75.5% in 2022. (AIHW 2024b).

Prevention

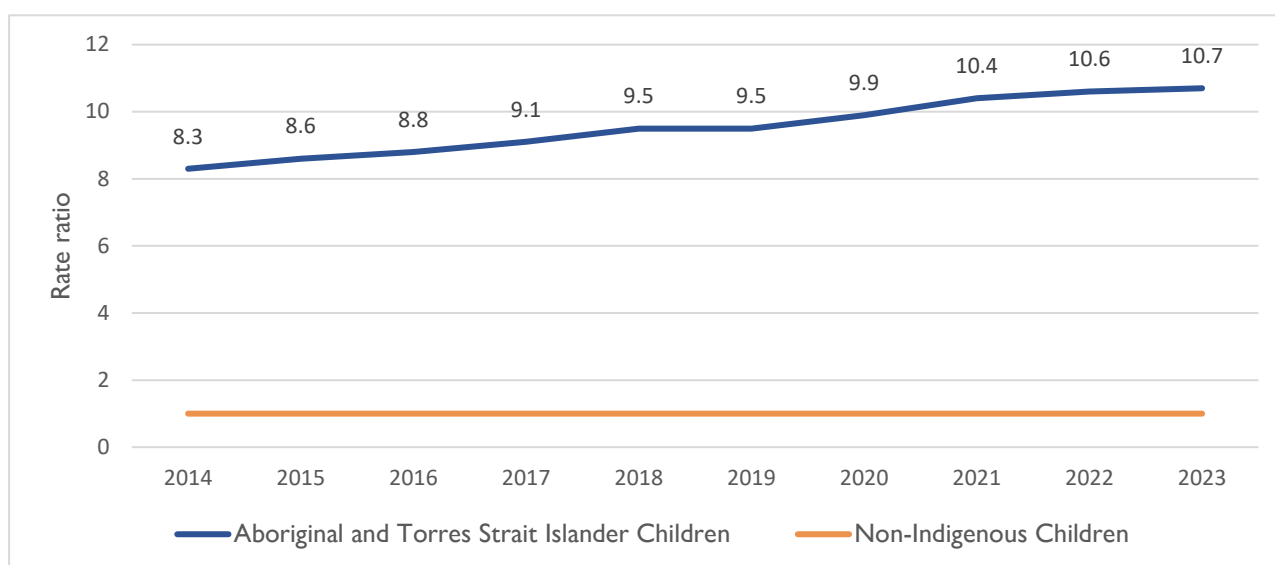
The prevention element of the Child Placement Principle aims to ensure that Aboriginal and Torres Strait Islander children and their families grow up healthy and safe, and within their own family and community. Preventing children and families entering the child protection system requires collaboration 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 Department while noting that holistic prevention can only be achieved with a whole-of-government approach.

Over-representation in child protection

Despite the NSW Government's stated focus on addressing the over-representation of Aboriginal and Torres Strait Islander children in OOHC, the number of Aboriginal and Torres Strait Islander children in OOHC continues to rise (NSW Government, 2024). The percentage of children and young people in OOHC and other supported placements who are Aboriginal and/or Torres Strait Islander rose from 41.6% as of 30 June 2021 to 42.2% in 2022 (SCRGSP 2024, Table 16A.2 and 16A.3). This rose again with Aboriginal and Torres Strait Islander children representing 42.9% of children and young people in OOHC and other supported placements as of 30 June 2023 (SCRGSP 2024, Table 16A.2 and 16A.3).

Despite the number of Aboriginal and Torres Strait Islander children in OOHC over the past four years reducing, over-representation persists with Aboriginal children in NSW being 10.7 times more likely than their non-Indigenous peers to be living in OOHC as of 30 June 2023 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42). This is a slight increase from the previous year's reporting in 2021–22 (SCRGSP 2024, Table 16A.2, 16A.3 and 16A.42) (see figure 1).

