

BARRIERS EXPERIENCED
BY ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILDREN AND FAMILIES
ACCESSING LEGAL SUPPORTS
– *Scoping Study*



NATSILS
National Aboriginal and
Torres Strait Islander Legal Services
TRUE JUSTICE FOR OUR PEOPLE



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ABOUT SNAICC

SNAICC – National Voice for our Children is the national non-government peak body for Aboriginal and Torres Strait Islander children. We work for the fulfilment of the rights of our children, in particular to ensure their safety, development and wellbeing.

SNAICC has a dynamic membership of Aboriginal and Torres Strait Islander community-based child care agencies, Multi-functional Aboriginal Children's Services, crèches, long day care child care services, pre-schools, early childhood education services, early childhood support organisations, family support services, foster care agencies, family reunification services, family group homes, services for young people at risk, community groups and voluntary associations, government agencies and individual supporters.

Since 1981, SNAICC has been a passionate national voice representing the interests of Aboriginal and Torres Strait Islander children and families. SNAICC champions the principles of community control and self-determination as the means for sustained improvements for children and families. These principles have been at the heart of SNAICC's work, whether on child protection and wellbeing or early childhood education and development.

Today, SNAICC is the national peak body for Aboriginal and Torres Strait Islander children and the sector supporting these children. Our work comprises policy, advocacy and sector development. We also work with non-Indigenous services alongside Commonwealth and State Governments to improve how agencies design and deliver supports and services for Aboriginal and Torres Strait Islander children and families.

ABOUT NATSILS

The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for the seven Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia.

NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education (CLE), advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives NATSILS a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples.

NATSILS was established as the peak body for ATSILS in 2007. Initially operating as a body to share best practice in the provision of legal assistance services to Aboriginal and Torres Strait Islander peoples, over time, NATSILS has evolved and grown into a highly coordinated body that has expanded its sphere of influence to include broader issues in addition to those of service provision.

NATSILS currently co-chairs the Justice Policy Partnership (JPP) under the National Agreement on Closing the Gap and is a member of the Australian Legal Assistance Forum (ALAF).

EXECUTIVE SUMMARY

Aboriginal and Torres Strait Islander peoples have been growing up their children strong in culture and community for millennia. However, the impact of colonisation continues to have a damaging impact on Aboriginal and Torres Strait Islander peoples, including the over representation of children in child protection systems nationally, with the number of Aboriginal and Torres Strait Islander children affected by Australia's child protection systems increasing and rates of over-representation at an all-time high. This over-representation is alarming and highlights ongoing human rights challenges in Australia.

Over-representation of Aboriginal and Torres Strait Islander children in child protection systems is driven by the current and ongoing impacts of colonisation and racism, including intergenerational trauma experienced by members of the Stolen Generations and their descendants. Colonisation and racism have created systems of violence that continue to harm Aboriginal and Torres Strait Islander children, families and communities. These systems, including child protection and criminal justice, disproportionately impact and target Aboriginal and Torres Strait Islander peoples. The distinct disparities experienced by Aboriginal and Torres Strait Islander peoples in employment, education, housing, health and justice outcomes are embedded within these

systems, with evidence showing these socio-economic outcomes overwhelmingly contribute to Aboriginal and Torres Strait Islander families being more likely to have contact with child protection and justice systems.

In July 2020, the Australian, state and territory governments signed the National Agreement on Closing the Gap (National Agreement), which includes 17 socio-economic outcome areas and associated targets for improving life outcomes for Aboriginal and Torres Strait Islander peoples. Target 12 is to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031.¹ The National Agreement also includes four Priority Reform Areas designed to shift the way governments operate to drive meaningful change for Aboriginal and Torres Strait Islander peoples.

The 2024 Closing the Gap Dashboard and Annual Data Compilation Report shows that the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care is worsening, with the national rate rising from 54.2 per 1,000 Aboriginal and Torres Strait Islander children in 2019 to 57.2 per 1,000 in 2023. For non-Indigenous children, the rate of children in care per 1,000 children was just 4.7 in 2023.

Modelling undertaken for the Family Matters Report 2023 estimated that, in the absence of wholesale reforms to child protection policy and practice, the rate of Aboriginal and Torres Strait Islander children in care would reach 62.3 per 1,000 children in 2031. This would represent a 14.9% increase from the 2019 rate, backsliding further against Target 12.² The Productivity Commission's first review of progress against the National Agreement added context to most governments' poor performance against Target 12 and various other targets, finding that governments across Australia are not meeting their commitments under the Priority Reforms and questioning whether they fully understand the scale of systemic change required.³

Achieving the Closing the Gap targets requires significant investment in early intervention and preventative child and family services, along with recognition of the right of self-determination in the development, funding and delivery of culturally appropriate legal services for Aboriginal and Torres Strait Islander peoples. It also requires governments to significantly transform the way they work in line with the Priority Reforms outlined in the National Agreement.

Through Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026 (First Action Plan), Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031 (Safe and Supported) recognises that culturally safe and appropriate legal representation is critical in supporting Aboriginal and Torres Strait Islander children, young people and families at risk of entering—or already in contact with—child protection systems.

Unmet legal needs have a profound and devastating impact on the lives of Aboriginal and Torres Strait Islander children and families. Most significantly, gaps in legal representation and support contribute to the ongoing removal of Aboriginal and Torres Strait Islander children,

severing their connection to community, language, culture, Country and kin. This not only devastates families but also perpetuates cycles of intergenerational trauma, inflicting deep and lasting harm across generations.

Under Action 6 of the First Action Plan, governments have committed to improving the availability and quality of legal supports for Aboriginal and Torres Strait Islander children and families in contact with child protection systems. This Scoping Study delivers on Activity A of this action by examining the interface between child protection systems, relevant legal services and youth justice systems to assess the barriers experienced by Aboriginal and Torres Strait Islander children and families in accessing legal supports. Efforts have also been made to map the issues faced by Aboriginal and Torres Strait Islander children and families at risk of—or already in—contact with child protection systems across each jurisdiction and, to the extent possible based on available data, to quantify levels of access to justice and unmet legal need.

This Scoping Study is a key initiative intended to contribute to improved outcomes for Aboriginal and Torres Strait Islander children and families. With a focus on the rights and needs of Aboriginal and Torres Strait Islander children, it aims to identify opportunities and options to address systemic discrimination and barriers, improve legal and related supports, and reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

The Scoping Study used a mixed methods design to understand the legal needs of Aboriginal and Torres Strait Islander children and families when they come into contact with child protection, barriers and gaps in accessing legal support, and current models and services that improve access and meet legal needs.

This involved a combination of qualitative and quantitative data gathered through desktop research, online forums and surveys targeted at stakeholders working with Aboriginal and Torres Strait Islander children and families who come into contact with child protection systems, as well as data from government agencies. An Expert Advisory Group provided guidance, advice and expertise by overseeing the data collection methods, findings and recommendations developed in this report.

The Study found that current funding arrangements restrict the accessibility of legal supports for Aboriginal and Torres Strait Islander children, young people and families, including the delivery of child and youth-focused services that are aligned with community needs. These services are primarily delivered through Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS); however, organisation-specific funding decisions for legal supports should be led by communities and invested into the services, organisations and supports that local community members determine are most appropriate to meet their needs.

The Study also emphasised the lack of cultural responsiveness in mainstream legal and court systems, and the resulting need for targeted action to strengthen cultural capability at all points within these systems. This includes

ensuring that cultural capability is built into qualification pathways and professional development opportunities. This report highlights some promising examples of specialist courts as having established systems, practices and approaches that are more culturally responsive for Aboriginal and Torres Strait Islander children and families.

Growing the Aboriginal and Torres Strait Islander legal—and related—workforce was emphasised as being critical to help meet the legal support needs of Aboriginal and Torres Strait Islander children and families. The Study also explored the role that non-legal Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) play in facilitating access to legal supports and legal advocacy, as well as providing prevention and early intervention services that both support Aboriginal and Torres Strait Islander families to avoid contact with tertiary child protection systems and facilitate early access to the supports they need. Increased funding is required for these services to operate effectively.

The Study specifically considered the needs of Aboriginal and Torres Strait Islander children throughout all stages of research and engagement, and clearly identified that children require consistent, high-quality and culturally responsive legal representation at all stages of proceedings. Facilitating this requires investment in legal representation, as well as in policy and regulatory responses, such as the development of National Minimum Standards for children's legal representatives.

The Study also revealed that most jurisdictions cannot easily collect or analyse data related to legal supports provided to Aboriginal and Torres Strait Islander children and families, making it challenging to quantify, understand and act to address unmet need.

To enable governments and the sector to deliver the changes required to ensure Aboriginal and Torres Strait Islander children and families are able to access the legal supports they need, this report contains 13 recommendations, along with sub-actions that bring these recommendations to life.

This report calls on government agencies, particularly jurisdictional child protection and justice departments, to take action through joined-up responses that are led by Aboriginal and Torres Strait Islander leaders and communities.

RECOMMENDATIONS

1. Provide increased funding and resourcing to deliver accessible legal supports to Aboriginal and Torres Strait Islander children and families by:

- 1.1** All governments establishing formal partnerships with relevant national and jurisdictional Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) that include core funding to adequately cover the holistic cost of service provision in all service areas, including:
 - delivery of early legal support and advice in relation to child protection matters, as well as during and post court proceedings,
 - holistic legal services models, and
 - service delivery in regional, remote and cross-border areas.
- 1.2** In addition to core funding, state and territory governments providing dedicated funding to jurisdictional ATSILS and FVPLS to:
 - implement place-based and culturally safe specialised youth programs dedicated to providing legal assistance and representation to Aboriginal and Torres Strait Islander young people, and
 - review, establish and deliver place-based community legal education that is culturally relevant, accessible and in line with community needs.
- 1.3** Establishing mechanisms for Aboriginal and Torres Strait Islander communities to guide decision-making for the growth and delivery of high-quality, culturally responsive legal supports within their communities.
- 1.4** State and territory governments funding specialist legal services that adopt a disability-informed approach for Aboriginal and Torres Strait Islander children and parents with disability who come into contact with child protection systems, including opportunities to co-design these specialist services with existing ACCOs.
- 1.5** Partnering with ACCO peak bodies to explore ways to reduce administrative burden for ATSILS, FVPLS and their national peak bodies, in alignment with Recommended Action 4 of the Stronger ACCOs, Stronger Families Report.

2. Increase the cultural capability of mainstream legal and court systems for Aboriginal and Torres Strait Islander children and families through:

- 2.1 State and territory governments partnering with jurisdictional ACCOs and communities to design and embed cultural capability frameworks in relation to child protection and youth criminal justice policy development, practice and service delivery, including the appointment and training of children's legal representatives.
- 2.2 State and territory governments partnering with jurisdictional ACCOs to co-design programs of judicial education for court and judicial staff that address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with the Court in child protection proceedings.
- 2.3 Requiring tertiary education institutions to implement cultural capability courses for students studying Law and other associated disciplines, which address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with legal systems.
- 2.4 Review and amend the Priestley 11 core legal subjects to include a subject that examines the impact of colonisation on Aboriginal and Torres Strait Islander communities as a mandatory part of Law degrees.

3. Strengthen and grow the Aboriginal and Torres Strait Islander legal sector through the Australian Government directly funding the cost of obtaining Graduate Diploma/Certificate in Legal Practice, Bachelor of Laws, Juris Doctor and other legal, court and justice related tertiary qualifications for Aboriginal and Torres Strait Islander students.

4. Increase early and ongoing access to legal supports and legal advocacy, outside of specific legal processes. This should be done through all governments' funding partnerships between ACCOs delivering child and family services, ATSILS and FVPLS to support access to early legal advice and referral pathways between ACCO legal services and ACCO child and family services.

5. State and territory governments to assess—and provide funding to meet—the internal legal capacity required for ACCO child and family services to effectively exercise delegated statutory authority through the transfer of decision-making power, authority, control and resources for Aboriginal and Torres Strait Islander children in contact with child protection services.

6. Ensure all Aboriginal and Torres Strait Islander children and young people have access to high-quality, culturally responsive, independent legal representation through:

- 6.1** State and territory governments funding the establishment of specialist children's legal representation services for Aboriginal and Torres Strait Islander children and young people involved in child protection proceedings within ATSILS and FVPLS.
- 6.2** State and territory governments funding the establishment of specialist children and youth legal representation services for Aboriginal and Torres Strait Islander children and young people involved in youth justice proceedings within ATSILS and FVPLS.
- 6.3** Establishing National Minimum Standards for children's legal representatives to be enshrined in legislation across all jurisdictions. These standards should embed human rights foundations, include Representation Principles focused on the representation of Aboriginal and Torres Strait Islander children and young people, and be administered by a relevant Aboriginal and Torres Strait Islander community-controlled authority.
- 6.4** Commissioning an independent review of training and ongoing professional development requirements for children's legal representatives to ensure they are adequately trained to provide accessible, culturally responsive legal services.

7. The Australian Government, in partnership with NATSILS and First Nations Advocates Against Family Violence (FNAAFV), to develop an implementation strategy for the administration of children's legal representation in child protection proceedings (currently occurring through Legal Aid Commissions and the Northern Territory Attorney-General's Department) to be transferred to ATSILS and FVPLS for Aboriginal and Torres Strait Islander children and young people by 2026.

8. State and territory governments to partner with ACCO peak bodies and ATSILS and FVPLS to establish specialist courts and/or dedicated court lists for Aboriginal and Torres Strait Islander families in care and protection matters in all jurisdictions, including providing adequate funding and resourcing for their design, implementation and evaluation.

- 8.1** Resourcing for specialist courts and/or dedicated court lists must include funding for Aboriginal and Torres Strait Islander judicial officers, or non-Indigenous judicial officers with specialist training, and for ATSILS and FVPLS to facilitate participation and navigate complexities within these courts as a core funding requirement.
- 8.2** This should also include specialised courts and/or dedicated court lists within youth justice for children in out-of-home care.

9. To address imbalances in power between parties, each Court responsible for child protection matters should have in place Practice Directions that require disclosure of evidence by child protection departments, within 14 days of the filing of a care and protection application by a department, to legal representatives for Aboriginal and Torres Strait Islander children, young people and their families.

9.1 The implementation of this recommendation should be undertaken in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

9.2 The effectiveness of the Practice Directions should be reviewed and evaluated regularly in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

10. All governments to invest in system reform for Aboriginal and Torres Strait Islander children in—or at risk of—entering out-of-home care, to promote wellbeing and prevent contact with the youth justice system by funding ACCO child and family services to provide child-centred, holistic and therapeutic supports.

10.1 Implementation of this recommendation should include all governments increasing early and tailored supports for children and families in line with the approach outlined in the National Child and Family Investment Strategy from the Safe and Supported: Aboriginal and Torres Strait Islander Action Plan 2023–2026.

11. State and territory child protection departments to partner with jurisdictional ATSILS and FVPLS to establish an automatic notification service, which will notify the relevant ACCO legal support service and ACCO child and family service that an Aboriginal and Torres Strait Islander child, young person or family has had contact with child protection and/or other statutory services, providing a timely opportunity for review, oversight, support and advocacy.

11.1 The implementation of this recommendation, including the design of the automatic notification service, should be overseen by an independent Aboriginal and Torres Strait Islander governance group, external to government, in each jurisdiction.

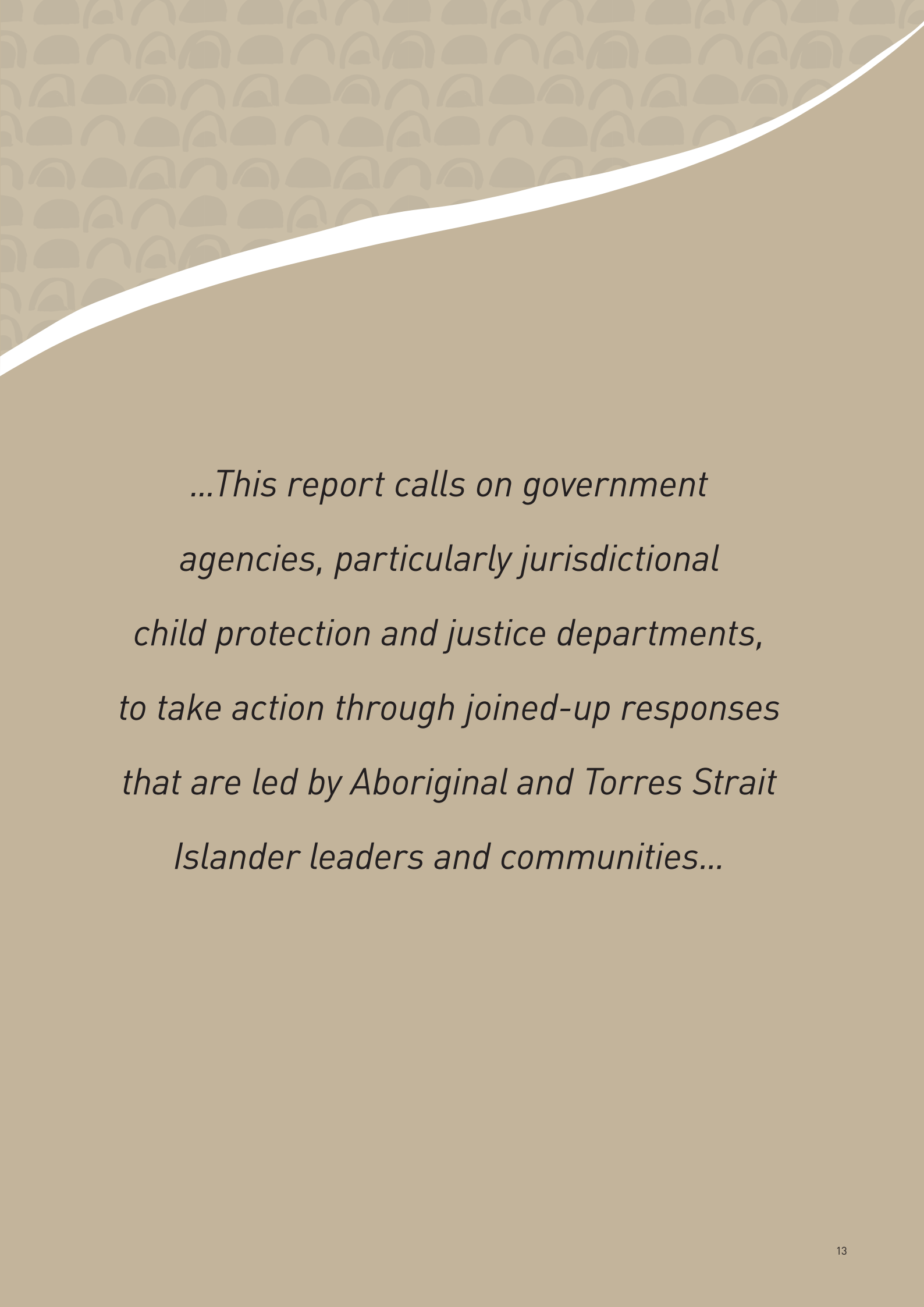
11.2 To support this recommendation, state and territory governments should amend child protection legal procedures and/or introduce legislative provisions in all jurisdictions to embed the referral of families to culturally safe legal services at the onset of child protection involvement, along with a referral to have a support person/advocate present to support children and/or parents in child protection meetings and court proceedings.