Figure – Rate ratios of Aboriginal and Torres Strait Islander children in OOHC and other supported placements in NSW 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

Family Support and Intensive Family Support Services

It is essential that governments invest in quality service supports with equitable access for Aboriginal and Torres Strait Islander children to ensure that their rights are upheld. Family Support Services (FSS) and Intensive Family Support Services (IFSS) play a pivotal role in supporting families and communities in safely caring for their children. NSW has increased its child protection expenditure on FSS and IFSS from 12.4% in 2020–21 to 12.1% in 2021–22 (SCRGSP 2024, Table 16A.8). From 2022–23, NSW increased child protection expenditure on FSS and IFSS from the reported 12.1% in 2021–22 to 13% 2022–23 (SCRGSP 2024, Table 16A.8). This investment fell below the national average of 15.3% (2022–23) (SCRGSP 2024, Table 16A.8) and follows the national trend of failure to shift investment towards prevention and early support despite extensive policy commitments made by NSW and Australian governments (SNAICC 2023).

The Department reported a continual investment in the Targeted Earlier Intervention (TEI) Program, which aims to provide a wide variety of support to children, young people, families and communities through community strengthening and wellbeing and safety activities (FACS n.d.). The program reported 34 out of 472 service providers being Aboriginal community-controlled, with 15% of children accessing the service identifying as Aboriginal and Torres Strait Islander in 2021–22 (Watthanawinitchai et al. 2023). The number of ACCOs providing TEI services in 2021–22 increased by 20% from the previous year, however, the number of Aboriginal and Torres Strait Islander children accessing TEI has dropped by 3% from the previous year (Watthanawinitchai et al. 2023). Considering the over-representation of Aboriginal and Torres Strait Islander children within OOH, the number of ACCOs delivering TEI services and Aboriginal and Torres Strait Islander children accessing the service is not proportionate.

In 2022, the Department reported an investment of an additional \$98.7 million to the Aboriginal Child and Family Centre (ACFC) program (NSW Government 2023a). This will establish six new ACFCs and expand the services of the existing nine centres. The centres provide a variety of services including early childhood education, family support, maternal and child health, playgroups and adult education opportunities (FACS n.d.). An evaluation of the program was completed in 2021 and found that ACFCs are providing high-quality and cost-effective early childhood education to Aboriginal and Torres Strait Islander children in a trusted, culturally safe environment and are increasing access and referrals to additional services (Inside Policy, 2021). Additionally, the evaluation modelled five funding scenarios to test the commercial viability of the ACFCs. The modelling indicated that a \$1 million allocation in funding in all years from 2020–21 to 2029–30 provided the greatest opportunity for ACFCs to maintain financial security and address future challenges (Inside Policy, 2021). Whilst these highlight positive outcomes, it is important to note that this evaluation was conducted by a non-Indigenous organisation. The evaluation also recommended that the program logic and evaluation framework be redesigned through a co-design process with ACFCs (Inside Policy, 2021). It is essential that Aboriginal communities are involved in governance and decision-making to ensure that these services are achieving positive outcomes for Aboriginal children and families.

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 and 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.

In New South Wales, throughout 2021 to 2023, 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.

Access to Early childhood education and care

In New South Wales there is no difference in the rate of enrolments in a preschool program between Aboriginal and Torres Strait Islander and non-Indigenous children aged between 3 and 5 years of age (SNAICC 2023, 55). However, Aboriginal and Torres Strait Islander children aged 0–5 years in New South Wales were attending Australian Government Childcare Subsidy-approved childcare services at 70% of the rate of non-Indigenous children during 2021–22, a slight decrease from 71% in 2020–21 (SNAICC 2023, P57 Figure 19). In response to these issues, the New South Wales Government developed the *Aboriginal Children's Early Childhood Education Strategy 2021–2025*, with committed funding towards expanding the Ninganah No More language program and expanding the Aboriginal Families as Teachers program (DOE 2021). This strategy was developed in consultation with members of the NSW Department of Education's Early Childhood Education and Care Aboriginal and Torres Strait Islander Committee (DOE 2021).

Early Interaction with Youth Justice

Aboriginal and Torres Strait Islander young people aged 10–17 living in New South Wales were placed in detention at 24.4 times the rate of non-Indigenous young people in 2022–23, an increase from 17.3 in 2021–22 (SCRGSP 2024, Table 17A.5).

In July 2019, the Department released Version 2 of the Joint Protocol (the Protocol) to reduce the contact of young people in residential OOHC with the criminal justice system (NSW Government 2019). The NSW Police, the Department, the Association of Children's Welfare Agencies and AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (AbSec) are signatories to the

Protocol (NSW Government).

In May 2024, the NSW Government introduced the *Bail and Crimes Amendment Bill*, which provides a temporary limitation on granting bail for certain young persons in relation to serious offences. This amendment was heavily criticised by legal and criminal justice experts across the country, including the NSW/ACT Aboriginal Legal Service (ALS).

Homelessness and housing

According to the 2021 Census 90 Aboriginal and Torres Strait Islander people per 1,000 were reported as experiencing homelessness in Australia (ABS 2023). Of the 24,930 Aboriginal and Torres Strait Islander people experiencing homelessness nationally, at the time of the census, 23.6% were under 12 years of age, and 26.2% were aged between 12 to 24 years old (ABS 2023).

Strong Family, Strong Communities (SFSC) is the Aboriginal Housing Office's 10-year strategy to improve the wellbeing of New South Wales Aboriginal and Torres Strait Islander families and communities through housing (AHO 2022). This strategy focuses on housing solutions, achieving better client outcomes, growth of the Aboriginal Community Housing Providers sector and improving the collection, evaluation and analysis of data. The SFSC Dashboard provides a snapshot of the achievements made from 2019 to 30 June 2022, with 27 of the 28 targets achieved. The SFSC Phase Two Implementation Plan was released in 2022 and outlines the key outcomes and targets which are intended to be implemented by 30 June 2026.

Access to Maternal and child health

Concerns have been raised by the Aboriginal community-controlled health organisation sector in New South Wales around the lack of accessibility of maternal care services due to issues such as cost, lack of trust and culturally unsafe practices (AH&MRC 2023). Having access to regular and culturally safe antenatal services can provide the opportunity for mothers to establish relationships with healthcare professionals—and access referrals to other health and wellbeing services—which may ultimately reduce the risk of engagement with child protection services (SNAICC 2023).

There is a lack of available and reliable data relating to the experience and number of Aboriginal and Torres Strait Islander mothers and children accessing relevant health services and health outcomes of children born. Unfortunately, due to a lack of trust in health care services and fear of their child being removed, in 2021 only 87.5% of Aboriginal and Torres Strait Islander mothers had attended five or more antenatal care visits, compared to 94.7% of non-Indigenous mothers (SNAICC 2023).

The latest available data shows that 90.5% of Aboriginal and Torres Strait Islander children were born with a healthy birthweight in 2022 compared to 94.4% of non-Indigenous babies (NSW Ministry of Health 2024).

Domestic and family violence

The *NSW Domestic and Family Violence Plan 2022–2027* and *NSW Sexual Violence Plan 2022–2027* were developed to prevent and respond to domestic, family and sexual violence. These plans do not

respond to the specific needs of the Aboriginal and Torres Strait Islander community and sector (DCJ 2022). However, the Department has committed to the development of a dedicated plan to address family and sexual violence experienced by Aboriginal and Torres Strait Islander people, which is expected to be released in early 2025 (NSW Government, 2023a).

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 peoples and 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. This commitment to transform the way governments work with Aboriginal and Torres Strait Islander people is still in its infancy.

An important aspect of the Partnership element is investment into ACCOs to deliver important services to Aboriginal and Torres Strait Islander children and families. New South Wales reported that 5.6% of total child protection expenditure directly funded ACCOs (NSW Government 2023A). For investment into ACCOs for FSS and IFSS there was an increase from 5.39% in 2020–21 to 7.67% in 2021–22 (NSW Government 2023a). New South Wales continues to report the highest proportion of expenditure for delivery of care services directly funding ACCOs of all jurisdictions with 7.41% of funding for care services directly funding ACCOs reported in 2021–22 (NSW Government 2023A).

Policy and Legislative Reform

A significant legislative reform occurred in New South Wales in 2022 with the passage of the *Children and Young Persons (Care and Protection) Amendment (Family is Culture) Act 2022* (Act). This Act was a response to recommendations outlined in the *Family is Culture Review Report 2019*, an Independent Review of Aboriginal Children and Young People in OOH (Davis 2019). The amendments legislate the five elements of the Child Placement Principle and outline principles of making active efforts to implement the Child Placement Principle (NSW Government 2023b).