12. All governments to partner with jurisdictional ACCOs, ATSILS and FVPLS to improve understanding of—and ability to respond to—unmet legal support needs in the context of child protection through:

- 12.1 Developing robust national guidelines for implementing management and collection of data relating to Aboriginal and Torres Strait Islander children and families involved in child protection services, court proceedings and out-of-home care systems.
- 12.2 Jointly undertaking jurisdictional mapping activities to understand areas of unmet need, including reviewing legal support services available for people with disability and for children and families in remote/regional areas and cross-border regions.
- 12.3 Co-designing and agreeing on jurisdictional implementation plans to increase the availability of legal supports in areas of unmet need.
- 12.4 Reporting biannually to the Justice Policy Partnership on each government's progress towards meeting unmet need within their jurisdiction. Copies of these reports should also be shared with Safe and Supported governance structures and the Early Childhood Care and Development Policy Partnership.

13. Increase accountability and oversight mechanisms, through Aboriginal and Torres Strait Islander governance and self-determination, to support the legal needs and rights of Aboriginal and Torres Strait Islander children and families by:

- 13.1 Establishing a fully independent, empowered and legislated National Commissioner for Aboriginal and Torres Strait Islander Children and Young People through a shared decision-making process, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026.
- 13.2 Establishing independent advocates in each state/territory for children and young people in all matters relating to family and domestic violence, youth justice and child protection, including out-of-home care.
- 13.3 Implementing National Minimum Requirements for Aboriginal and Torres Strait Islander Children's Commissioners in all jurisdictions, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026, ensuring that independent, empowered and effective Aboriginal and Torres Strait Islander Children's Commissioners in each jurisdiction are developed in partnership with Aboriginal and Torres Strait Islander representatives.
- 13.4 Ratifying the Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure that would allow Aboriginal and Torres Strait Islander children to raise complaints directly with the United Nations when domestic remedies are exhausted.



...This report calls on government agencies, particularly jurisdictional child protection and justice departments, to take action through joined-up responses that are led by Aboriginal and Torres Strait Islander leaders and communities...

INTRODUCTION

For more than 60,000 years, Aboriginal and Torres Strait Islander children have been raised to be strong in their culture and to thrive, supported by family, community, Country and culture. However, the settler-colonial Australian state sought to erase Aboriginal and Torres Strait Islander peoples and their political sovereignty, dispossess them of their Country, and disconnect them from their families, communities and culture.

Since colonisation, Aboriginal and Torres Strait Islander children and families have been separated at disproportionate rates compared to non-Indigenous families. The landmark *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Bringing Them Home Report), published in 1997, documented the history of the Stolen Generations and the impact of forcible removal on children, families and communities. Many of these children grew up without connection to their culture, Country and identities.⁴

In the 27 years since the Bringing Them Home Report was released, governments have not meaningfully reduced this over-representation.

In fact, the data indicates they have gone backwards. SNAICC analysis of the latest data from AIHW's Child Protection Australia report found that in 2022–23, Aboriginal and Torres Strait Islander children were 10.8 times more likely than non-Indigenous children to be in out-of-home care or on a third-party parental responsibility order. Further, these ratios are steadily increasing, with Aboriginal and Torres Strait Islander children's rate of over-representation in out-of-home care at its highest point since this data was first recorded.

Culturally safe and appropriate legal representation is critical in supporting Aboriginal and Torres Strait Islander children, young people and families at risk of entering—or already in contact with—child protection systems. Legal representation is often the only way parents can meaningfully participate in child protection proceedings.⁵ However, in many jurisdictions, it is incredibly rare for families coming into contact with child protection to obtain legal advice and representation before their children are removed or assumed into care, or court proceedings are commenced.⁶

This Scoping Study delivers part of Action 6 in the *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026* (First Action Plan), which commits to 'improve availability and quality of legal support for

Aboriginal and Torres Strait Islander children and families engaged with child protection systems.’ As an independent study, the findings and recommendations made in this report will inform the remaining parts of Action 6 to be taken in partnership between Australian Governments and the Aboriginal and Torres Strait Islander Leadership Group, which are:

- Action 6(b) – From the Scoping Study, governments and Aboriginal and Torres Strait Islander partners to identify areas for improvement across systems, and commit to address the barriers faced by Aboriginal and Torres Strait Islander children and families in seeking legal supports. This will be developed in close alignment with the Closing the Gap Justice Policy Partnership and the National Plan to End Violence Against Women and Children 2022–2032.

- Action 6(c) – In partnership with Attorney-General’s departments, develop and implement joint proposals to progress this action.

This report is organised into four parts.

In **Part One**, we establish the strategic context for this work, after which **Part Two** outlines the project methodology. **Part three** provides an overview of the current state of legal supports for Aboriginal and Torres Strait Islander children and families. **Part four** explores the specific barriers and challenges experienced by Aboriginal and Torres Strait Islander children, young people and families in accessing culturally safe, high-quality legal supports and how these can be addressed to reduce unmet need.

THE FOUR PARTS OF THIS REPORT





PART ONE

STRATEGIC CONTEXT

SELF-DETERMINATION

SNAICC and NATSILS advocate for the full enactment of self-determination in all legislation, policies and strategies. Self-determination describes the right of Aboriginal and Torres Strait Islander peoples to autonomy and self-governance.⁷ The United Nations Expert Mechanism on the Rights of Indigenous Peoples connects the capacity of Indigenous peoples to meet their children's needs with their ability to exercise self-determination⁸.

The Australian Government has taken important steps towards recognising the rights of Aboriginal and Torres Strait Islander peoples to self-determination in matters relating to children. Safe and Supported commits to progressive systems transformation that has Aboriginal and Torres Strait Islander self-determination at its centre and defines self-determination as:

a collective right of Aboriginal and Torres Strait Islander peoples to determine and control their own destiny. It is a right of Aboriginal and Torres Strait Islander peoples to exercise autonomy in their own affairs and to maintain and strengthen distinct political, legal, economic, social and cultural institutions.⁹

For too long, governments have decided what works best for Aboriginal and Torres Strait Islander peoples and communities without delivering meaningful and tangible positive change for our children and families. Enacting self-determination is critical to designing and implementing effective policies that achieve better outcomes for Aboriginal and Torres Strait Islander children. Systems responding to Aboriginal and Torres Strait Islander child and family wellbeing need to be designed and delivered by Aboriginal and Torres Strait Islander peoples.

Self-determination cannot be realised through minor adjustments to government designed and led systems that are failing to provide effective protection for Aboriginal and Torres Strait Islander children.

The right to self-determination is not about the state working with our people, in partnership. It is about finding agreed ways that Aboriginal people and their communities can have control over their own lives and have a collective say in the future wellbeing of their children and young people.¹⁰

Put another way, meaningful self-determination is not about the state granting Aboriginal communities the 'permission' to develop and implement support services; it is about recognising that Aboriginal families have the right to be free from unwarranted state interference and the right to respond appropriately to issues within their communities. Meaningful self-determination also recognises that Aboriginal people have been negatively affected by over two centuries of colonisation and require financial and other support to develop and implement services to ameliorate their socioeconomic disadvantage.¹¹

HUMAN RIGHTS FOUNDATIONS

Aboriginal and Torres Strait Islander children and young people have a distinct set of rights, and the only way to fully protect these is to ensure they are explicitly named and incorporated in human rights instruments. Aboriginal and Torres Strait Islander children's rights include those owed to all children as well as their unique rights as Indigenous Peoples. These rights are drawn from international human rights frameworks.

Australia has ratified seven international human rights treaties, including:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities.¹²

While Australia has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), it is not a legally binding declaration¹³, and there have been no moves at the federal level to formally incorporate UNDRIP into domestic law.¹⁴ This should be urgently addressed by the Parliament of Australia legislating to codify the articles within UNDRIP¹⁵, processes for their protection and accountability mechanisms, including within the current requirements for Commonwealth Bills to include a statement of compatibility with Australia's human rights obligations.¹⁶

The rights of all children are set out in the United Nations Convention on the Rights of the Child (UNCRC) and are specific to children, their contexts and their needs. The convention contains 54 articles and is based on four core principles:

- non-discrimination
- devotion to the best interests of the child
- the right to life, survival and development, and
- respect for the views of the child.¹⁷

UNCRC articles include the right of a child to protection and care as is necessary for their wellbeing; the right to protection from violence, abuse and neglect while in the care of a parent, guardian or other person; the right to a standard of living that is sufficient to meet their physical and mental needs; and the right to an education that meets their developmental needs.

The UNCRC also contains articles that are especially important to Aboriginal and Torres Strait Islander children, such as the right to enjoy their culture and to learn and use the

language and customs of their Indigenous Nations. Article 30 of the UNCRC specifically notes the right of children to enjoy culture 'in community' with others of their cultural group. This is often overlooked for Aboriginal and Torres Strait Islander children and young people in out-of-home care, where the right to enjoy culture is often artificially separated from relationships with Aboriginal and Torres Strait Islander family, kin or community.

Aboriginal and Torres Strait Islander children's rights under the UNCRC are the focus of General Comment No. 11 (2009), which highlights the unique challenges faced by Indigenous children, emphasising their right to enjoy all human rights while maintaining their culture, language and identity. It also provides guidelines for states to support Indigenous children's rights and eliminate discrimination.¹⁸

However, many of these rights are not currently enforced in Australia. For example, Australia continues to hold a reservation to Article 37(c) of the UNCRC, which requires that children are not detained with adults. Consequently, children are currently being held in adult detention facilities and prisons in some states and territories.¹⁹ The Australian Government has defended this reservation by arguing that the geography and demography of the country make it difficult to detain all children in youth justice facilities close enough for their families to maintain regular contact.²⁰

Additionally, the Australian Government has not ratified one of the Optional Protocols to the Convention on the Rights of the Child²¹ that would allow Aboriginal and Torres Strait Islander children to raise complaints directly with the United Nations once domestic remedies are exhausted.

The United Nations Convention on the Rights of Persons with a Disability (UNCRPD) also contains several relevant articles directed at ensuring that the human rights and dignity of children and parents with disability are respected throughout their involvement with child protection systems. These include:

- Article 4(1)(b) of the UNCRPD requires state parties to 'take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities'
- Article 5(1) provides that all persons are 'equal before and under the law and are entitled without any discrimination to equal protection and equal benefits of the law'
- Article 13(1) requires state parties to 'ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages'
- Article 23(2) requires state parties to render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities
- Article 23(4) provides that in 'no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents'.^{22,23}

NATIONAL AGREEMENT ON CLOSING THE GAP

In July 2020, the Australian Government, all State and Territory governments, and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks) signed the National Agreement on Closing the Gap (National Agreement). The National Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander peoples, pushing for equality in life outcomes for all Australians.

The National Agreement is built around four Priority Reforms²⁴ to change the way governments work with Aboriginal and Torres Strait Islander communities, organisations and peoples across the country.

The Priority Reforms must inform all government action, including legislation, policy and practice, whether these actions are targeted for Aboriginal and Torres Strait Islander peoples or impact them as part of the general population.

In Priority Reform Two, the National Agreement states that Aboriginal and Torres Strait Islander community control is an act of self-determination and commits governments to strengthen the community-controlled sector. While Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs)²⁶ may look and operate differently depending on the context and needs of the community they operate within, all ACCOs centre on delivering services that build the strength and empowerment of Aboriginal and Torres Strait Islander communities.

The Priority Reforms are:

1. Formal Partnerships and Shared Decision Making	Aboriginal and Torres Strait Islander peoples are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.
2. Building the Community Controlled Sector	There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high-quality services to meet the needs of Aboriginal and Torres Strait Islander peoples across the country.
3. Transforming Government Organisations	Governments, their organisations and their institutions are accountable for Closing the Gap, and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander peoples, including through the services they fund.
4. Shared Access to Data and Information at a Regional Level	Aboriginal and Torres Strait Islander peoples have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development. ²⁵

The elements of a strong community-controlled sector are where:

- a. there is sustained capacity-building and investment in ACCOs which deliver certain services and address issues through a set of clearly defined standards or requirements, such as an agreed model of care
- b. there is a dedicated and identified Aboriginal and Torres Strait Islander workforce that complements a range of other professions and expertise, and where people working in community-controlled sectors have wage parity based on workforce modelling, commensurate with need
- c. ACCOs which deliver common services are supported by a peak body, governed by a majority Aboriginal and Torres Strait Islander Board, which has strong governance and policy development and influencing capacity
- d. ACCOs which deliver common services have a dedicated, reliable and consistent funding model designed to suit the types of services required by communities, responsive to the needs of those receiving the services, and developed in consultation with the relevant peak body.

The recommendations in this report have been developed in consideration of government commitments to the Priority Reform Areas in the National Agreement.

POLICY PARTNERSHIPS

Under the National Agreement, five policy partnerships were established to drive key actions for priority outcome areas: Early Childhood Care and Development Policy Partnership (ECCDPP), Housing Policy Partnership, Justice Policy Partnership (JPP), Languages Policy Partnership, and Social and Emotional Wellbeing Policy Partnership.

All five of the policy partnerships have been founded on the principles of shared decision-making and include representatives from all Australian governments, representatives of the Coalition of Peaks and independent Aboriginal and Torres Strait Islander members.

While the priorities of all five policy partnerships intersect, the work of the ECCDPP and the JPP is most relevant to the Scoping Study due to their focus on child protection and justice systems.

Early Childhood Care and Development Policy Partnership

The ECCDPP brings together Aboriginal and Torres Strait Islander leaders and all Australian government early childhood education and care and child protection departments to progress policy reform in relation to early childhood care and development. The ECCDPP is co-chaired by the Commonwealth Department of Education and SNAICC – National Voice for our Children.

The purpose of the ECCDPP is for governments and Aboriginal and Torres Strait Islander parties to develop a joined-up approach to policy that ensures Aboriginal and Torres Strait Islander children are born healthy, supported to thrive with strong families and proud in culture. The scope of the Partnership includes Targets 2, 3, 4, 12 and 13 under the National Agreement, which span maternal and child health, early childhood education and care, and child and family safety.

The Legal Supports Scoping Study will provide critical evidence to support governments to understand and respond to unmet legal need supports, as well as evidence-informed decision-making by the Partnership to drive progress towards Target 12 of the National Agreement to reduce the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

Justice Policy Partnership

The JPP is aimed at progressing socio-economic Target 10 of the National Agreement to reduce the rate of Aboriginal and Torres Strait Islander adults incarcerated by at least 15% by 2031 and socio-economic Target 11 of the National Agreement to reduce the rate of Aboriginal and Torres Strait Islander children (10-17 years) in detention by at least 30% by 2031.

The JPP is made up of representatives from the Coalition of Peaks, Aboriginal and Torres Strait Islander independent members, and Australian, state and territory governments.

The Legal Supports Scoping Study, including findings and recommendations, will be promoted through the JPP membership along with the subsequent activities in Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026. These subsequent activities include identifying areas for improvement across systems and committing to address the barriers highlighted in this Scoping Study, while working in close alignment with the JPP and the implementation of the National Plan to End Violence Against Women and Children 2022–2032 (Activities 6(b) and 6(c)).²⁷

SAFE AND SUPPORTED: THE NATIONAL FRAMEWORK FOR PROTECTING AUSTRALIA'S CHILDREN 2021–2031

Finalised in 2021, Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031²⁸ (Safe and Supported) is Australia's second intergovernmental framework to reduce child abuse and neglect and its intergenerational impacts, which aims to drive change through collective effort across governments and sectors that impact the safety and wellbeing of children and young people. It

builds on the National Framework for Protecting Australia's Children 2009–2020 but differs significantly in the process by which it was developed—rather than being a government-centred process in which Aboriginal and Torres Strait Islander organisations were merely consulted, Safe and Supported was negotiated through a co-design process with Aboriginal and Torres Strait Islander leaders and experts in child and family wellbeing as equal partners at the table. Accordingly, Safe and Supported reflects all governments' commitments under the National Agreement and its four Priority Reforms.

Safe and Supported sets out a 10-year strategy to improve the lives of children, young people and families experiencing disadvantage or who are vulnerable to abuse and neglect. It includes an agreed vision and goal, priority groups, focus areas and underpinning principles. Aboriginal and Torres Strait Islander children and young people are identified as one of the four priority groups, with a corresponding focus area to reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection systems (closely aligned with Target 12 of the National Agreement).

Implementation of Safe and Supported takes place through two sets of Action Plans, with the current Action Plans spanning between 2023 and 2026 and each including eight actions.²⁹ The First Action Plan addresses the needs of all Australian children, focusing on children and families who are experiencing disadvantage and/or are vulnerable. The Aboriginal and Torres Strait Islander First Action Plan—again, negotiated in partnership between the Aboriginal and Torres Strait Islander Leadership Group and the Australian, State and Territory Governments—focuses on achieving safety and wellbeing outcomes for Aboriginal and Torres Strait Islander children in order to reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection systems.³⁰

Both Action Plans are governed by a shared decision-making structure that respects Aboriginal and Torres Strait Islander leaders and experts as equal partners, including through a range of subject-specific Working Groups and by vesting the Aboriginal and Torres Strait Islander Leadership Group with equal authority to Community Service Ministers.

This project was commissioned to support the implementation of Safe and Supported by progressing part of Action 6 of the Aboriginal and Torres Strait Islander First Action Plan to ‘improve availability and quality of legal support for Aboriginal and Torres Strait Islander children and families engaged with child protection systems.’ Under Activity A of this Action, governments have committed to commission an independent scoping study on the interface between child protection systems and relevant legal services, including domestic and family violence legal services, and youth justice systems. This Scoping Study assesses the barriers experienced by Aboriginal and Torres Strait Islander children and families in accessing legal supports, including mapping the issues faced by Aboriginal and Torres Strait Islander children and families at risk of—or already in—contact with child protection systems across each jurisdiction, and quantifying levels of access to justice.

In the context of child protection, legal assistance plays a crucial role in ensuring that the voices of Aboriginal and Torres Strait Islander children, families and communities are heard, their rights are upheld, and child protection systems are accountable for decisions they make about Aboriginal and Torres Strait Islander peoples’ lives.

This Scoping Study will contribute to achieving the outcomes of Safe and Supported by:

- identifying barriers to accessing legal services for Aboriginal and Torres Strait Islander children and families experiencing discrimination, and/or at risk of contact with child protection and youth justice systems; and
- identifying solutions to improve access to legal services and justice for Aboriginal and Torres Strait Islander children and families.

NATIONAL LEGAL ASSISTANCE PARTNERSHIP

The National Legal Assistance Partnership 2020–2025 (NLAP) is an intergovernmental funding agreement, under which the Commonwealth Government provides funds to all state and territory governments for disbursement to legal assistance providers.^{31,32} The NLAP’s objective is to contribute to integrated, efficient, effective and appropriate legal assistance services that, within available resources, focus on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage.

The NLAP aims to facilitate the achievement of the following outcomes:

- a. Legal assistance services are focused on, and accessible to, people facing disadvantage.
- b. Legal assistance services are delivered in a client-centric manner in order to better consider people’s legal needs and capabilities.

- c. Legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people's legal and other problems.
- d. Legal assistance services are provided at an appropriate time, which best addresses an individual's legal needs, including preventative action when appropriate.
- e. Legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address or prevent legal problems.
- f. Legal assistance providers are supported to build the capacity of their organisations and staff to ensure they can effectively respond to evolving service demand.

The NLAP also supports the delivery of Aboriginal and Torres Strait Islander-specific legal assistance services—consistent with the principle of self-determination—as defined under the NLAP to facilitate the achievement of the following outcomes:

- a. Enable and empower Aboriginal and Torres Strait Islander peoples in addressing their legal needs.
- b. Improve access to justice outcomes for Aboriginal and Torres Strait Islander peoples.

The NLAP is subject to an independent review every five years to inform the negotiation of a successor legal assistance funding mechanism. The review of the current NLAP, undertaken by Dr Warren Mundy, was released in May 2024.

Dr Mundy's key findings included:

- the current funding for Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) is insufficient to support the legal needs of Aboriginal and Torres Strait Islander peoples;
- the current NLAP has failed to deliver on governments' commitments under Closing the Gap, especially the Priority Reforms, and governments, including states and territories, must be held accountable to progressing these outcomes for Aboriginal and Torres Strait Islander peoples;
- the legal needs of Aboriginal and Torres Strait Islander peoples are the highest of all priority groups under the NLAP funding framework.³³

ATSILS, FVPLS and other ACCOs have called for the Commonwealth Government to implement Dr Mundy's recommendations in full with the next agreement.

On 22 November 2024, all Attorneys-General agreed to the terms of the new 5-year National Access to Justice Partnership 2025–30 (NAJP), which will commence on 1 July 2025 and will replace the current NLAP. The NAJP sets out that governments will work in partnership with the ACCO legal-assistance sector to develop a Closing the Gap Schedule within the first 2 years of the agreement.³⁴ The Schedule will support the National Agreement on Closing the Gap Priority Reforms and progress relevant targets and outcomes, particularly Targets 10, 11, 12 and 13.



PART TWO

METHODOLOGY

The Legal Supports Scoping Study used a mixed consultation methodology to understand and explore unmet legal needs for Aboriginal and Torres Strait Islander children and families.

The Study included a desktop review of existing evidence, engagement with individuals and organisations providing legal support and assistance, and analysis of available government data and information on the provision of legal support services.

Work on the study commenced in July 2023, and the draft final report was submitted to the Department of Social Services in September 2024.

DESKTOP REVIEW

This desktop review explored existing research and evidence on access to legal services for Aboriginal and Torres Strait Islander children and families experiencing discrimination or at risk of contact with child protection systems, effective legal support models for Aboriginal and Torres Strait Islander children and families within the child protection system, and solutions to improve access to legal services and justice for Aboriginal and Torres Strait Islander children and families.

The desktop review included analysis of:

- inquiries and reviews;
- peer-reviewed research;
- reports from Commissioners for Children and Young People;
- government plans, strategies and policy frameworks relating to youth justice, child protection, family violence, and access to legal services and supports for Aboriginal and Torres Strait Islander peoples;
- evaluations of legal services and models, including court-based supports, community legal education and paralegal supports;
- Aboriginal and Torres Strait Islander Legal Services sector papers and reports;
- legislative provisions relating to access to legal support for Aboriginal and Torres Strait Islander children and families in contact with child protection;
- policy provisions relating to access to legal support for Aboriginal and Torres Strait Islander children and families in contact with child protection; and
- funding sources, models, such as the NLAP, and budget papers.

ENGAGEMENT

The engagement focused on ATSILS, FVPLS, including their national peak body, First Nations Advocates Against Family Violence (FNAAFV), formerly National Family Violence Prevention Legal Service, and ACCOs that provide child and family services.

Online, semi-structured jurisdictional forums and an online survey were selected as the most appropriate engagement methods to accommodate the location, capacity and variety of stakeholders.

ONLINE FORUMS

Online forums (Table 1) with structured questions were held in all jurisdictions throughout May 2024. Invitations were circulated throughout SNAICC's membership, social media and broader network, including through members of the Expert Advisory Group.

Table 1: Online forum participants by jurisdiction and service type.

	ACT	NT	QLD	SA	TAS	VIC	WA	NSW	TOTAL
Aboriginal and Torres Strait Islander Legal Services	1	4					1		6
Aboriginal Community Controlled Organisation - Child and Family Services	3	4	2	8	4	1	3		25
Legal Aid Commission		2	1			2	1	1	8
First Nations Advocates Against Family Violence			1			1	4		6
Non-Indigenous Organisation					1		1		2
Other		1		1		1	1	3	7
Total participants	4	11	1	9	5	5	11	1	54

ONLINE SURVEY

An online survey (Table 2) was designed³⁵ to collect data on the needs, barriers and opportunities of Aboriginal and Torres Strait Islander children and families in accessing legal support related to child protection and other matters, such as family violence and youth justice. The online survey included 40 questions, combining multiple-choice and short-answer questions. While primarily designed to collect responses from stakeholders working with Aboriginal and Torres Strait Islander children and families in contact with the child protection and legal system, other stakeholders were able to contribute based on previous experience with families, including lived experience.

The online survey received a total of 57 responses.³⁶ Approximately 75% of survey respondents were currently employed by Aboriginal and Torres Strait Islander owned and controlled organisations, 13% were employed by non-Indigenous not-for-profit organisations and the remaining 12% were employed by government organisations.

In addition, 64%, or more than half, of the respondents were employed in either the child and family services sector or the legal assistance services sector. The remainder of respondents were employed in the following sectors: youth services, domestic, family and/or sexual violence services, mental health, community development, health, justice, early childhood education and care, homelessness and housing, and disability support.

GOVERNMENT DATA

SNAICC and NATSILS issued Commonwealth, state and territory governments with a request to provide jurisdictional information on:

- funding allocations for legal supports,
- programs and services that support the legal needs of children and families,
- evaluation outcomes, and
- service utilisation.

No jurisdictions provided a full response to the information request issued; accordingly, the provided data has been incorporated into this report wherever possible, while noting the limitations of the analysis able to be provided.

Note: Information provided on funding data is included in Appendix C.

Several jurisdictions noted that their funding disbursements are not typically allocated in a way that is disaggregated to Aboriginal and Torres Strait Islander children and parents, or specifically for child protection legal matters. Other data related to the legal needs of Aboriginal and Torres Strait Islander children and parents is not widely available, and accessing it through, for example, Freedom of Information requests was beyond the scope of this project. This, combined with a lack of consistent and complete data across jurisdictions, places limitations on meaningful analysis that allows for the quantification of unmet legal need for Aboriginal and Torres Strait Islander children and families. This report provides more detail about current data collection and analysis practices, and what is needed to be able to better quantify unmet legal need, on pp. 62–63.

Table 2: Survey respondents by jurisdiction.

	ACT	NT	QLD	SA	TAS	VIC	WA	NSW	TOTAL
Survey respondents	0	11	3	7	3	9	10	14	57

EXPERT ADVISORY GROUP

Oversight for the Study was provided by an Expert Advisory Group. The Expert Advisory Group was comprised of members who specialise in supporting the legal needs of Aboriginal and Torres Strait Islander children and families who come in contact with child protection, and other legal areas such as family violence and youth justice. It included representation from specialist Aboriginal and Torres Strait Islander community-controlled legal services, ACCOs delivering child and family support, other legal service providers, practitioners and other specialists.

The Expert Advisory Group was established to provide guidance in identifying opportunities and options to address systemic discrimination and barriers, improve legal and related supports, and reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. The Expert Advisory Group met four times over the course of the project and reviewed and provided input out of session.



PART THREE

CURRENT LEGAL SUPPORTS

A well-functioning justice system is fundamental to protecting the rights of Aboriginal and Torres Strait Islander children and families, including their ability to participate in legal decisions that impact their lives. In the context of child protection, legal assistance plays a crucial role in ensuring that the voices of Aboriginal and Torres Strait Islander children, families and communities are heard, their rights are upheld, and child protection systems are accountable for decisions they make about Aboriginal and Torres Strait Islander peoples' lives.

WHAT ARE LEGAL SUPPORTS?

In the context of child protection, legal supports encompass a broad range of services, including community legal education, legal advice, administrative review, document preparation, representation in courts and tribunals, and alternative forms of dispute resolution. Non-legal advocacy is also crucial as it operates as an enabler for legal supports and upholds various child protection legal and administrative processes at different stages of the child protection continuum. Legal supports and non-legal advocacy are vital for families to advocate for their rights and navigate complex child protection systems.³⁷

In practice, legal supports can vary depending on the specific needs of the family and the nature of the child protection matter. For example, some families may need help understanding their rights and options, while others may require representation in court to challenge the removal of their children. Throughout this Scoping Study, participants raised that the right to seek administrative review of child protection decisions is often underutilised due to insufficient legal services funding and relatively low awareness of the right to review a child protection decision. Additionally, families dealing with child protection frequently face other complex legal issues, such as criminal or civil matters, which are often interconnected. The level of support each client will need cannot be accurately predicted or quantified at first contact, and it will often change over time.

The availability and effectiveness of legal supports is a fundamental component of procedural fairness and ensuring equitable access to justice. It is also crucial to preventing unnecessary separations and ensuring that children remain connected to their family, community, Country and culture. These systems should reflect the values of Aboriginal and Torres Strait Islander communities. Without these safeguards, the rights of children and families are at risk of being overlooked.

CHILD PROTECTION MATTERS IN THE COURTS

Child protection matters are typically held in the Children's Court at the state and territory level; however, this can differ in regional areas. The Federal Circuit and Family Court of Australia (FCFCOA) considers safety and risk at all stages of family law proceedings and has jurisdiction to make orders for the care and welfare of children. A judicial officer of FCFCOA can request the intervention of a child welfare officer in family law proceedings under section 91B, however, intervention rarely occurs.

The FCFCOA will usually adjourn proceedings where child protection proceedings are on foot. Section 69ZK of the Family Law Act provides that a court having jurisdiction under the Family Law Act must not make an order in relation to a child who is under the care of a person under a child welfare law unless the order is expressed to come into effect when the child ceases to be under that care, or unless the order is made in family law proceedings instituted or continued with the written consent of a child welfare officer.

HOW ARE CHILDREN AND YOUNG PEOPLE REPRESENTED IN CHILD PROTECTION LEGAL MATTERS?

The process for child representation varies between jurisdictions and is dependent upon a child's age and their capacity to give instructions to legal representatives. In some jurisdictions, representation is mandatory, whilst in others, it is on application of another party or at the request of the Court. Legal representation for Aboriginal and Torres Strait Islander children in child protection matters is typically administered by Legal Aid Commissions, except in the Northern Territory, where the Solicitor for the Northern Territory—part of the Department of the Attorney-General and Justice—is responsible.

Table 3 provides information on the representation of children in child protection proceedings, per legislation in each jurisdiction.

Table 3: Representation of children in child protection proceedings, per legislation in each jurisdiction.

JURISDICTION	LEGISLATION
New South Wales	<i>Children and Young Persons (Care and Protection) Act 1998 (NSW) s 99:</i> Provides for the appointment of a legal representative for a child or young person, with a distinction being made between children above the age of 12 ("directly represented") and those under the age of 12 being independently represented in their best interests (see sections 99A, 99B, 99C). The role of a child representative in proceedings is outlined in section 99D.
Victoria	<i>Children, Youth and Families Act 2005 (Vic) s 525:</i> Mandates that children aged 10 years or more must be legally represented. In exceptional circumstances a child aged under 10 years, or a child aged 10 years or more whom the Court determines is not mature enough to give instructions, may be appointed a Best Interests Lawyer who is not required to act on instructions but must communicate to the Court the wishes expressed by the child to the extent it is practicable to do so.

JURISDICTION	LEGISLATION
Queensland	<i>Child Protection Act 1999 (Qld) s 110:</i> Allows for the appointment of a Child Representative to advocate for the child's interests if the Court considers it necessary in the child's best interest. Where the making of an order is contested by the child's parents or opposed by the child, the Court must consider the appointment. The separate representative for the child must act in the child's best interests, regardless of any instructions from the child.
South Australia	<i>Children and Young People (Safety) Act 2017 (SA) s 67:</i> The Act mandates that the Children's Court must consider the views of children, and a Children's Lawyer may be appointed to represent them. The level of representation is often based on the child's age and maturity. Section 63 outlines what requests or directions a legal representative for a child must comply with, to the extent that it is consistent with the legal practitioner's duty to the Court.
Western Australia	<i>Children and Community Services Act 2004 (WA) s 8:</i> Provides that the Children's Court must consider the wishes of children aged 12 and over. The Act allows for the appointment of a lawyer for children (section 148), particularly when they are deemed capable of understanding and expressing their wishes. Such lawyers are required to act on children's instructions if they have sufficient maturity and understanding to give instructions and wish to do so, and in any other case, must act in the child's best interests.
Tasmania	<i>Children, Young People and Their Families Act 1997 (Tas) s 59:</i> Provides that the Court cannot proceed to hear an application unless the child is represented or the Court is satisfied the child has made an informed and independent decision not to be so represented. The Court is obliged to hear the views of the child (section 56), and these should be taken into account, having regard to the child's maturity and understanding (section 10F).
Australian Capital Territory	<i>Court Procedures Act 2004 (ACT) s 74E:</i> A child or young person may be represented in a court proceeding in relation to them, and a Court can only proceed to hear an application if the child has a lawyer or the Court is satisfied that they have had a reasonable opportunity to get representation, and their best interests will be adequately represented in the proceeding. The requirement for the Court to take into account the views and wishes of children and young people is found in separate legislation – Children and Young People Act 2008 (ACT), s 352.
Northern Territory	<i>Care and Protection of Children Act 2007 (NT) s 10:</i> In deciding what is in a child's best interest, the Court should consider the views of children, having regard to the maturity and understanding of the child. Children are considered parties to proceedings, and every party may be represented (section 101).

HOW ARE PARENTS REPRESENTED IN CHILD PROTECTION LEGAL MATTERS?

Child protection legislation in each jurisdiction recognises the right of parents to be legally represented in child protection proceedings. However, child protection laws are shaped by Western ideas of family, where legal authority over children is primarily vested in parents.³⁸ During engagement for this Scoping Study, it was highlighted that other caregivers—such as kinship carers, who are essential in bringing up children and providing care in many Aboriginal and Torres Strait Islander families and communities—are not always recognised as having a right to be legally represented in child protection proceedings. Indigenous legal frameworks recognise shared responsibilities for children, particularly involving extended family and elders, such as grandmothers. This difference in approach affects how child protection systems operate and make decisions.

Expanding definitions of adults who are entitled to representation in child protection proceedings, to include caregivers like kinship carers, is essential for recognising the millennia of successful child-rearing these family structures have supported. In other related areas of law, changes to the Family Law Act have expanded the definitions of 'relative' and 'member of the family' to include Aboriginal and Torres Strait Islander concepts of family.³⁹ Participants highlighted that it is promising to see broader definitions of family applied in other areas of law, and these changes should also be considered in relation to care and protection legislation.

WHAT DO WE KNOW ABOUT THE CURRENT UNMET NEED?

The Productivity Commission's review of progress against the National Agreement highlighted the current unmet legal need of Aboriginal and Torres Strait Islander children and families as a significant barrier to achieving improved legal outcomes. This is evidenced by the incarceration rate for Aboriginal and Torres Strait Islander adults increasing—with the National Agreement's target of a 15% reduction by 2031 now off track, the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system showing no progress, and the rate of Aboriginal and Torres Strait Islander children in out-of-home care continuing to rise.⁴⁰

A lack of sufficient funding for legal services has also been identified as a reason for unmet need, with the 2024 Independent Review of the National Legal Assistance Partnership also finding that current funding for ATSILS and FVPLS is insufficient to service the legal needs of Aboriginal and Torres Strait Islander peoples.⁴¹

The Legal Australia-Wide Survey (LAW Survey) remains the most extensive quantitative assessment of legal needs conducted in Australia. It was published in 2012 and involved interviews with 20,716 individuals across all states and territories, focusing on legal problems, actions taken, sources of advice and outcomes. This survey identifies disadvantaged groups as particularly vulnerable to legal problems.

State-specific research also helps to bolster our understanding of unmet legal needs. For example, the findings of the Victoria Law Foundation's 2023 Public Understanding of Law Survey (PULS)⁴², as reflected in the Victoria Law Foundation's submission to the NLAP review, indicate a very high level of unmet legal need in Victoria. Among the 6,008 respondents,

legal needs were unmet in 90% of cases where expert help was sought from legal services, and in 78% of cases where non-lawyer experts were consulted.