The legislative amendments are a welcome development to improve the implementation of the Child Placement Principle. However, the ACCO sector has expressed disappointment with the lack of partnership and engagement with Aboriginal communities, including a brief and limited consultation period that failed to reflect partnership commitments under Priority Reforms One, Two and Three of the National Agreement. The sector expressed concern over a delayed 12-month period for provisions in relation to active efforts to be proclaimed in November 2023, despite the passage of the legislation in November 2022. The Department noted that delays were caused by efforts to develop training materials and policy and practice guidelines for caseworkers and the sector to support effective implementation of active efforts (NSW Government 2023a). AbSec and ALS were involved in the Steering Committee on the implementation of the provisions, related working groups and the consultation process, however, were dissatisfied with the resulting policy (NSW Government, 2023a). Updated versions of the policy and practice guidelines are expected to be developed in partnership with relevant Aboriginal peak bodies, noting that the policy and practice guidelines need to be consistent with the legislation. Additionally, the ACCO sector and Aboriginal communities have raised concerns over a lack of a clear definition of active efforts within the legislation to ensure that active efforts are completed in a timely and purposeful manner. It was pleasing to see the addition of Section

9A in November 2023, which outlines the principles of making active efforts.

The establishment of the Ministerial Aboriginal Partnership Group (MAP Group) with a focus on efforts to reform the New South Wales child protection system does represent a step forward in upholding the partnership element. Meeting for the first time in February 2024, the MAP Group includes the Minister for Families and Communities and is co-chaired by the CEO of AbSec (DCJ 2024).

In 2023, the Department reported on the Better Decisions for Children (Better Decisions) project, which ran from 2021 to 2023 as part of the Quality Assurance Review of SDM, to review and improve the decision-making tools, practices and processes in the NSW child protection and OOHC system across six key areas (DCJ 2023). The ACCO sector reported that there was no input from ACCOs or peak bodies into the design of the Better Decisions project. The Department's website reflected a willingness to engage and respond to community voices (DCJ 2023), however, the approach suggests a government-led process that uses consultation but fails to respond to Aboriginal and Torres Strait Islander community voices (SNAICC 2023:69). Better Decisions has been superseded by a formal partnership that the Department is entering with AbSec and ALS. The Partnership Agreement will establish a process by which AbSec, ALS and DCJ will work in partnership to design and implement new policies, practices, procedures and frameworks for child protection assessment and decision-making that improve outcomes for—and reduce the over-representation of—Aboriginal children and families in the NSW child protection and OOHC system (NSW Government 2023a).

The OOHC Transition Project was re-commenced in 2022, in partnership with AbSec and the Association of Children's Welfare Agencies (ACWA), the peak body for non-government organisations delivering child and family services. The purpose of this project is to support successful case management transfers of Aboriginal children in OOHC into the care of ACCOs. In 2022, the New South Wales Government committed to transferring at least 300 Aboriginal children in non-Indigenous OOHC providers to ACCOs per year for a period of 3 years (SNAICC 2023:67). As of December 2023, only 32 children have been transferred due to lack of sufficient resourcing and specifically a lack of investment into capacity building for ACCOs and associated costs with that capacity building (SNAICC 2023:67).

Additionally, the Department is funding the Family Connect and Support program under Targeted Earlier Intervention (TEI) which aims to assist families in connecting with supports across a variety of service areas. However, Aboriginal and Torres Strait Islander communities have expressed concerns, including that the program is Department-led and continues the pattern of not partnering with Aboriginal and Torres Strait Islander communities. Communities also expressed concerns that the Department has undertaken consultation that does not reflect the needs, aspirations and voices of Aboriginal and Torres Strait Islander families and communities.

Placement

When a child is to be placed in OOHC, the Child Placement Principle placement hierarchy ensures that Aboriginal and Torres Strait Islander children maintain connection to their family, community, culture and Country. The placement element refers to the placement of Aboriginal and Torres Strait Islander children in OOHC in accordance with the established Child Placement Principle placement hierarchy, which is reflected in Section 13 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW Government 2023b). For Aboriginal and Torres Strait Islander children living in OOHC care the preferred placements are as listed:

1. Most desirable is with an Aboriginal and Torres Strait Islander relative or kin.
2. With non-Indigenous relatives or kin.
3. With Aboriginal and Torres Strait Islander members of a child's community or other Aboriginal and Torres Strait Islander family-based carers.
4. The last resort is with a non-related non-Indigenous caregiver or in a residential setting.