Research regarding unmet legal need of Aboriginal and Torres Strait Islander communities specifically also highlights significant gaps, particularly in civil and family law. A study by Cunneen and Schwartz⁴³, the first state-wide Indigenous-specific assessment in New South Wales, identified barriers to accessing legal assistance and emphasised the need to address civil and family law needs to improve access to justice. These findings provide guidance for legal service providers in developing targeted services for Aboriginal and Torres Strait Islander communities.

Additionally, research by Durbach, Edgeworth and Sentas⁴⁴ examined Aboriginal and Torres Strait Islander legal needs across a range of areas, including housing, discrimination, credit, debt, consumer issues, social security and child protection. This study noted the complexity of legal needs within Aboriginal and Torres Strait Islander communities, which are often compounded by social and economic disadvantage and restricted access to legal services. This research outlines areas where access to justice can be improved for Aboriginal and Torres Strait Islander communities.

WHAT ARE THE BARRIERS FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN, YOUNG PEOPLE AND FAMILIES IN ACCESSING LEGAL SUPPORT?

This Scoping Study's desktop review and engagement with the sector highlighted a number of key barriers for Aboriginal and Torres Strait Islander children, young people and families accessing legal support.

These include:

- Current funding models for legal support often fail to address the urgent and culturally specific needs of Aboriginal and Torres Strait Islander families. The lack of funding can mean that legal support is frequently not available when families first come into contact with the child protection system, leading to missed opportunities to access information about their legal rights early in the process.
- Systemic racism in mainstream legal systems means that most courts do not provide culturally informed or accessible services for Aboriginal and Torres Strait Islander people. These systems often do not account for the cultural rights of Aboriginal and Torres Strait Islander families, and this lack of cultural capability can create significant barriers to accessing legal support. As long ago as 1991, the Royal Commission into Aboriginal Deaths in Custody found that systemic racism and a lack of understanding of Aboriginal cultures contributed to poorer legal outcomes and less access to justice for Aboriginal people.⁴⁵
- ACCOs provide culturally safe environments and practical support, which are crucial for early intervention. In addition, ACCOs providing child and family services and other non-legal ACCOs are critical in bridging gaps between Aboriginal and Torres Strait Islander families and legal services, including through facilitating community-specific advice and referrals to legal supports. However, these services are not funded to provide this support or services.
- Legal representation for children, particularly in child protection cases, varies significantly across Australian jurisdictions. This inconsistency can lead to unequal legal outcomes and varying levels of support for children and, consequently, for their families.
- Children in out-of-home care, including those placed in foster care or residential care, are consistently let down by systems that intervene in their lives. These systems do not do enough to deter or divert children and young people from the criminal justice system and do not provide adequate access to legal support.
- Data collection and analysis practices regarding legal needs and service gaps are insufficient, leading to a lack of visibility of unmet needs.
- There is often a lack of oversight and accountability in the legal system, which can lead to insufficient attention to the needs of Aboriginal and Torres Strait Islander peoples.



PART FOUR

CHALLENGES AND SOLUTIONS

CURRENT FUNDING RESTRICTS THE ACCESSIBILITY OF LEGAL SUPPORTS FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN, YOUNG PEOPLE AND FAMILIES

This Scoping Study's desktop research and engagement with the sector highlighted that Aboriginal and Torres Strait Islander children, young people and families are not accessing the legal supports they need to be effectively represented throughout child protection matters. A key barrier to engaging with legal supports is a lack of availability of culturally safe, high-quality services. This challenge is particularly acute in regional and remote areas.

The current funding arrangements for ATSILS, FVPLS and other legal support organisations do not reflect the full cost of service delivery, meaning that most organisations do not receive enough funding to meet the full demand for their services. As a result, these organisations are regularly faced with difficult decisions on where to direct their limited resources. This funding shortfall is exacerbated in regional and remote locations. This disparity in funding, compared to non-Indigenous organisations, raises concerns about discriminatory practices. If governments fail to provide comparable investment based on the needs of Aboriginal

and Torres Strait Islander communities, this undermines equitable access to legal representation and contributes to ongoing disparities in legal support and justice outcomes for Aboriginal and Torres Strait Islander peoples.

In addition, competitive grant processes have been found to disadvantage ACCOs.⁴⁶ Significant reporting and administrative burdens, along with a fundamental misalignment between how organisations are funded and what services communities need, restrict the ability of ATSILS, FVPLS and other legal support organisations to deliver effective, culturally responsive legal supports.

"We need urgent funding and support for holistic legal service models that provide integrated and continuous support for Aboriginal families."

Victoria Online forum participant

The expenditure data provided by jurisdictions as part of this Scoping Study highlighted that the majority of funding provided to Aboriginal and Torres Strait Islander community-controlled legal services is done so under the NLAP (refer to Appendix C). The resourcing constraints experienced by ATSILS, FVPLS, and other legal services under the NLAP are well evidenced.⁴⁷ Funding and resourcing shortfalls

limit the availability of support to Aboriginal and Torres Strait Islander children and families to challenge child protection applications and appeal care and protection orders. The resulting staffing shortfalls also limit the ability for legal services to manage conflicts of interest by quarantining relevant information between legal matters, which can prevent Aboriginal and Torres Strait Islander parents and families from being able to access timely and quality legal representation.⁴⁸

Resourcing shortfalls also highlight that the current funding model for ATSILS and FVPLS is inequitable in comparison to non-Indigenous services.⁴⁹ This perpetuates long-lasting inequities within the legal services sector, such as the salaries for ATSILS and FVPLS staff being lower than those in Legal Aid Commissions and Community Legal Centres, showing that this funding model significantly undervalues the skills required to deliver holistic, culturally safe and responsive legal services.⁵⁰ This disparity also suggests a broader, systemic undervaluing of Aboriginal and Torres Strait Islander-led services compared to non-Indigenous organisations.

In many jurisdictions, there are a number of legislative special measures designed to recognise and protect the distinct human rights of Aboriginal and Torres Strait Islander children and families and address their over-representation in the child protection system. This includes, for example, additional decision-making principles for Aboriginal and Torres Strait Islander children in the Children, Youth and Families Act 2005 (Vic)⁵¹, and specific considerations regarding making permanent care orders for Aboriginal and Torres Strait Islander children in the Child Protection Act 1999 (Qld)⁵². These measures are in addition to the generalist child protection advice that is applied when giving advice to families of other backgrounds.

Understanding and applying these special measures requires specialist legal expertise, as well as a deep understanding of the continuing impacts of colonisation on Aboriginal and Torres Strait Islander families and communities, and salaries should be commensurate with these specialist skills. Accordingly, governments should work with NATSILS and FNAAFV to implement the NLAP review's recommendations on ensuring pay parity for ATSILS and FVPLS lawyers and non-legal staff is included in the successor funding agreement.

To improve access to culturally safe and accessible legal supports, state and territory governments should fund specialist legal services that adopt a disability-informed approach. These services should be co-designed with ACCOs to ensure they meet the specific needs of Aboriginal and Torres Strait Islander children and parents with disability in contact with child protection systems. This approach reflects the importance of integrating cultural values into service delivery, as highlighted in Scott Avery's Culture is Inclusion model.⁵³ Avery's work emphasises that culturally inclusive services must acknowledge the unique experiences of Aboriginal and Torres Strait Islander peoples living with disability and the ongoing impacts of colonisation. Providing these tailored services will help ensure families receive effective and appropriate legal representation, particularly in navigating the complexities of child protection systems.

Another significant challenge experienced by ATSILS and FVPLS is a lack of core funding for community legal education through the National Legal Assistance Partnership, despite the fact that states and territories also do not appear to provide any standalone funding for community legal education. In response to a request to provide data on government expenditure towards community legal education for Aboriginal and Torres Strait Islander

communities, only three jurisdictions confirmed that they fund targeted programs designed to support Aboriginal and Torres Strait Islander children in contact with the child protection and justice systems or to prevent this contact. None of these programs specifically focuses on community legal education initiatives, such as supporting children and families to understand their legal rights (refer to Appendix 3).

From this evidence, it is clear that ATSILS, FVPLS and non-legal ACCOs are expected to fund community legal education activities from within their core funding. This makes delivery of community legal education inconsistent and challenging for services to prioritise alongside service delivery.

"I think we have to do more education with our people, whether at men's or women's groups. I don't think they trust anyone right now. They wait until the last minute, because they think they don't need a lawyer yet, but I think that's why we need to do work with ACCOs to get it out to communities, don't wait for trouble to come. Come in and hear what your rights are."

NSW Online Forum participant

Legal and justice systems are inherently complex and challenging to navigate. Community legal education is important because it helps people build their knowledge and understanding of the law and how it applies to them. For Aboriginal and Torres Strait Islander peoples, culturally responsive, accessible and accurate community legal information builds an important understanding of how the legal system works, including myth busting, their entitlements within the system, and how these can be navigated.

"We need to target people a little differently, and use people from community. When I started a women's group, we had to go and pick them up, say come and have a cup of tea! We had to do that. It's not getting to our people. We need to hear good stories where law has worked for our people. It needs to go through our local groups. And do some pamphlets that our people can understand, not big jargon! One page! And a phone number they can ring!"

NSW Online Forum participant

Throughout engagement, participants consistently stated that as community legal education is not appropriately funded or resourced, it is unable to effectively meet the needs of community. Community legal education for Aboriginal and Torres Strait Islander people must be designed and delivered in culturally responsive and engaging ways to ensure it reaches those most in need of the information.

"I can only encourage people to be innovative and creative in how we go about business. . . It needs to be region-based as well. In remote communities, English isn't the first language, we won't interact with them like we would with people in Brisbane. Education has to be considerate, thoughtful, and pro-active, based on need."

QLD Online Forum participant

More broadly, the NLAP review highlighted that the current funding for all legal services, including ATSILS and FVPLS is insufficient and as a result there has not been a meaningful progression towards the relevant Closing the Gap targets.⁵⁴ The review also concluded that governments have not been delivering on their commitments to the four Priority Reform areas of the National Agreement, including building the community-controlled sector.

This lack of effective implementation, previously observed in the Productivity Commission's report⁵⁵, raises concerns about systemic discrimination in funding, as it continues to undermine Aboriginal and Torres Strait Islander communities' access to equitable legal services and self-determination.

To deliver on their commitments under the National Agreement, and to ensure that Aboriginal and Torres Strait Islander people have appropriate access to legal supports, all governments must invest in the community controlled legal sector. This can be done through increased funding that reflects the holistic cost of service delivery. These services are primarily delivered through Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS); however, organisation-specific funding decisions for legal supports should be led by communities and invested into the services, organisations and supports that local community members determine are most appropriate to meet their needs.

Funding approaches should allow legal services to build on the existing strengths of the sector, delivering culturally responsive and holistic services tailored to community needs. This should occur even in communities that do not have an established ATSILS or FVPLS by working closely with community members to identify and invest in legal supports that can be delivered immediately within their communities.

By ensuring that funding is driven by community-led decision-making, adaptable and targeted specifically towards child protection related legal support, rather than being absorbed into broader criminal justice legal assistance, legal services will be able to deliver effective services that meet the demands of community and the needs of children and families in contact with child protection systems.

RECOMMENDATION ONE

1. Provide increased funding and resourcing to deliver accessible legal supports to Aboriginal and Torres Strait Islander children and families by:

- 1.1 All governments establishing formal partnerships with relevant national and jurisdictional Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) that include core funding to adequately cover the holistic cost of service provision in all service areas, including:
 - delivery of early legal support and advice in relation to child protection matters, as well as during and post court proceedings,
 - holistic legal services models, and
 - service delivery in regional, remote and cross-border areas.
- 1.2 In addition to core funding, state and territory governments providing dedicated funding to jurisdictional ATSILS and FVPLS to:
 - implement place-based and culturally safe specialised youth programs dedicated to providing legal assistance and representation to Aboriginal and Torres Strait Islander young people, and
 - review, establish and deliver place-based community legal education that is culturally relevant, accessible and in line with community needs.

1.3	Establishing mechanisms for Aboriginal and Torres Strait Islander communities to guide decision-making for the growth and delivery of high-quality, culturally responsive legal supports within their communities.
1.4	State and territory governments funding specialist legal services that adopt a disability-informed approach for Aboriginal and Torres Strait Islander children and parents with disability who come into contact with child protection systems, including opportunities to co-design these specialist services with existing ACCOs.
1.5	Partnering with ACCO peak bodies to explore ways to reduce administrative burden for ATSILS, FVPLS and their national peak bodies, in alignment with Recommended Action 4 of the Stronger ACCOs, Stronger Families Report.

MAINSTREAM LEGAL AND COURT SYSTEMS ARE NOT CULTURALLY SAFE FOR ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN, YOUNG PEOPLE AND FAMILIES

Mainstream services, particularly within the justice system, are not culturally safe by design and continue the legacy of colonisation. The systemic failure of these systems is evident in the significant over-representation of Aboriginal and Torres Strait Islander people in the justice system, disproportionately high rates of deaths in custody and the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. It is worth noting that efforts towards cultural capability can only work to minimise harm within colonial systems and will never create fulsome safety for Aboriginal and Torres Strait Islander peoples. The only way to

create true cultural safety is the dismantling of colonial systems and structures and the realisation of self-determination.

However, making systems more culturally responsive and capable as an interim step is critical to the safety and wellbeing of Aboriginal and Torres Strait Islander peoples within them.

In a legal and child protection context, a lack of cultural capability within the system creates barriers to effective support for Aboriginal and Torres Strait Islander families. This gap in cultural understanding can lead to inadequate service delivery, miscommunication and a lack of trust between families and legal institutions. Increasing the cultural capability of the child protection and justice workforce is therefore necessary to create a more culturally informed system and to address the barriers that prevent access to legal support for Aboriginal and Torres Strait Islander children and families. The Productivity Commission's review of progress against the National Agreement on Closing the Gap recommended that governments embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander peoples into all their work and practices.⁵⁶

There is a need for non-Indigenous legal practitioners and judicial officers to build their cultural capability. This applies to both non-Indigenous judicial officers and legal practitioners who work directly with Aboriginal and Torres Strait Islander children, young people and families through legal support services or mainstream systems, and those working across the broader sector. The Productivity Commission's 2024 report on their review of the National Agreement on Closing the Gap stresses the importance of recognising the pervasive influence cultural bias has in policymaking and service delivery.⁵⁷ These biases result in decisions and practices that do not align with the needs or values of Aboriginal

and Torres Strait Islander peoples. Unpacking these biases is crucial in achieving meaningful change and transforming systems to be more equitable and effective.⁵⁸

Current educational pathways for legal practitioners often lack focus on Aboriginal and Torres Strait Islander experiences and perspectives, which exacerbates the disconnect between the legal system and Aboriginal and Torres Strait Islander communities. There is an opportunity for tertiary education institutions to support the development of cultural capability within the legal sector by introducing mandatory subjects as part of obtaining legal qualifications. An example of this is Curtin University's 'Indigenous Peoples, Law and Justice' subject,⁵⁹ which is aimed at enhancing understanding of Aboriginal and Torres Strait Islander perspectives on the law and increasing the cultural capability of the legal profession overall. Wherever possible, such education opportunities should be immersive and include community input into the content.

Cultural capability is not a one-off learning or activity, and it is important that it is effectively embedded into the legal sector for the whole workforce across all government, community sector and ACCO services. To ensure this is done in a way that is responsive to local needs, legislative requirements and other jurisdictional considerations, state and territory governments should work in partnership with ACCO peak bodies, service providers and local communities to design and embed cultural capability frameworks to guide the sector. In line with the National Agreement on Closing the Gap, these frameworks should include what steps the government is taking to build its cultural capability and transform child protection and youth justice system policies and practices.

It is equally important for judges, magistrates and other legal decision-makers to improve their cultural capability through participation

in more robust judicial education programs. In NSW, the Family is Culture: Final Report stated that magistrates with specialised knowledge of Aboriginal culture—and a proven ability to communicate and work with Aboriginal families—would help to ensure the best outcomes for Aboriginal children in the out-of-home care system with a strong, sustainable cohort of Aboriginal magistrates being the ideal scenario. The report also made a number of recommendations about the kinds of topics that should form part of a program of education, including information about decision-making involving children in out-of-home care and the criminal justice system, identification and de-identification of Aboriginal children in proceedings, the Aboriginal and Torres Strait Islander Child Placement Principle, and 'research on intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal parents' interactions with the Court'.⁶⁰

There is a range of existing useful resources that legal professionals can draw upon to improve their cultural capability and better incorporate Aboriginal and Torres Strait Islander perspectives into their practice immediately, while organisation- and sector-wide frameworks and training programs are in development. For example, the Bugmy Bar Book⁶¹ is a free, evidence-based online resource for lawyers and legal decision-makers across the country. Whilst the Bugmy Bar Book Project was initially started to assist practitioners in the preparation and presentation of material in sentencing, particularly with regard to Aboriginal and Torres Strait Islander defendants—following the decision in *Bugmy v The Queen* (2013) 249 CLR 571—the Bugmy principles have potentially relevant applications well beyond criminal sentencing. Accordingly, there has been extensive discussion around broadening its use outside of the criminal courtroom.

A lack of cultural understanding and capability is also evident in other child protection processes and approaches, such as expert testimonies and clinical assessments that are used to determine the best interests of children and inform legal and court outcomes for Aboriginal and Torres Strait Islander children and families. For example, in NSW, institutions like the Children's Court Clinic rely heavily on assessments from social workers, psychologists and psychiatrists. These assessments are often conducted without meaningful incorporation of Aboriginal and Torres Strait Islander community expertise and knowledge. The privileging of Western knowledge systems within these processes leads to outcomes that do not reflect the cultural needs and interests of Aboriginal and Torres Strait Islander children and families.⁶²

RECOMMENDATION TWO

2. Increase the cultural capability of mainstream legal and court systems for Aboriginal and Torres Strait Islander children and families through:

- 2.1 State and territory governments partnering with jurisdictional ACCOs and communities to design and embed cultural capability frameworks in relation to child protection and youth criminal justice policy development, practice and service delivery, including the appointment and training of children's legal representatives.

- 2.2 State and territory governments partnering with jurisdictional ACCOs to co-design programs of judicial education for court and judicial staff that address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with the Court in child protection proceedings.

- 2.3 Requiring tertiary education institutions to implement cultural capability courses for students studying Law and other associated disciplines, which address the Aboriginal and Torres Strait Islander Child Placement Principle, intergenerational trauma, the effects of colonisation, domestic violence, poverty, substance abuse and mental health issues that may affect Aboriginal and Torres Strait Islander parents' interactions with legal systems.

- 2.4 Review and amend the Priestley 11 core legal subjects to include a subject that examines the impact of colonisation on Aboriginal and Torres Strait Islander communities as a mandatory part of Law degrees.

IT IS CRITICAL TO STRENGTHEN THE ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL WORKFORCE

In the legal and child protection sectors, a strong Aboriginal and Torres Strait Islander workforce is essential in achieving better outcomes for Aboriginal and Torres Strait Islander children and families. The Aboriginal and Torres Strait Islander workforce is better equipped to understand and respond to the unique challenges faced by Aboriginal and Torres Strait Islander children and families and, as a result, improve outcomes.⁶³

In 2022, only 1% of Australian solicitors identified as Aboriginal and/or Torres Strait Islander, compared to 40% of the total ATSILS workforce and around 70% of the FVPLS non-legal workforce.⁶⁴ Strengthening Aboriginal and Torres Strait Islander legal and associated workforces requires targeted initiatives and supports to attract, recruit and retain Aboriginal and Torres Strait Islander people within these professions.

All governments, tertiary institutions and legal organisations have a role to play in ensuring Aboriginal and Torres Strait Islander peoples have equitable access and ability to engage with qualification pathways and legal practice. For many Aboriginal and Torres Strait Islander peoples, high costs can be a deterrent to pursuing formal qualifications, and a lack of flexibility within tertiary institutions makes it challenging for students to balance their academic studies with family or community responsibilities. In addition, many Aboriginal and Torres Strait Islander students have reported finding higher learning institutions culturally unsafe and inaccessible.⁶⁵ This was recently acknowledged in the Australian Universities Accord Final Report, which highlighted the presence of systemic racism and the failure of institutions to provide culturally responsive environments.⁶⁶

Increasing the number of Aboriginal and Torres Strait Islander peoples in the legal profession requires a multi-faceted approach that focuses on both individual supports and structural reform.⁶⁷ A key starting point for the Australian Government is providing funding support for Aboriginal and Torres Strait Islander students to undertake qualifications relevant to the legal sector. Equally important, however, is ensuring pay parity within the profession to retain Aboriginal and Torres Strait Islander lawyers. Addressing disparities in salaries between ATSILS and other legal services is crucial to both attracting and keeping Aboriginal and Torres Strait Islander professionals in the field.

RECOMMENDATION THREE

3. Strengthen and grow the Aboriginal and Torres Strait Islander legal sector through the Australian Government directly funding the cost of obtaining Graduate Diploma/Certificate in Legal Practice, Bachelor of Laws, Juris Doctor and other legal, court and justice related tertiary qualifications for Aboriginal and Torres Strait Islander students.

NON-LEGAL ACCOS PLAY A KEY ROLE IN EARLY INTERVENTION AND FACILITATING ACCESS TO LEGAL SUPPORTS

The value of ACCOs in delivering services to Aboriginal and Torres Strait Islander children and families is well recognised, including through the National Agreement's acknowledgement of the importance of the community-controlled sector. ACCOs are best placed to deliver culturally responsive, holistic and responsive services to Aboriginal and Torres Strait Islander peoples because they are deeply connected to the communities in which they work.⁶⁸

Throughout engagement, participants highlighted that in addition to the critical work of ATSILS and FVPLS, along with their national peak bodies, NATSILS and FNAAFV, non-legal ACCOs that provide child and family services play a crucial role in supporting access to legal supports. These ACCOs empower Aboriginal and Torres Strait Islander children and families to understand their legal rights, especially regarding participation in legal processes, and often make referrals to legal services. This is the type of holistic support that ACCOs have always delivered within their communities. However, despite its value, ACCOs rarely receive funding for this purpose, making it challenging for these organisations to provide robust support and to connect effectively with ATSILS and other legal support services within their communities. In fact, most ACCOs are chronically underfunded for the services they provide within their communities.⁶⁹

“Non-legal services, especially ACCOs, play a big role in supporting families going through child protection. They fill gaps left by government and often have a deep understanding of cultural and community dynamics.”

NT Online forum participant

The limited resourcing of non-legal ACCOs has significant implications for Aboriginal and Torres Strait Islander children and families. Without appropriate funding, these organisations are constrained in their ability to educate families about their legal rights, which is crucial for effective participation in legal processes.

Participants also raised related concerns that legal issues can escalate when Aboriginal and Torres Strait Islander children and families are unable to access culturally responsive and timely early intervention and prevention services in response to issues that increase

the likelihood of coming into contact with child protection systems (such as family violence and housing instability). This concern was also reflected in the NLAP review.⁷⁰ Jurisdictional expenditure data sheds further light on these funding concerns. Despite the well-evidenced benefits of investing in early intervention and prevention programs, the vast majority of child protection funding nationally in 2021–22 continued to be directed at child protection service intervention at 22.3% and out-of-home care services at 61.9%. In dollar figures, this means that out of a total of \$8.2 billion spent on child protection nationally, only \$1.3 billion was directed to family support measures, compared to \$6.9 billion of expenditure on the tertiary end of the child protection spectrum.⁷¹

Reducing the number of children in contact with the child protection and youth justice systems cannot be achieved without greater investment in targeted prevention and early support services. There is a need to reallocate funding towards early intervention and prevention services, ensuring that more resources are directed to family support measures rather than being concentrated on service intervention and out-of-home care.⁷²

To address these issues, it is essential to enhance the resourcing and support provided to non-legal ACCOs, enabling them to better educate and empower Aboriginal and Torres Strait Islander children and families to ensure their rights are fulfilled. When sufficient funding is available, non-legal ACCOs can work closely with ATSILS and other legal organisations within their communities to support two-way information sharing, wraparound support and warm referrals that allow Aboriginal and Torres Strait Islander children, young people and families to access legal supports.

Examples of promising practice

Examples of existing funding available for these types of supports include the Intensive Family Support Services (IFSS) and Children and Family Intensive Support (CaFIS) programs. IFSS provide time-limited, typically in-home, intensive casework supports aimed at addressing the complex needs of families experiencing vulnerabilities. IFSS delivered by ACCOs have been found to bridge barriers to service access by providing culturally strong casework supports and assisting families to access and navigate the broader service system.⁷³

CaFIS is an Australian Government program that provides early intervention and prevention support to children or young people aged 0–18 years and their families. CaFIS operates in selected communities in the Northern Territory and across Anangu Pitjantjatjara Yankunytjatjara Lands in South Australia. This service aims to support families with multiple and complex needs to enhance children and young people's health, safety and wellbeing. While CaFIS is a mainstream program, 11 of the 12 providers are ACCOs.⁷⁴

State-based early intervention and prevention programs include the Aboriginal-Led Case Conferencing (ALCC) Model, designed and delivered by the Victorian Aboriginal Child and Community Agency (VACCA) as part of a two-year innovative diversion project. In this pilot, families were diverted from investigation by child protection to instead participate in an Aboriginal-led case conference to co-develop culturally safe support plans that address concerns and facilitate earlier engagement with culturally appropriate services.

An independent evaluation undertaken by Melbourne University⁷⁵ recommended that the ALCC model be fully implemented, making the following findings:

- the trial had a 78.3% investigation diversion success rate
- families were highly satisfied with the service and felt culturally safe, as reported in client feedback forms
- the trial yielded a high return on investment—approximately \$5 return per \$1 invested.

The success of this pilot has resulted in a commitment to further funding and the inclusion of all pregnant women for whom an unborn report has been received by Child Protection. VACCA is advocating for funding to expand the program to all VACCA regions. To drive meaningful change, it is important that funding for programs of this type is increased nationwide, with a view to providing proportional funding to ACCOs to deliver services to Aboriginal and Torres Strait Islander children and families.

In 1997, the Bringing Them Home Report called for governments to establish a legal framework to negotiate the transfer of jurisdiction over child welfare, care and protection, adoption and juvenile justice to Aboriginal and Torres Strait Islander communities, representatives or organisations.⁷⁶ Safe and Supported also recognises the transfer of state functions and decision-making powers for protecting Aboriginal and Torres Strait Islander children to ACCOs—widely known as 'delegated authority'—as an important step towards embedding full self-determination in these systems.

From a Western legal perspective, 'delegation' reflects the legislative mechanism by which states and territories can transfer legal authority under their Constitutions. However, broader considerations are required, including how Aboriginal and Torres Strait Islander peoples influence the design and creation of legislation, and how Aboriginal and Torres

Strait Islander organisations are funded and resourced to exercise authority effectively.

In Victoria, the legislative framework for delegated authority, called Aboriginal Children in Aboriginal Care (ACAC), has been in place for several years, with two ACCOs now exercising statutory powers and functions in respect of Aboriginal children subject to child protection involvement. The Yoorrook Justice Commission's Yoorrook for Justice Report recommended that ACAC be expanded further, calling for the 'transfer of decision-making power, authority, control and resources to First Peoples, giving full effect to self-determination.'⁷⁷ The transfer of state functions and powers to ACCOs has also been linked to the effectiveness of Specialist Courts, including Koori Family Hearing Day at Marram-Ngala Ganbu within the Children's Court of Victoria. The effectiveness of these Specialist Courts is discussed further on pp. 53–54.

To progress self-determination, child protection systems must relinquish control and power over the lives of Aboriginal and Torres Strait Islander children and families. This involves enabling Aboriginal and Torres Strait Islander peoples and organisations to care for their children and families in ways that reflect Aboriginal and Torres Strait Islander ways of knowing, being and doing. This requires the transfer of appropriate funding, non-financial resources and infrastructure to support ACCOs to take on delegated authority and exercise substantive decision-making power.

RECOMMENDATION FOUR

4. Increase early and ongoing access to legal supports and legal advocacy, outside of specific legal processes. This should be done through all governments' funding partnerships between ACCOs delivering child and family services, ATSILS and FVPLS to support access to early legal advice and referral pathways between ACCO legal services and ACCO child and family services.

RECOMMENDATION FIVE

5. State and territory governments to assess—and provide funding to meet—the internal legal capacity required for ACCO child and family services to effectively exercise delegated statutory authority through the transfer of decision-making power, authority, control and resources for Aboriginal and Torres Strait Islander children in contact with child protection services.

CHILDREN ARE INCONSISTENTLY REPRESENTED ACROSS JURISDICTIONS WITH AN IMPACT ON LEGAL OUTCOMES

Throughout engagement, legal services, including ATSILS, FVPLS and Legal Aid Commissions, raised concerns with the inconsistent processes and administration of the representation of children in child protection legal proceedings.

The process for child representation varies between jurisdictions and is dependent on a child's age and their capacity to give instructions to legal representatives. In some jurisdictions, representation is mandatory, while in others, it is based on the application of another party or at the discretion of the Court, which can lead to varying outcomes for Aboriginal and Torres Strait Islander children.

The responsibility and administration of child representatives for care and protection proceedings sits with the Legal Aid Commission in each jurisdiction, except for the Northern Territory, where this responsibility lies with the Department of the Attorney-General and Justice. However, ATSILS and FVPLS are better placed to deliver legal services for Aboriginal and Torres Strait Islander children and young people. ATSILS and FVPLS recognise the cultural, social and historical contexts that impact the lives of Aboriginal and Torres Strait Islander children and their families, providing more accessible, culturally responsive services that provide better outcomes for children, young people and families.

Throughout engagement, participants expressed concerns about jurisdictional Legal Aid Commissions and the Northern Territory Attorney-General's Department and administering legal support for children, given the potential and perceived conflicts of

interest in government solicitors representing both the child protection department and the children and families involved. There is a need for these arrangements to be transferred to ATSILS—and FVPLS in the context of family violence—to ensure that Aboriginal and Torres Strait Islander children are being effectively represented by culturally responsive services, in line with Priority Reforms Two and Three of the National Agreement.

Participants also raised concerns about the lack of mandatory training required to become a children's representative and the inconsistent quality of legal representation for children. Additionally, concerns were raised about Aboriginal and Torres Strait Islander children not consistently seeing the same lawyer, leading to issues such as the need for children to retell their stories multiple times, which can exacerbate trauma, and variability in representation due to differing interpretations of case notes by multiple legal representatives. Non-Indigenous lawyers, unfamiliar with Aboriginal and Torres Strait Islander cultural perspectives, often represent these children, leading to cultural bias. This disconnect can result in determinations about what is best for Aboriginal and Torres Strait Islander children being made from non-Indigenous worldviews. To address this, participants suggested that the accreditation and oversight of legal representatives for Aboriginal and Torres Strait Islander children should include ATSILS and FVPLS, to ensure culturally informed representation in line with community expectations.

"Once appointed a representative, Aboriginal children are not seeing the same lawyer, and can see more than 3 or 4 lawyers. This is concerning for a number of reasons, including the potential to go through their trauma when they have to retell their stories, and their representation being dependent on a lawyer's interpretation

of the previous lawyer's notes. Child protection proceedings are only heard in the capital city, and Aboriginal children and families living outside the city experience disadvantage because they are based far away from the courts."

SA Online forum participant

These challenges often result in the views and wishes of children not being heard, in direct contravention of their rights under the UNCRC. There is an urgent need for mandatory legal representatives for children and for these representatives to be able to deliver high-quality, culturally responsive representation to ensure the rights of all Aboriginal and Torres Strait Islander children are upheld during these processes.

One method of monitoring and upholding the quality of legal representation provided to children is the creation of National Minimum Standards (NMS) for children's legal representatives, which would set mandatory requirements for—among other things—qualifications, ethical practice and cultural safety. The significant differences in what children's legal representatives can and/or must do under jurisdictional legislation, as set out in Table 3, mean that NMS would play an important role in achieving greater consistency between states and territories, so that Aboriginal and Torres Strait Islander children and young people know what they have the right to expect from their legal representatives—no matter where they live.

Compared to amending legislation in all eight jurisdictions, NMS, established through intergovernmental consensus, would also be a far more efficient way to improve the quality of legal representation provided to children. Given the profound over-representation of Aboriginal and Torres Strait Islander children in child protection—and youth justice proceedings—

it will be critical for NMS to be developed through shared decision-making processes in line with Priority Reform One of the National Agreement. Further, Aboriginal and Torres Strait Islander communities and organisations should be centrally involved in the implementation and oversight of NMS.

RECOMMENDATION SIX

6. Ensure all Aboriginal and Torres Strait Islander children and young people have access to high-quality, culturally responsive, independent legal representation through:

- 6.1** State and territory governments funding the establishment of specialist children's legal representation services for Aboriginal and Torres Strait Islander children and young people involved in child protection proceedings within ATSILS and FVPLS.
- 6.2** State and territory governments funding the establishment of specialist children and youth legal representation services for Aboriginal and Torres Strait Islander children and young people involved in youth justice proceedings within ATSILS and FVPLS.
- 6.3** Establishing National Minimum Standards for children's legal representatives to be enshrined in legislation across all jurisdictions. These standards should embed human rights foundations, include Representation Principles focused on the representation of Aboriginal and Torres Strait Islander children and young people, and be administered by a relevant Aboriginal and Torres Strait Islander community-controlled authority.

- 6.4** Commissioning an independent review of training and ongoing professional development requirements for children’s legal representatives to ensure they are adequately trained to provide accessible, culturally responsive legal services.

RECOMMENDATION SEVEN

- 7.** The Australian Government, in partnership with NATSILS and First Nations Advocates Against Family Violence (FNAAFV), to develop an implementation strategy for the administration of children’s legal representation in child protection proceedings (currently occurring through Legal Aid Commissions and the Northern Territory Attorney-General’s Department) to be transferred to ATSILS and FVPLS for Aboriginal and Torres Strait Islander children and young people by 2026.

SPECIALIST COURTS PROVIDE AN OPPORTUNITY FOR MAINSTREAM LEGAL SYSTEMS TO BE MADE MORE CULTURALLY RESPONSIVE

As noted above, Western justice and legal structures are inherently culturally unsafe for Aboriginal and Torres Strait Islander peoples and reinforce colonial systems of power. In line with Priority Reform Three of the National Agreement, all governments have committed to transforming mainstream institutions to make them culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander peoples.

Throughout engagement, participants universally highlighted the lack of culturally appropriate processes and decision-making in court proceedings, within non-ACCO legal services and across the broader legal and child protection systems. The desktop review also highlighted ongoing structural barriers in courtrooms and a lack of trust in the legal and court systems due to poor cultural capability and the ongoing impacts of intergenerational trauma.⁷⁸

One significant example of this imbalance is the use of ex parte applications, hearings and determinations in child protection legal proceedings. An ex parte application is a legal request made to a court by one party without notifying the other party involved. In the context of the child protection legal system, this often means applications are made regarding the removal of a child without serving or notifying the parent/s, thereby preventing them from appearing in court to contest the application.

This practice was specifically raised as a concern by the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) during their engagement mission to WA in November 2023. EMRIP expressed concerns that when Aboriginal children are taken into care under a warrant, the initial hearing is often ex parte, meaning the parents are neither notified nor allowed to attend. The magistrate decides on the necessity of the warrant based solely on written information from child protection departments, without verification of its completeness. While EMRIP acknowledged that immediate action may sometimes be necessary for high-risk cases, they recommended that families’ lawyers should nonetheless be notified and involved in such hearings and processes.⁷⁹

Addressing these critical power imbalances could be done via the development and implementation of Practice Directions—procedural guidelines for a court—that require the timely disclosure of evidence by child protection departments to legal representatives for Aboriginal and Torres Strait Islander children, young people and their families. An example of this can be found in New South Wales, where the Department of Communities and Justice is required to serve, rather than file with the Children’s Court, a bundle of relevant documents no later than the first mention of a care application. These documents include relevant information referred to in the Initiating Application and Report, as well as documents like genograms, birth alerts, removal records and safety assessments.⁸⁰ This early form of discovery ensures that solicitors are able to provide early merits advice, which is essential for trauma-informed practice.