Placement of Aboriginal and Torres Strait Islander children with Aboriginal and Torres Strait Islander relatives or kin is essential to maintaining connection to culture, community and family. As of 30 June 2023, New South Wales reported the fourth highest rate (33.2%) of Aboriginal and Torres Strait Islander children in OOHC living with Aboriginal and Torres Strait Islander relatives or kin in 2022–23 (SCRGSP 2024, Table 16A.23) of any jurisdiction in Australia. This remains relatively unchanged from 2022 (33.8%) (SCRGSP 2024, Table 16A.23). The rate of Aboriginal and Torres Strait Islander children living with non-Indigenous relatives or kin remained relatively unchanged from 22.6% as of 30 June 2022 to 22.5% in 2022 (SCRGSP 2024, Table 16A.23). The proportion of Aboriginal and Torres Strait Islander children in New South Wales being placed in residential care increased from 4.7% as of 30 June 2022 to 5.4% in 2023 (SCRGSP 2024, Table 16A.23). Despite recording the fourth highest rate of placement with Aboriginal and Torres Strait Islander relatives or kin, this is still an unacceptably low rate that continues to place Aboriginal and Torres Strait Islander children living in OOHC in placements that do not best support their connection to culture, community and family.

Table – Aboriginal children in NSW 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
Placed with relatives/kin or other Aboriginal carer							
Aboriginal relative/kin	40.1	35.5	34.9	35.3	33.9	33.8	33.2
Non-Indigenous relative/kin	15.9	21.5	22.3	22.5	22.9	22.6	22.5
Total placed with relatives/kin	56	57	57.2	57.8	56.8	56.4	55.7
Other Aboriginal and Torres Strait Islander carer	22.7	16.4	15.6	14.8	13.7	13.6	13.7
Total	78.7	73.4	72.8	72.5	70.5	70	69.4

In another care arrangement							
Other non-Indigenous carer	17.5	22.6	22.4	22.5	23	23.3	23.0
Residential care or family group home	2.6	2.7	2.7	3.2	3.8	4.7	5.4
Independent living/living arrangements unknown	1.2	1.3	2	1.7	2.7	2	2.3
Total	21.3	26.6	27.2	27.5	29.5	30	30.6

Source: Report on Government Services 2024, Part F, Section 16 Child Protection Services, Table 16A.23

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.

The Department reported multiple initiatives that aim to fulfil the participation element and increase participation of Aboriginal children and families in child protection decision-making processes, including a legislated requirement for decision-makers to apply each relevant element of the Child Placement Principle when making decisions under that Act which involve an Aboriginal or Torres Strait Islander child or young person, and to participate in active efforts (NSW Government 2023a).

In addition, the *Children and Young Persons (Care and Protection) Act 1998* was amended to provide Aboriginal organisations and entities with the ability to be heard by the Children’s Court, if the Court is considering making an order that has a significant impact on Aboriginal families or communities that are not party to the proceedings (NSW Government 2023a).

Family Group Conferencing

FGC received \$3.73m in funding during 2022–23 and, as of July 2023, 43% of FGC facilitators identified as Aboriginal and Torres Strait Islander (NSW Government 2023a). The Department commissioned The University of Sydney Research Centre for Children and Families to complete an independent evaluation of FGC in 2022. The report highlighted that 2,424 children were referred to FGC between 2017 and 2021, of which 48.8% were from Aboriginal households. From these referrals, 1,801 children received an FGC conference, of which 48.5% were from Aboriginal households (NSW Government, UTS, 2022).

Comments from Aboriginal participants suggested that the Child Placement Principle and, specifically, the participation element is not consistently embedded within FGC practices (Conley Wright et al. 2022). The evaluation noted that there were localised differences in approaches to goal setting and outcomes, differences in local understanding of and use of FGCs and, hence, in the engagement of workers and families, which are challenges to the wider and more effective delivery of FGCs. In addition, there are community concerns about reliance on FGC rather than ACCO-designed and delivered AFLDM models.

The Department reported it is developing new data and indicators to support AFLDM and FGC as a response to a *Family Is Culture* recommendation. However, the Department has not yet reported when these new data sets and indicators will be implemented.