Engagement participants also suggested that power imbalances are less pronounced in specialist courts, providing examples of how integrated, culturally informed support can significantly improve Aboriginal and Torres Strait Islander families’ experiences of court and the resulting outcomes for children and families. For example, Marram-Ngala Ganbu (Koori Family Hearing Day in the Children’s Court of Victoria), Winha-nga-nha (Aboriginal and Torres Strait Islander Care List in the New South Wales Children’s Court at Dubbo) and Dandjoo Bidi-Ak⁸¹ (a specific Court List and courtroom of the Children’s Court of Western Australia) were all cited as providing a more culturally responsive approach to proceedings involving Aboriginal and Torres Strait Islander children and families than mainstream counterparts.

Expenditure information was provided by governments regarding the current costs of specialist courts in Western Australia and Victoria. The figures indicate a welcome

increase in expenditure on specialist courts in both states from 2022–23 to 2023–24; however, this funding was still only a very small fraction of total national expenditure on magistrates’ courts, including children’s courts, at \$355.87 million in the year 2023–24.⁸² The current expenditure on specialist courts does not reflect the true levels of funding and resourcing required to implement and service specialist courts in all jurisdictions.

JURISDICTION	2021–22	2022–23	2023–24
WA Dandjoo Bidi-Ak	\$599,713	\$536,132	\$696,822
VIC Marram- Ngala Ganbu	N/A	\$572,000	\$634,000

A 2019 evaluation of Marram-Ngala Ganbu⁸³ found that the program is providing a more effective and just response for Koori families through a more culturally appropriate court process that enables greater participation by family members and more culturally informed decision-making. This included specific findings that:

- there are early indicators that Koori families have increased cultural connections, more Koori children are being placed in Aboriginal kinship care, and families are more likely to stay together as a result of Marram-Ngala Ganbu
- the child protection system, magistrates and lawyers demonstrate greater compliance with the Aboriginal and Torres Strait Islander Child Placement Principle within the child protection, court and legal systems

- child protection is more accountable to magistrates and the court process in Marram-Ngala Ganbu.

This evidence demonstrates that better outcomes can be achieved through culturally informed and specialised court settings that are designed with community input and consider the impact of fundamental inequalities between parties before the court, building on the above examples of promising practice. However, for these courts to be maximally effective, ATSILS, FNAAFV and other ACCO legal services must be appropriately resourced to provide duty services for families and children participating in these courts.

The transfer of state functions and powers for protecting Aboriginal and Torres Strait Islander children to ACCOs has also been observed to contribute to the effectiveness of the Koori Family Hearing Day at Marram-Ngala Ganbu. In evidence given to the Yoorrook Justice Commission in 2022, Regional Co-ordinating Magistrate Kay Macpherson stated, *‘Nugel make an enormous difference to our Court. Nugel are a part of VACCA that have been, under section 18 of our Act, assigned the duties—the responsibility of the department. So, it’s an Aboriginal organisation in charge of Aboriginal children, and they are fantastic. The great results we get in Marram-Ngala Ganbu are more often than not cases that are managed by Nugel. It would be terrific to see state-wide a whole lot of Marram-Ngala Ganbus, and a whole lot of Nugels.’*⁸⁴

An independent evaluation of Victoria’s delegated authority framework, ACAC, which includes VACCA’s Nugel program, similarly reported that *‘anecdotal evidence from evaluation participants [including Court staff] suggests courts react more positively to court reports presented by ACCOs for children part of ACAC when making and reviewing orders. Evaluation participants felt that the courts were broadly responsive to ACCOs and supportive of the work they are doing through*

*ACCOs, and were very positive about the court reports that focus on strengths and human rights, and in particular the child’s rights.’*⁸⁵

This evaluation also highlighted that **‘ACCO approaches prioritise engagement with family members and aim to give families a voice in decisions about their children. Anecdotal evidence indicates that in some cases, parents’ engagement and attendance at court hearings improved as a result of collaborating and working in partnership with ACCOs.’**⁸⁶ Finally, the evaluation highlighted that the reunification rate for all cases delegated under ACAC from 1 Jan 2017 to 30 June 2020, involving children on final orders, was 22%, compared to the reunification rate of 11.1% for cases remaining under Victorian Government Child Protection.⁸⁷

As outlined in the next section, there are a number of children and young people who have contact with both the youth justice and child protection systems. Interaction with two statutory systems creates unique needs and challenges for these children, and it is critical that children on dual orders—care and protection/youth justice—have their unique needs and circumstances considered within the court system. Current approaches rarely accommodate these needs or demonstrate an understanding of the unique challenges and circumstances of dual order arrangements. As such, there is a need for specialised courts or dedicated court lists, underpinned by specialist knowledge and trauma-informed approaches, that will allow for the full consideration of issues impacting these children at all stages of interaction with the court system.

Finally, the effectiveness of specialist courts relies heavily on a child protection system that facilitates early and ongoing access to legal supports. The increased usage of specialist courts is, therefore, heavily dependent on effectively implementing Recommendations One and Four of this Scoping Study.

RECOMMENDATION EIGHT

8. State and territory governments to partner with ACCO peak bodies and ATSILS and FVPLS to establish specialist courts and/or dedicated court lists for Aboriginal and Torres Strait Islander families in care and protection matters in all jurisdictions, including providing adequate funding and resourcing for their design, implementation and evaluation.

8.1 Resourcing for specialist courts and/or dedicated court lists must include funding for Aboriginal and Torres Strait Islander judicial officers, or non-Indigenous judicial officers with specialist training, and for ATSILS and FVPLS to facilitate participation and navigate complexities within these courts as a core funding requirement.

8.2 This should also include specialised courts and/or dedicated court lists within youth justice for children in out-of-home care.

RECOMMENDATION NINE

9. To address imbalances in power between parties, each Court responsible for child protection matters should have in place Practice Directions that require disclosure of evidence by child protection departments, within 14 days of the filing of a care and protection application by a department, to legal representatives for Aboriginal and Torres Strait Islander children, young people and their families.

9.1 The implementation of this recommendation should be undertaken in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

9.2 The effectiveness of the Practice Directions should be reviewed and evaluated regularly in partnership with NATSILS, FNAAFV and jurisdictional ATSILS and FVPLS.

CHILDREN IN OUT-OF-HOME CARE ARE FAILED BY STATUTORY SYSTEMS

Children in out-of-home care who come into contact with the criminal justice system are continuously let down by all the statutory systems that intervene in their lives.

From the outset, when Aboriginal and Torres Strait Islander children are placed in out-of-home care, their ties to culture, family, Country and community can be severely disrupted. This disconnection often has profound and long-lasting effects on their identity, wellbeing and sense of belonging through the loss of cultural knowledge, language and supportive relationships. The trauma and sense of dislocation experienced from these processes have frequently been linked to an increased likelihood of juvenile criminal offending.⁸⁸

Accordingly, the Aboriginal and Torres Strait Islander Child Placement Principle (Child Placement Principle) sets out a broad array of policy and practice approaches that aim to protect the cultural rights and identities of Aboriginal and Torres Strait Islander children when they are placed in out-of-home care. The Child Placement Principle emphasises the importance of placing children and young people with their extended family or community to maintain their connection to their culture, language and Country. The Child Placement Principle also prioritises the involvement of Aboriginal and Torres Strait Islander

communities in decision-making processes regarding the placement of Aboriginal and Torres Strait Islander children and young people. However, as SNAICC and other ACCO children's peak bodies have demonstrated extensively, adherence to the Child Placement Principle remains very low in most or all jurisdictions, even where the Child Placement Principle has been codified into legislation.⁸⁹

The statistical intersection between child protection and youth justice is extensively documented; nationwide, almost two-thirds, at 64%, of Aboriginal and Torres Strait Islander young people under youth justice supervision during 2020–21 had also received child protection services in the five years from 1 July 2016 to 30 June 2021⁹⁰. This compares with just under half, at 46%, of non-Indigenous young people under youth justice supervision during the same period.

Throughout engagement, ACCOs and legal services consistently emphasised that these children and young people are repeatedly failed by statutory systems that are meant to ensure their safety and wellbeing. There are inadequate system responses for the diverse needs of children and young people in out-of-home care, particularly in relation to needs around disability supports, for example, via the National Disability Insurance Scheme. Participants raised that there are inadequate system responses to defer and protect children and young people in out-of-home care from contact with the youth justice system.

"A lot of our young people in detention are on care and protection orders. Nothing is done to change the trajectory of those young people; they cycle in and out of detention, and child protection is just waiting for them to turn 18 so they don't have to worry about them. For those teenagers, they are in a whole world of pain. Nothing changes in their lives to put them on a better pathway."

ACT Online forum participant

Participants also noted that inadequate system responses for children transitioning away from out-of-home care, usually when turning 18 years old, have resulted in an increase in applications made for these children to be appointed a guardian or administrator. These included applications made for children with intellectual disability. It was observed that there is often a failure to build up the capacity of children in out-of-home care to move independently into the world. To address this gap, there is an urgent need for targeted, place-based funding for ACCOs to deliver holistic and therapeutic case management to better support these children and young people. Tailored, targeted supports for young people experiencing the out-of-home care and youth justice systems would include appropriate civil law supports provided by ATSILS and NFVPLS, with a commensurate increase in funding to these ACCOs to expand their services accordingly.

Alongside a lack of culturally safe, Aboriginal and Torres Strait Islander-specific legal representation services for Aboriginal and Torres Strait Islander children and young people in child protection proceedings, as discussed above, there is a corresponding shortage of specialised youth programs dedicated to providing legal assistance and representation to Aboriginal and Torres Strait Islander young people in criminal matters. This points to a critical need for governments to invest in establishing such programs across all jurisdictions and across different courts within each jurisdiction, including regional and remote courts.

One strong example of this type of program is Balit Ngulu at the Victorian Aboriginal Legal Service. Balit Ngulu was established to ensure that young Aboriginal Victorians have access to comprehensive, culturally appropriate, specialist legal representation in relation to both their criminal justice and child protection matters. Although the program

does not currently provide representation in child protection matters due to limited funding, its solicitors work extensively with young people living in out-of-home care, particularly residential care, and are crucial in keeping defendants out of remand.⁹¹

Finally, there are well-documented issues with government systems, including justice and child protection, not effectively sharing relevant information across agencies and/or with service providers working to support children and families. This can create significant barriers for Aboriginal and Torres Strait Islander children and young people's ability to access well-coordinated supports, as critical information 'falls through the cracks'—including in legal proceedings.⁹² Effective and culturally appropriate information-sharing among agencies and service providers can greatly improve outcomes by ensuring that all relevant parties are informed, aligned and able to respond to the needs of children and families in a timely and holistic manner. These systems must align with Indigenous Data Sovereignty principles and must be designed, implemented and governed through shared decision-making with Aboriginal and Torres Strait Islander peoples.

RECOMMENDATION TEN

10. All governments to invest in system reform for Aboriginal and Torres Strait Islander children in—or at risk of—entering out-of-home care, to promote wellbeing and prevent contact with the youth justice system by funding ACCO child and family services to provide child-centred, holistic and therapeutic supports.

10.1 Implementation of this recommendation should include all governments increasing early and tailored supports for children and families in line with the approach outlined in the National Child and Family Investment Strategy from the Safe and Supported: Aboriginal and Torres Strait Islander Action Plan 2023–2026.

THERE IS A LACK OF EARLY ACCESS TO BOTH LEGAL ADVICE AND LEGAL SUPPORTS

Both the desktop review and sector engagement highlighted the importance of early referrals and access to legal services for parents and caregivers in ensuring they have information about their legal rights and are able to participate in child protection proceedings.

Key barriers in accessing early legal advice—and access to legal supports overall—include difficulties with outreach and non-legal assistance, technical problems with online court processes and resources, and insufficient awareness of available services. Complexities within legal processes also create barriers, including limited access to the right to seek administrative review of a child protection decision due to insufficient funding for legal services to pursue administrative review and support Aboriginal and Torres Strait Islander parents to understand their rights to review child protection decisions. Additionally, there have been noted breakdowns in communication between services making and receiving referrals, which further complicates access and support for families.

These difficulties in accessing timely and effective legal supports have serious repercussions for Aboriginal and Torres Strait Islander children and families, and contribute to the significant over-representation of Aboriginal and Torres Strait Islander children in child protection systems. We need only look at the challenges faced by pregnant Aboriginal and Torres Strait Islander women in jurisdictions where there are legislative powers to investigate unborn (pre-birth) children to further understand the devastating consequences of how current systems and structures operate. As highlighted in *Holding on to Our Future*, the Final Report of the Commissioner for Aboriginal Children and Young People's Inquiry into the removal and placement of Aboriginal children and young people in South Australia, one-third of Aboriginal pregnant women in South Australia had been subject to an Unborn Child Concern notification. For non-Aboriginal women, those rates were one in 33.⁹³ The inquiry found that:

"Pregnant Aboriginal women with identified Unborn Child Concerns are not prioritised in the child protection service system as a population group with high needs requiring support services; instead, the decision to remove the newborn at birth is the priority. The manner in which infant removals at birth occurs is reprehensible and is not an acceptable way to deal with Aboriginal women, children and families." ⁹⁴

While legal supports are challenging to access for many Aboriginal and Torres Strait Islander peoples, it can be even more complex for Aboriginal and Torres Strait Islander peoples with a disability. This was highlighted in *Parents with a Disability* and their experience of the Child Protection System, a paper for the Royal

Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The paper posited that the lack of specialised, affordable and accessible legal representation is a significant barrier to equal and informed participation by parents with disability in child protection proceedings in Australia and internationally.⁹⁵ This research also noted that parents with disability may need more time to work through legal issues, but this is not accounted for in funding models.

State borders can also create difficulties for parents and children who are in need of legal advice and/or representation in child protection proceedings. Throughout this Scoping Study's engagement, participants in Western Australia, Australian Capital Territory and Northern Territory raised concerns about cross-border issues and the impact this has on access to and quality of legal supports and services. Examples were provided of children being on child protection orders in one jurisdiction, while residing in the adjacent state or territory and/or regularly moving across borders.

"Some families don't know which jurisdiction [the] matter is in, and where they place children. Departments refuse to transfer files to the other state or territory, hard for families to know who is who, or where to go for support".

NT Online forum participant

"It's a merry-go-round of trying services, and they are falling through the gaps or give up, people are worn down by the department and systemic racism, without the clear pathway into having a lawyer, that's how people end up without a lawyer in court."

WA Online forum participant

Unfortunately, there is insufficient data available across jurisdictions to fully understand or quantify the unmet legal need being experienced by Aboriginal and Torres Strait Islander peoples, and there is even less data available on Aboriginal and Torres Strait Islander peoples with disability or those in cross-border locations. The need for improved data capability and visibility of unmet legal needs is outlined in the following section.

One way that child protection systems can better support early access to legal advice and supports is through enabling automatic notification to legal services once a family comes into contact with child protection. This was strongly recommended by the Family is Culture report, which called for the Department of Communities and Justice to establish a notification service—similar to the NSW Custody Notification Service—to alert the Child Protection Advocacy Program or a relevant Aboriginal community body about the removal of an Aboriginal child or young person from their family. This would provide a timely opportunity for review, oversight and advocacy on behalf of Aboriginal families and communities in the best interests of Aboriginal children and young people.⁹⁶

These systems are being trialled and tested in some jurisdictions for the purposes of reducing child removals and/or increasing reunifications. This includes Victoria, whereby Victoria Legal Aid would have a Memorandum of Understanding with Djirra and the Victorian Aboriginal Legal Service, and in New South Wales, Legal Assistance for Families: Partnership Agreement⁹⁷ between the Department of Communities and Justice, the NSW Legal Aid Commission, and the Aboriginal Legal Service (NSW/ACT). In the Northern Territory, the North Australia Aboriginal Family Legal Service is currently scoping options for an automatic notification system.

When a child or family makes initial contact with child protection systems, this is also a critical time for ensuring the provision of wraparound, holistic child and family supports. Given the criticality of these types of supports, it is suggested that any notification to ACCO legal services is mirrored by a notification to ACCO child and family services.

Any notification system or early referral pathway that is established to ACCO legal services and/or child and family services, or which would otherwise see an increase in demand for those organisations' services, should also necessarily include an injection of funding to ensure that those legal services are able to meet the demand and recruit staff. Feedback from NSW participants indicated that it has been challenging to meet the increased demand following the commencement of the Legal Assistance for Families: Partnership Agreement, which saw a significant increase in early referrals for legal advice directly from caseworkers, without a commensurate increase in lawyers to provide the advice.

RECOMMENDATION ELEVEN

11. State and territory child protection departments to partner with jurisdictional ATSILS and FVPLS to establish an automatic notification service, which will notify the relevant ACCO legal support service and ACCO child and family service that an Aboriginal and Torres Strait Islander child, young person or family has had contact with child protection and/or other statutory services, providing a timely opportunity for review, oversight, support and advocacy.

11.1 The implementation of this recommendation, including the design of the automatic notification service, should be overseen by an independent Aboriginal and Torres Strait Islander governance group, external to government, in each jurisdiction.

11.2 To support this recommendation, state and territory governments should amend child protection legal procedures and/or introduce legislative provisions in all jurisdictions to embed the referral of families to culturally safe legal services at the onset of child protection involvement, along with a referral to have a support person/ advocate present to support children and/or parents in child protection meetings and court proceedings.

- the number and proportion of child protection legal matters heard in a specialist Aboriginal and Torres Strait Islander court; and
- expenditure data on a range of matters, including NLAP funding to Aboriginal Torres Strait Islander community-controlled legal services and, specifically on child protection legal services, and child protection legal services for Aboriginal and Torres Strait Islander children and families.

Critically, jurisdictions were unable to provide data on the number and proportion of Aboriginal and Torres Strait Islander children and families without legal representation in child protection proceedings or meetings with child protection agencies. This creates significant challenges in quantifying the level of unmet legal need and highlights the urgent need for improved data collection and reporting. Priority Reform Four of the National Agreement emphasises the importance of shared access to data and information, and calls for governments to partner with Aboriginal and Torres Strait Islander communities to improve data collection, sharing and reporting in order to ensure communities have the information needed to make informed decisions. The lack of comprehensive data on unmet legal needs for Aboriginal and Torres Strait Islander children and families directly reflects a failure to meet Priority Reform Four.

Some jurisdictions provided data on funding for child protection legal services for all parents and children, while others provided information on Aboriginal and Torres Strait Islander legal services—refer to Appendix 3 for a full list of data provided. In the absence of contextual data about access to these services and unmet demand, it is difficult to quantitatively assess whether funding levels are currently adequate to meet demand.⁹⁸

CURRENT DATA COLLECTION AND ANALYSIS PRACTICES DO NOT PROVIDE ADEQUATE VISIBILITY OF UNMET LEGAL NEED

Throughout this Scoping Study, efforts were made to quantify the level of unmet legal need in relation to Aboriginal and Torres Strait Islander children and families in contact with child protection. In the preparation of this report, data requests were made to all relevant state and territory departments to seek data on:

- the number and proportion of Aboriginal and Torres Strait Islander children and families without legal representation in child protection proceedings or meetings with child protection agencies;
- information on regional coverage for Aboriginal and Torres Strait Islander children and families seeking legal support;

Data is a critical tool in guiding decision-making processes, particularly when addressing legal needs within specific communities. In South Australia, for example, data provided by the Courts Administration Authority to the Aboriginal Legal Rights Movement (ALRM) highlighted the number of criminal and child protection cases involving Aboriginal families. This information allowed ALRM to identify a significant gap in legal representation for Aboriginal families in child protection cases. Based on this data, ALRM was able to collaborate with the Adelaide Youth Court to establish a Child Protection Duty Solicitor Service, ensuring that legal services are more accessible and culturally appropriate for families.

Accordingly, there is an urgent need for state and territory governments to build an in-depth understanding of unmet legal need within their jurisdictions and to work in partnership with Aboriginal and Torres Strait Islander organisations and communities to design implementation plans to begin addressing these needs.

RECOMMENDATION TWELVE

12. All governments to partner with jurisdictional ACCOs, ATSILS and FVPLS to improve understanding of—and ability to respond to—unmet legal support needs in the context of child protection through:

- 12.1** Developing robust national guidelines for implementing management and collection of data relating to Aboriginal and Torres Strait Islander children and families involved in child protection services, court proceedings and out-of-home care systems.

12.2 Jointly undertaking jurisdictional mapping activities to understand areas of unmet need, including reviewing legal support services available for people with disability and for children and families in remote/regional areas and cross-border regions.

12.3 Co-designing and agreeing on jurisdictional implementation plans to increase the availability of legal supports in areas of unmet need.

12.4 Reporting biannually to the Justice Policy Partnership on each government's progress towards meeting unmet need within their jurisdiction. Copies of these reports should also be shared with Safe and Supported governance structures and the Early Childhood Care and Development Policy Partnership.

THERE IS INSUFFICIENT SYSTEM ACCOUNTABILITY AND OVERSIGHT TO ENSURE THE LEGAL NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN, YOUNG PEOPLE AND FAMILIES ARE MET

Throughout engagement, participants from a number of jurisdictions raised the lack of accountability and system oversight as a key limitation of current child protection and legal support systems. Participants noted that Aboriginal and Torres Strait Islander communities are currently unable to provide feedback to non-ACCO legal services on the cultural appropriateness of their services and approaches. In addition, new legal initiatives such as specialist and therapeutic courts need

to be evaluated consistently to ensure that they are continuing to meet the needs of Aboriginal and Torres Strait Islander families. Similarly, government systems and institutions need to be accountable to Aboriginal and Torres Strait Islander children and families.

Historically, the absence of robust accountability mechanisms and independent oversight has led to inadequate protection of Aboriginal and Torres Strait Islander rights. Without efficient accountability and oversight, legal and related services fail to be culturally responsive. A lack of independent monitoring means that breaches of children's rights—particularly for Aboriginal and Torres Strait Islander children, who are among the most vulnerable—go unaddressed, perpetuating systemic inequalities.

Implementation and protection of children's rights at all levels of government needs to be monitored and overseen by independent bodies. This would significantly strengthen government transparency and accountability, as well as improve feedback and complaint pathways for communities. Independent monitoring, accountability, and complaint pathways also help to ensure adequate focus on rights protection for cohorts that are particularly vulnerable to breaches, such as Aboriginal and Torres Strait Islander children.

International mechanisms, such as the Optional Protocol to the UNCRC, are critical rights-based accountability measures. This Optional Protocol provides for a communications procedure that would allow Aboriginal and Torres Strait Islander children to raise complaints directly with the United Nations when domestic remedies are exhausted, thereby offering an additional layer of protection and recourse.

Similarly, the establishment of a fully empowered and resourced independent statutory National Commissioner for Aboriginal

and Torres Strait Islander Children and Young People will provide a critical mechanism for increased transparency and accountability. National Minimum Requirements for Aboriginal and Torres Strait Islander Children's Commissioners in all jurisdictions are currently being negotiated by Aboriginal and Torres Strait Islander leaders and all Australian governments. To enable Aboriginal and Torres Strait Islander Children's Commissioners to operate most effectively, these positions should—at a minimum—be fully empowered, legislated and resourced; provide complaint pathways for children and families; and be designed to ensure that governments are publicly held accountable for their commitments and responsibilities to children and young people.

Another important accountability mechanism is the role of independent jurisdictional advocates for children and young people. These advocates are essential in ensuring the views of children and young people are heard—and acted on—in proceedings related to family and domestic violence, child protection and youth justice. In most cases, such advocates have powers to advocate for individual children where required.

For example, in South Australia, the Guardian for Children and Young People promotes the rights and best interests of children and young people in care, including residential care, through advocating for them and monitoring their circumstances to see if their wellbeing needs, rights and interests are being met. In Queensland, the Office of the Public Guardian is an independent statutory office established to protect the rights, interests and wellbeing of children and young people in the child protection system—foster care, kinship care and residential care—and at other visitable sites, such as a youth detention centre, disability service or mental health facility.

However, the powers and functions of these advocate positions vary, and Western Australia does not have an independent advocate at all. It is critical that each jurisdiction has an independent advocate for children and young people in out-of-home care and youth justice settings to ensure that their views and voices can be heard within these systems and that their rights are protected and upheld at all times.


RECOMMENDATION THIRTEEN

13. Increase accountability and oversight mechanisms, through Aboriginal and Torres Strait Islander governance and self-determination, to support the legal needs and rights of Aboriginal and Torres Strait Islander children and families by:

- 13.1** Establishing a fully independent, empowered and legislated National Commissioner for Aboriginal and Torres Strait Islander Children and Young People through a shared decision-making process, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026.
- 13.2** Establishing independent advocates in each state/territory for children and young people in all matters relating to family and domestic violence, youth justice and child protection, including out-of-home care.

13.3 Implementing National Minimum Requirements for Aboriginal and Torres Strait Islander Children’s Commissioners in all jurisdictions, as per Action 7 of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023–2026, ensuring that independent, empowered and effective Aboriginal and Torres Strait Islander Children’s Commissioners in each jurisdiction are developed in partnership with Aboriginal and Torres Strait Islander representatives.

13.4 Ratifying the Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure that would allow Aboriginal and Torres Strait Islander children to raise complaints directly with the United Nations when domestic remedies are exhausted.



*... Aboriginal and
Torres Strait Islander peoples
have been growing up their
children strong in culture and
community for millennia...*

APPENDICES

APPENDIX A – ONLINE FORUM DISCUSSION QUESTIONS

1. Accessing legal support

- a. Can you tell us about how Aboriginal and Torres Strait Islander children and families access legal support for child protection issues in your state/territory?
- b. What are the major barriers to accessing legal support?

2. The role of child and family services

What is the role of child and family services in addressing the legal needs of Aboriginal and Torres Strait Islander children in contact with child protection in (your jurisdiction)?

3. Cultural Safety

This question is about cultural safety. SNAICC defines cultural safety as the positive recognition and celebration of cultures. It is more than just the absence of racism or discrimination and more than 'cultural awareness' and 'cultural sensitivity'. It empowers people and enables them to contribute and feel safe to be themselves.

- a. Do you think the current options for legal support for Aboriginal and Torres Strait Islander children, parents and families are culturally safe? Why, or why not?
- b. What would make legal support for Aboriginal and Torres Strait Islander children and families more culturally safe?

4. Holistic legal supports

Our research has shown that families often struggle navigating multiple legal and statutory systems for different legal matters such as child protection, family violence and youth justice.

- a. In your experience, are you aware of any holistic service responses that seek to meet the diverse legal support needs of Aboriginal and Torres Strait Islander children and families experiencing multiple legal issues?

5. Community Legal Education

- a. Can you tell us about Community Legal Education in (your jurisdiction)?
- b. In your experience, what works and what could be improved?

6. Recommendations for System Improvement

SNAICC and NATSILS have an opportunity to make recommendations to the government to improve access to legal support.

- a. What recommendations do you have to improve legal support for Aboriginal and Torres Strait Islanders in contact with the child protection system?
- b. Can you share any examples of good practice or effective service models?

APPENDIX B – SURVEY QUESTIONS

The survey results below are the summary data for all respondents

1. How old are you?		
Answer choices	Responses	
0-18	0.00%	0
19-25	3.57%	2
26-40	37.50%	21
40-60	42.86%	24
60 and above	16.07%	9
Prefer not to say	0.00%	0
	Answered	56
	Skipped	1

2. What is your gender?		
Answer choices	Responses	
Male	14.29%	8
Female	85.71%	48
Prefer not to say	0.00%	0
	Answered	56
	Skipped	1

3. Do you identify as an Aboriginal or Torres Strait Islander person?		
Answer choices	Responses	
Yes	60.71%	34
No	37.50%	21
Both	0.00%	0
Prefer not to say	1.79%	1
	Answered	56
	Skipped	1

4. Where do you live?		
Answer choices	Responses	
New South Wales	24.56%	14
Queensland	5.26%	3
Victoria	15.79%	9
Western Australia	17.54%	10
South Australia	12.28%	7
Northern Territory	19.30%	11
Australian Capital Territory	0.00%	0
Tasmania	5.26%	3
	Answered	57
	Skipped	0

5. What type of region do you live in?		
Answer choices	Responses	
Regional	22.81%	13
Remote	1.75%	1
Rural	8.77%	5
Urban	66.67%	38
	Answered	57
	Skipped	0

6. What type of organisation do you work for?		
Answer choices	Responses	
ACCO	74.07%	40
Non-Indigenous not-for-profit organisation	12.96%	7
Government	12.96%	7
Child protection agency	0.00%	0
Court	0.00%	0
Disability	0.00%	0
I am not working	0.00%	0
Answered		54
Skipped		3

7. Which sector do you work in?		
Answer choices	Responses	
Child and family services	41.07%	23
Youth services	3.57%	2
Legal assistance services	23.21%	13
Domestic, family and / or sexual violence services	7.14%	4
Education	0.00%	0
Mental health, alcohol and/ or other drugs, and/or social and emotional wellbeing	3.57%	2
Emergency relief	0.00%	0
Employment	0.00%	0
Community development	1.79%	1
Health	3.57%	2
Justice	7.14%	4
Early Childhood Education and Care	3.57%	2
Homelessness and Housing	1.79%	1
Disability support	3.57%	2
Answered		56
Skipped		1

8. In your experience what are certain legal problems in relation to child protection that Aboriginal and Torres Strait Islander children and families may require support with? [Open text].

9. Do you know how to refer Aboriginal and Torres Strait Islander children and families in your region to legal support services for child protection issues?

Answer choices	Responses	
Yes, I know how to make referrals for legal support with child protection.	81.08%	30
No, I don't know how to refer people to legal services for child protection issues.	18.92%	7
Answered		37
Skipped		20

11. How easy is it for Aboriginal and Torres Strait Islander children and families in your region to access legal support services when they are in contact with child protection in your community? (Select one option).

Answer choices	Responses	
Very easy	5.13%	2
Somewhat easy	20.51%	8
Neither easy nor difficult	23.08%	9
Somewhat difficult	41.03%	16
Very difficult	10.26%	4
Answered		39
Skipped		18

12. When should a referral for legal support services be made for Aboriginal and Torres Strait Islander children and families for child protection issues?		
Answer choices	Responses	
As soon as a family has contact with child protection (as early as possible)	87.18%	34
When child protection wants to discuss legal documents or legal orders	12.82%	5
When you receive Court paperwork and are made aware of a Court date	0.00%	0
Answered		39
Skipped		18

13. Do you have any comments to make on families and children's abilities to self-refer for legal advice in your jurisdiction? [Open text].

14. How accessible and inclusive are the legal support options in your region for Aboriginal and Torres Strait Islander children, young people, parents and families with disability in contact with child protection? (Select one option or comment).		
Answer choices	Responses	
Not accessible or inclusive	17.95%	7
Somewhat accessible and inclusive	56.41%	22
Very accessible and inclusive	5.13%	2
I don't know	20.51%	8
Answered		39
Skipped		18

15. Which statement best describes your ability to access or refer Aboriginal and Torres Strait Islander people in your region to culturally safe legal support services for child protection issues?		
Answer choices	Responses	
I can access culturally safe legal support services for child protection issues.	55.88%	19
I don't know what legal support services are available to me for child protection issues.	14.71%	5
I don't have access to any legal support services for child protection issues.	8.82%	3
The legal support services available for child protection issues are not culturally safe.	20.59%	7
Answered		34
Skipped		23

16. Are there Aboriginal and Torres Strait Islander community controlled organisations (ACCOS) delivering legal services for child protection issues in your community?		
Answer choices	Responses	
Yes	64.86%	24
No	35.14%	13
Answered		37
Skipped		20

17. What types of legal support services would better meet the needs of Aboriginal and Torres Strait Islander children, young people, parents and families in contact with child protection? [Open text].

18. In your experience what are the types of legal problems in relation to youth justice that Aboriginal and Torres Strait Islander children and young people might require support with? [Open text].

19. Do you know if there are legal services for Aboriginal and Torres Strait Islander children and young people who come in contact with the youth justice system in your community?

Answer choices	Responses	
Yes, there are legal supports available for Aboriginal and Torres Strait Islander children and young people in relation to youth justice issues.	76.67%	23
No, there are no legal services available to support Aboriginal and Torres Strait Islander children and young people in relation to youth justice issues.	6.67%	2
I don't know if there are legal services available to support Aboriginal and Torres Strait Islander children and young people in relation to youth justice issues.	16.67%	5
Answered		30
Skipped		27

20. When should a referral for legal support services be made for Aboriginal and Torres Strait Islander children and young people who come in contact with the youth justice system?

Answer choices	Responses	
As soon as a child/young person has contact with the youth justice system (as early as possible)	100%	30
When youth justice wants to discuss legal documents or legal orders	0.00%	0
When you receive Court paperwork and are made aware of a Court date	0.00%	0
Other	0.00%	0
Answered		30
Skipped		27

21. Do you know how to refer Aboriginal and Torres Strait Islander children and young people in your region to legal support services for youth justice issues?

Answer choices	Responses	
Yes, I know how to make referrals.	80%	24
No, I don't know how to refer children and / or young people to legal services for youth justice issues.	20%	6
Answered		30
Skipped		27

22. How easy is it for Aboriginal and Torres Strait Islander children and young people in your region to access legal support services when they are in contact with the youth justice system in your community? (Select one option).

Answer choices	Responses	
Very easy	3.45%	1
Somewhat easy	48.28%	14
Neither easy nor difficult	20.69%	6
Somewhat difficult	20.69%	6
Very difficult	6.90%	2
Answered		29
Skipped		28

23. Do you have suggestions on how access to legal support Aboriginal and Torres Strait Islander young people in your region could be improved? [Open text]

24. Which statement best describes your ability to access or refer Aboriginal and Torres Strait Islander children and young people in your region to culturally safe legal support services for youth justice issues?

Answer choices	Responses	
I can access culturally safe legal support services for youth justice issues.	63.33%	19
I do not know what legal support services are available to me for youth justice issues.	13.33%	4
I do not have access to any legal support services for youth justice issues.	0.00%	0
The legal support services available for youth justice issues are not culturally safe.	16.67%	5
Other	6.67%	2
Answered		30
Skipped		27

25. Are there Aboriginal and Torres Strait Islander community controlled organisations (ACCOS) delivering legal services for youth justice issues in your community?

Answer choices	Responses	
Yes	66.67%	20
No	33.33%	10
Answered		30
Skipped		27

26. What types of legal support services would better meet the needs of Aboriginal and Torres Strait Islander children and young people in contact with the youth justice system? [Open text].

27. How easy is it for Aboriginal and Torres Strait Islander children and young people in out-of-home care in your region who become involved in the youth justice system to access legal support? (Select one option).

Answer choices	Responses	
Very easy	10.34%	3
Somewhat easy	27.59%	8
Neither easy nor difficult	20.69%	6
Somewhat difficult	13.79%	4
Very difficult	13.79%	4
I do not know	13.79%	4
Answered		29
Skipped		28

28. How would you describe the legal support options in your region for Aboriginal and Torres Strait Islander young people in out-of-home care for youth justice issues? (Select all that apply)

Answer choices	Responses	
Support is available from an Aboriginal and Torres Strait Islander community-controlled organisation that meets the needs of young people in out of home care experiencing youth justice issues	46.15%	12
Support is available but only from non-Indigenous organisations	3.85%	1
The support available is inadequate, but is provided by Aboriginal and Torres Strait Islander community-controlled organisations	26.92%	7
The support available is inadequate, and is only available from non-Indigenous organisations	23.08%	6
Answered		26
Skipped		31

29. How can legal support be improved in your region for Aboriginal and Torres Strait Islander children and young people facing youth justice issues? [Open text].

30. How easy is it for Aboriginal and Torres Strait Islander children, parents and families affected by domestic and family violence to access legal support in your region?		
Answer choices	Responses	
Very easy	3.57%	1
Somewhat easy	21.43%	6
Neither easy nor difficult	25.00%	6
Somewhat difficult	32.14%	9
Very difficult	10.71%	3
I do not know	7.14%	2
Answered		28
Skipped		29

31. How would you describe the legal support options in your region for Aboriginal and Torres Strait Islander parents and families experiencing domestic and family violence who are in contact with child protection? (Select all that apply)		
Answer choices	Responses	
Support is available from an Aboriginal and Torres Strait Islander community-controlled organisation that meets the needs of parents and families experiencing domestic and family violence	40.00%	12
Adequate support is available but only from non-Indigenous organisations	13.33%	4
The support available is inadequate, but is provided by Aboriginal and Torres Strait Islander community-controlled organisations	30.00%	9
The support available is inadequate, and is only available from non-Indigenous organisations	16.67%	5
Answered		30
Skipped		27

32. How can legal support be improved in your region for Aboriginal and Torres Strait Islander parents and families experiencing domestic and family violence who are in contact with child protection? [Open text].