Permanency Case Management Policy and the Aboriginal Case Management Policy

The Permanency Case Management Policy (PCMP) rules and practice guidelines, updated in August 2023, support assessment and case planning between the Department and Permanency Support Planning providers (DCJ 2023b). The rules and guidelines were updated to reflect that any placement of an Aboriginal and Torres Strait Islander child must be consistent with the Child Placement Principle (NSW 2023a). This includes prioritising placement of Aboriginal children with family or kin *as recognised by the Aboriginal community to which they belong* (Section 13 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW Government 2023b)). In practice, when read with Section 13(4), which states that when an Aboriginal or Torres Strait Islander child has one parent who non-Indigenous, they should be placed with the person with whom it is ‘in the best interests of the child’ to be placed with, this often results in the placement priority being given to the child’s non-Indigenous family (ALS 2024), which may be the result of institutional biases in favour of non-Indigenous care-givers.

The Aboriginal Case Management Policy (ACMP) and its associated rules and practice guidelines were developed by the Department and AbSec. They sit alongside the PCMP and support casework practices in enabling Aboriginal families and communities to participate in child protection processes through AFLDM (NSW Government 2023a). Prior to the Deputy Children’s Guardian for Aboriginal Children and Young People position being vacated in February 2023, the OCG published a special report on the *Children’s Guardian Act 2019: Family Is Culture Review*. This report highlighted concerns about the ACMP and its effectiveness, specifically raising issues on the ACMP’s lack of resourcing that prevents effective implementation and the 7-year delivery timeframe (OCG 2022). The OCG outlined four key strategic priorities to enable effective delivery of the ACMP:

1. Strengthen Aboriginal-led services – giving their accountability mechanisms back to community.
2. Strengthen governance and oversight.
3. Leverage Aboriginal family and community strengths – including a call for ‘place-based Aboriginal cultural models’ that ‘could be developed through government support including growing the ACCO sector with sustainable investment’.
4. A stronger Aboriginal focus for regulation of the sector.

These strategic priorities are supported by AbSec and the ALS.

AbSec has been funded to implement a critical element of the ACMP, the statewide establishment of Aboriginal community-controlled mechanisms. Since funding has been provided, one ACMP has been established in the Shoalhaven City Council.

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.

Reunifications

Children on long-term guardianship custody orders (GCOs) and 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, 2% of Aboriginal children were reunified from OOHC (including long-term GCOs) in New South Wales (AIHW 2024a T3, AIHW 2024b: Table 10.18). In comparison, 2.5% of non-Indigenous children were reunified from OOHC in the same 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 longer term. AIHW reports this data by whether a child returned to OOHC within 12 months after exiting to reunification.

In New South Wales, 84.4% 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 89.6% (AIHW 2024a T3, AIHW 2024b: Table 10.18).

This was slightly above 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.

In February 2024, the NSW Government announced the establishment of a ‘restoration taskforce’ looking into the reunification of Aboriginal and Torres Strait Islander children with their families. The taskforce will give ACCOs greater say and input over how Aboriginal and Torres Strait Islander children are dealt with in the child protection system.

Use of long-term and permanent care orders

Permanent care orders imposed through state systems are often incompatible with the recognition that an Aboriginal and Torres Strait Islander child’s wellbeing is rooted in a strong connection with culture, community and family. This is due to the orders often prioritising a child’s physical and legal stability, despite an Aboriginal and Torres Strait Islander child’s connection to culture being central to their wellbeing. Using the data available from AIHW, SNAICC has calculated the rates of Aboriginal and Torres Strait Islander children placed on long-term TPROs and finalised guardianship or custody orders.

New South Wales reported a very slight decrease in these types of orders from 64.4 per 1,000 Aboriginal and Torres Strait Islander children in 2020–21 to 63.4 per 1,000 Aboriginal and Torres Strait Islander children in 2021–22 (SNAICC calculation of rates with data drawn from AIHW 2023, Table S4.10 and Table P3). In 2021–22, New South Wales reported the third highest rates of these orders with Victoria recording the highest rate of 83.1 per 1,000 and the Northern Territory reporting the lowest rate with 23 per 1,000 (SNAICC calculation of rates with data drawn from AIHW 2023, Table S4.10 and Table P3). The high number of these orders, in addition to the low New South Wales reunification rates, reflects a systemic preference towards long-term placement and permanent care orders for Aboriginal and Torres Strait Islander children.

Permanent Care Arrangements

In New South Wales, there is a preference for permanent care arrangements. It is argued that a preference for permanency is justified on the basis of achieving stability for children in the child protection system. As highlighted above, a high proportion of Aboriginal and Torres Strait Islander children are placed under permanent guardianship or ‘parental responsibility of the Minister’ orders. This preference is reflected in legislation under Section 10A of the *Children and Young Persons (Care and Protection) Act 1998*, as updated in 2023 (NSW Government 2023b). Section 10A(3) outlines a hierarchy of six permanent placement principles, with options including that the first preference is for the child or young person to be restored to the care of his or her parent, and the second preference is for the child or young person to be placed with a relative, kin or other suitable person in accordance with a guardianship order (NSW Government 2023b). Section 83A (3) outlines the steps that must be taken when considering a permanency plan for an Aboriginal or Torres Strait Islander

child or young person. The Children's Court must not make a guardianship order unless satisfied that permanent placement of the child or young person is in accordance with the Aboriginal and Torres Strait Islander Child and Young Person Placement Principles under sections 12 and 13.

The interaction between the Child Placement Principle and the permanent placement principles contained in section 10A (3) is unclear, as section 10A (3) fails to reflect a first preference for placement of Aboriginal and Torres Strait Islander children with Aboriginal family members and kin as outlined in Section 13. The inclusion of adoption as the 'last preference' in the permanent placement principles for Aboriginal and Torres Strait Islander children in Section 10A (3) poses a significant risk to the rights and wellbeing of the child, which is associated with removing a child's family, cultural and community connections (SNAICC 2023).

New South Wales reported that six Aboriginal and Torres Strait Islander children were adopted in 2021–22, with only one child being adopted by Aboriginal and Torres Strait Islander carers (NSW Government 2023a). These were the only adoptions reported by any jurisdiction in 2021–22 (SNAICC 2022). This is concerning and reflects the New South Wales Government's commitment to pursuing permanent placement despite repercussions for the rights and wellbeing of Aboriginal and Torres Strait Islander children.

This legislated preference for permanent placement is operationalised through the Permanency Support Program (PSP), which aims to work with the child and their support system to identify the best permanency goal that is achievable within two years. An evaluation report released in April 2023 highlighted PSP did not substantially improve children's safety, permanency, stability or wellbeing (Rose et al. 2023). Additionally, it found that when an Aboriginal and Torres Strait Islander child had been in a non-kin placement for an extended period new potential kin placements were not often considered (Rose et al. 2023). The broader ACCO sector has expressed concern over this program and its negative impact on how Aboriginal and Torres Strait Islander children in OOHHC experience connection. The evaluation explicitly calls for 'substantial overhaul, and specific components of the reform [to be] discontinued' (Rose et al. 2023). Although some ACCOs deliver the PSP in NSW, this program was not developed or completed in partnership with Aboriginal families and communities or ACCOs and continues a problematic history of the Department not reflecting commitments made under the National Agreement, which commits to formal partnerships and shared decision-making with Aboriginal and Torres Strait Islander people. Other concerns include delayed implementation processes, poor communication and access issues with client case management systems and payments (Rose et al. 2023).

Cultural Support Plans and Cultural Hubs

A significant aspect of maintaining the connection element is the implementation of CSPs that are guided by the child, their family, the relevant ACCO and their community. A CSP ensures that active efforts are made to maintain the child's connection to culture and community. In NSW there has been an increase in Aboriginal and Torres Strait Islander children in OOHHC care who have a CSP, with the proportion increasing from 55.9% in 2020, 60.3% in 2021 and 75.5% in 2022 (AIHW 2024b, Table

10.5).

The Department has also reported that to support Aboriginal and Torres Strait Islander children living in OOHC to maintain a strong connection to family, culture and community, Aboriginal Cultural Support Teams (Cultural Hubs) have been established. These hubs have been established to provide expert Aboriginal practice consultation with the focus on supporting cultural planning, cultural activities and community events (NSW Government 2023a). Caseworkers connect families to relevant services including designated referral pathways to FGC, intensive services and alternative interventions such as parental responsibility contracts, parenting capacity orders and temporary care agreements (NSW Government 2023a). These hubs have been established across New South Wales, however, the number of hubs created is unknown nor is there evaluation of the effectiveness of the hubs, nor information on whether they effectively partner with ACCOs, families and communities.

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