33. Which statement best describes your ability to access or refer Aboriginal and Torres Strait Islander parents, families and children in your region affected by family violence to access culturally safe legal support?		
Answer choices	Responses	
I can access culturally safe legal support services for child protection issues.	59.26%	16
I don't know what legal support services are available to me for child protection issues.	7.41%	2
I don't have access to any legal support services for child protection issues.	3.70%	1
The legal support services available for child protection issues are not culturally safe.	22.22%	6
Other	7.41%	2
Answered		27
Skipped		30

34. Please describe the available CLE for Aboriginal and Torres Strait Islander children who have contact with the child protection system:		
Answer choices	Responses	
There is CLE in my region for Aboriginal and Torres Strait Islander children on child protection legal rights	21.43%	6
There is no CLE in my region for Aboriginal and Torres Strait Islander children about child protection rights	46.43%	13
I do not know	32.14%	9
Answered		28
Skipped		29

35. Please describe the available CLE for Aboriginal and Torres Strait Islander parents and families who have contact with the child protection system:		
Answer choices	Responses	
There is CLE in my region for Aboriginal and Torres Strait Islander parents and families about child protection legal rights	32.14%	9
There is no CLE in my region about child protection rights	35.72%	10
I do not know	32.14%	9
Answered		28
Skipped		29

36. Please describe the available CLE for Aboriginal and Torres Strait Islander children and/or young people who have contact with the youth justice system:

Answer choices	Responses	
There is CLE in my region for Aboriginal and Torres Strait Islander children and or young people about youth justice legal rights	32.14%	9
There is no CLE in my region for Aboriginal and Torres Strait Islander children and or young people about youth justice legal rights	28.57%	8
I do not know	39.29%	11
Answered		28
Skipped		29

37. Please describe the available CLE for Aboriginal and Torres Strait Islander children and families experiencing family violence:

Answer choices	Responses	
There is CLE in my region for Aboriginal and Torres Strait Islander children and families experiencing family violence in relation to child protection	40.74%	11
There is no CLE in my region for Aboriginal and Torres Strait Islander children and families experiencing family violence in relation to child protection	33.33%	9
I do not know	25.93%	7
Answered		27
Skipped		30

38. Having responded to the above, do you have any suggestions for improvements to the delivery of CLE or any opportunities for CLE in your region that you would like to share? [Open text].

39. Please describe examples of good practice or service delivery model(s) that respond effectively to the needs of Aboriginal and Torres Strait Islander children, parents and families in contact with the child protection system? Describe what makes this an example of good practice or service delivery model/s and include links, dot points, or names of organisations or programs. [Open text]

40. Do you have any other comments you think would be important for the Project Team to know? [Open text]

APPENDIX C – JURISDICTIONAL DATA

Legal Supports Scoping Study Project – Jurisdictional data provided by governments

In May 2024, SNAICC and NATSILS requested data and information from governments on:

- funding allocations for legal supports
- programs and services that support the legal needs of children and families
- evaluation outcomes
- service utilisation.

The information was submitted to the child protection and justice departments in each of the jurisdictions. Information was also requested regarding the representation of children in child protection proceedings from the National Indigenous Australians Agency (NIAA).

The government jurisdictions that provided responses are as follows:

- Australian Capital Territory: (1) Justice and Community Safety Directorate; and (2) Community Safety Directorate;
- Queensland: (1) Department of Child Safety, Seniors and Disability Services; and (2) Department of Justice and Attorney-General;
- South Australia: (1) Department for Child Protection; and (2) South Australian Attorney-General's Department.
- Western Australia: (1) Department of Communities; and (2) Department of Justice;
- Tasmania: (1) The Tasmanian Department for Education, Children and Young People; and (2) Tasmania Aboriginal Legal Service
- Victoria: (1) Department of Justice and Community Safety Victoria;
- New South Wales: Department of Communities and Justice (1); and
- National Indigenous Australians Agency (NIAA).

The jurisdictions which have not provided responses are as follows:

- Northern Territory
- Department of Families, Fairness and Housing in Victoria.

FINDINGS – EXPENDITURE

Expenditure under the National Legal Assistance Program (NLAP) specifically for Aboriginal and Torres Strait Islander community-controlled legal services for Aboriginal and Torres Strait Islander children and parents, and a breakdown of expenditure in relation to child protection.

A. Expenditure under the National Legal Assistance Program (NLAP) specifically for Aboriginal and Torres Strait Islander community-controlled legal services for Aboriginal and Torres Strait Islander children and parents, and a breakdown of expenditure in relation to child protection.			
JURISDICTION	2021-22	2022-23	2023-24
ACT⁹⁹			
ALS baseline funding	\$728,000 ¹⁰⁰	\$799,000 ¹⁰¹	\$815,000 ¹⁰²
QLD¹⁰³	N/A	N/A	N/A
SA¹⁰⁴			
Core funding	\$5,267,000 ¹⁰⁵	\$5,350,000	\$5,427,000
Family Law Pilot	\$766,166 ¹⁰⁶	\$785,320	\$804,953
Women's Legal Assistance	\$500,000 ¹⁰⁷	\$512,500	\$525,313
Coronal Inquiries and Expensive and Complex Cases	\$118,000 ¹⁰⁸	\$487,000	\$738,000
Mental Health – Litigation Guardian			\$57,229 ¹⁰⁹
WA¹¹⁰	N/A	N/A	N/A
TAS¹¹¹	N/A	N/A	N/A
VIC¹¹²			
Victorian Aboriginal Legal Service – VALS	\$5.682m ¹¹³	\$5.788m	\$5.887m
Djirra	\$0.450m ¹¹⁴	\$0.455m	\$0.462m
NSW¹¹⁵			
ALS – NLAP	\$22.394m	\$23.702m	\$24.7m
WBAWLC – NLAP	\$523,601	\$532,501	Yet to be tabled

B. State and territory government expenditure on child protection legal services for Aboriginal and Torres Strait Islander children and parents separate to the National Legal Assistance Program.

JURISDICTION	2021-22	2022-23	2023-24
ACT¹¹⁶			
Mulleun Mura	\$285,076 ¹¹⁷	\$290,065 ¹¹⁸	\$295,141 ¹²⁰
CPLAS		\$366,000 ¹¹⁹	\$377,000 ¹²¹
QLD¹²²	N/A	N/A	N/A
SA¹²³	N/A	N/A	N/A
WA¹²⁴	N/A	N/A	N/A
TAS¹²⁵	N/A	N/A	N/A
VIC State funding through DJCS:			
<i>Culturally Appropriate Family Violence Legal Services to VALS (\$1.5m) and Djirra (\$1.5m) provided annually to two Victorian Aboriginal legal services to support employment of appropriately qualified and experienced Lawyers and Client Service Officers.</i>	\$3m (VALS \$1.5m and Djirra \$1.5m)	As per 2021-22	As per 2021-22 and 2022-23
VALS for <i>Balit Ngulu</i>		\$0.866 m	\$0.878 m
VLA - total state funding (inclusive of services to non-Indigenous Victorians), noting that as a statutory authority, the exact allocation of resources is determined by the organisation.		\$166.104m	\$169.075m
Other CLCs (excluding VALS and Djirra) - total funding; CLCs determine the amount of total funding that they expend on child protection, and other, matters.		\$41.884m	\$45.653m
NSW¹²⁶			
Legal Aid NSW	\$272.742m	\$286.781m	N/A
CLCs	\$14.526m	\$14.603m	

C. Expenditure on child protection legal services for all parents and children, including a separate breakdown of expenditure through the National Legal Assistance Program and funding for Legal Aid Commissions and Community Legal Centres.

JURISDICTION	2021-22	2022-23	2023-24
ACT¹²⁷			
NLAP funding	\$782,000	\$799,000	\$815,000
LA ACT baseline funding	\$14.408m	\$13.891m	\$14.101m
CLC baseline funding		\$353,845	\$365,876
QLD¹²⁸	N/A	N/A	N/A
SA¹²⁹			
Legal Services Commission			
Baseline funding	\$17,719,000 ¹³⁰	\$17,997,000	\$18,297,000
Family Advocacy and Support Services	\$861,000	\$1,135,000	\$1,160,000
Domestic Violence Unit / Health Justice Partnership	\$848,150 ¹³²	\$864,500	\$880,475
Legal Assistance for Vulnerable Women	\$450,000 ¹³³	\$461,250	\$472,781
Federal Circuit and Family Court of Australia Case Management		\$1,770,000 ¹³⁷	\$1,827,000
Community Legal Centres			
Baseline funding	\$4,406,661	\$4,475,583	\$4,542,829
Family Law Family Violence	\$1,422,920 ¹³⁴	\$1,439,919	\$1,459,918
Family Law Pilot Program	\$2,700,000	\$2,748,750	\$2,798,719
Women's Legal Assistance	\$715,000 ¹³⁵	\$732,875	\$1,119,885
Domestic Violence Unit	\$604,850 ¹³⁶	\$616,000	\$644,537
Women's Legal Assistance Regions		\$540,000 ¹³⁸	\$553,500
Mental Health (Litigation Guardian)			\$382,040 ¹³⁹
WA¹⁴⁰	N/A	N/A	N/A
TAS¹⁴¹	N/A	N/A	N/A
VIC			
Culturally Appropriate Family Violence Legal services	VALS \$1.5m and Djirra \$1.5m	As per 2021-22	As per 2021-22 and 2022-23
Family violence prevention and child protection legal services	Djirra \$0.263m		
<i>VALS for Balit Ngulu</i>	\$1.243m	\$0.866m	\$0.878 m

VLA – total state funding, noting that as a statutory authority, the exact allocation of resources is determined by the organisation	\$179.041m	\$166.104m	\$169.075m
NLAP funding to other CLCs (excluding VALS and Djirra) – total funding; CLCs determine the amount of total funding that they expend on child protection, and other, matters. Note: there is no dedicated State or NLAP funding allocated to Community Legal Centres (CLC) through DJCS for child protection legal services. CLCs determine the amount of total funding that they expend on child protection, and other, matters.	\$20.196m	\$20.495m	\$26.602m
NSW	N/A	N/A	N/A
NIAA			
<p>The NIAA funds legal assistance for First Nations peoples through investment in the following programs:</p> <ul style="list-style-type: none"> • Family Violence Prevention Legal Services (FVPLS); • Supplementary Legal Assistance (SLA); and • Indigenous Women’s Program (IWP). 			
FVPLS			
<ul style="list-style-type: none"> • NIAA funds 16 FVPLS providers under the IAS to deliver services which address the legal needs and non-legal wrap-around support needs for First Nations victim-survivors of family violence and sexual assault (predominantly women and children). Services delivered by FVPLS providers include: <ul style="list-style-type: none"> - Legal advice and casework assistance in various areas of law, including: family and domestic violence, victim support, sexual assault, family law, child protection, victim compensation and witness assistance. - Non-legal wrap-around wellbeing support for First Nations clients and families, including: counselling, non-legal case management services, referral, information and support services. - Early Intervention and family violence prevention programs; Community Legal Education (CLE) programs and community engagement. • The FVPLS sector plays a vital role, directly contributing towards Target 12, which aims to reduce the over-representation of First Nations children in child protection systems. FVPLS service delivery addresses structural and systemic drivers in contact with child protection systems. • From 1 July 2022 to 31 December 2023, FVPLS providers supported over 21,412 First Nations victim-survivors of family violence and/or sexual assault with legal and non-legal services across Australia. • FVPLS providers are funded under the IAS to have a presence in each state and territory, covering 79.5% of Australia’s land mass [6.1 million square kilometres], in areas with a higher proportion of First Nations women. It was noted that some state and territory governments provide investment in FVPLS services. 			

SLA and IWP

NIAA funds legal assistance services for First Nations peoples through the SLA and IWP programs. This funding supplements core NLAP funding for legal assistance providers.

- SLA:
 - In 2023-24 – 5 providers funded to deliver 6 SLA activities in the NT. Providers are Community Legal Centres, an Aboriginal and Torres Strait Islander Legal Service, and a Legal Aid Commission.
 - Services may include legal advice, case work and representations, legal information and non-legal support, remote community outreach, and community legal education.
 - IWP:
 - In 2023-24 – 7 providers funded to deliver 7 IWP activities across Australia. Providers are Community Legal Centres and an Aboriginal and Torres Strait Islander Legal Service.
 - Providers deliver high-quality, culturally sensitive, equitable and accessible legal assistance services to First Nations women to help them engage effectively with the legal system in order to address legal needs.
 - The services provided differ in each location depending on the needs of each community, as identified by each provider.
-

D. Expenditure on specialist Aboriginal and Torres Strait Islander courts for child protection matters, for relevant jurisdictions, including a breakdown of expenditure on Aboriginal-identified Court co-ordination positions and other processes supporting specialist Courts.

JURISDICTION	2021-22	2022-23	2023-24
ACT	N/A	N/A	N/A
QLD¹⁴²	N/A	N/A	N/A
SA¹⁴³	N/A	N/A	N/A
WA			
Dandjoo Bidi-Ak Court:	\$599,713	\$536,132	\$696,822
1 FTE – Aboriginal Convenor	\$98,944	\$100,923	\$102,941
2 FTE Family Engagement Worker – Aboriginal	\$157,434	\$160,583	\$163,794
1 FTE Court Officer – Aboriginal	\$69,256	\$70,641	\$72,054
oncosts – salary and other	\$97,690	\$99,644	\$101,637
Children’s Court:			
Aboriginal Liaison Officers	\$170,389	\$96,641	\$249,446
Aboriginal interpreters	\$6,000	\$7,700	\$6,950
TAS¹⁴⁴	N/A	N/A	N/A
VIC	N/A	\$0.572m ¹⁴⁵	\$0.634m ¹⁴⁶
NSW¹⁴⁷	N/A	N/A	N/A

E. The amount and proportion of total expenditure for:

- a. community legal education for Aboriginal and Torres Strait Islander communities about legal rights and options in relation to child protection contact; and
- b. legal representation for Aboriginal and Torres Strait Islander children in relation to child protection matters
- c. legal representation, advice and support for Aboriginal and Torres Strait Islander children and young people in relation to youth justice matters
- d. legal representation for Aboriginal and Torres Strait Islander parents in relation to child protection matters
- e. Aboriginal community-controlled organisations with Delegated Authority for children to access legal support for Aboriginal and Torres Strait Islander children in relation to child protection and youth justice matters
- f. early intervention programs specifically designed for Aboriginal and Torres Strait Islander children and families to defer from the court and legal system
- g. paralegal support and case coordination support for Aboriginal and Torres Strait Islander children and parents in relation to legal needs related to child protection and/or youth justice matters.

JURISDICTION	2021-22	2022-23	2023-24
ACT¹⁴⁸			
Legal representation funding	N/A	\$366,000 ¹⁴⁹	\$377,000 ¹⁵⁰
QLD¹⁵¹	N/A	N/A	N/A
SA¹⁵²			
Aboriginal Power Cup	\$103,781 ¹⁵³	\$106,376	\$109,036
Aboriginal Justice Advocacy Service	\$239,933 ¹⁵⁴	\$231,292	\$242,394 ¹⁵⁷
Non-Aboriginal specific			
Operation Flinders Program	\$488,925 ¹⁵⁵	\$501,148	\$513,677
Forensic Child Protection Services		\$139,909	\$143,406
TAS¹⁵⁸	N/A	N/A	N/A
VIC¹⁵⁹	N/A	N/A	N/A
WA	N/A		
NIAA			
Youth Through-Care (for 3 providers)	\$2.73m	\$3.11m	\$3.5m
Custody Notification Service (for 5 providers)	\$3.05m	\$4.4m	\$4.4m
Youth Diversion and Support	\$4.72m for 18 activities	\$15.2m for 49 activities	\$14.39m for 49 activities
Family Violence Prevention Legal Services (for 16 providers)	\$37.3m	\$29.2m	\$36.6m

JURISDICTION	2021-22	2022-23	2023-24
NSW		<ul style="list-style-type: none"> State Funding – 2022-23 \$234,322 via Funded Services Unit YJNSW. Proportion of State 2 funding = 14.6% Between November 2022 to November 2023, 618 visits were made to young people in custody by ALS solicitors. Advice was given regarding 1313 discrete matters. There were 561 instances where further follow-up work took place after the visit. 	<ul style="list-style-type: none"> ALS Visiting Legal Service \$342,544 excl. GST (note: \$117,161 of this funded via State 2 funding, the remaining from Youth Justice operational budget). ALS Comm funding – \$623,000 via Whole of Government Initiatives Team (WOGIT)/Short Term Remand (STR). Proportion of Comm 2 funding = 25.3% Waminda – \$282,369 via South Coast YJ Community Office, Nowra. Proportion of State 2 funding = 11.7% Muloobinba Aboriginal Corporation – \$250,000 via WOGIT/STR. Proportion of Comm 3 = 6.9%.
		TOTAL \$351,483 ex GST	TOTAL \$1,565,913 ex GST

F. Total amount of expenditure on legal practitioners and legal services for the child protection department, including, if relevant, the available budget for the payment of external legal practitioners.

JURISDICTION	2021-22	2022-23	2023-24
ACT¹⁶⁰			
Expenditure on legal practitioners/services	\$2.974m	\$3.377m	\$3.380m ¹⁶¹
Budget for external legal resources	\$33,000	\$33,000	\$33,000
QLD¹⁶²	N/A	N/A	N/A
SA	N/A	N/A	N/A
WA¹⁶³	N/A	N/A	N/A
TAS¹⁶⁴	N/A	N/A	N/A
VIC ¹⁶⁵	N/A	N/A	N/A
NSW¹⁶⁶			
Care Litigation	\$5,325,202	\$5,758,974	\$4,192,214
OOHC File Audit	\$2,478,894	\$2,584,099	\$2,604,810
Specialist Litigation & Advice	\$17,494	\$47,955	\$0
Total	\$7,821,590	\$8,391,027	\$6,797,024

G. Expenditure on ACCOs or other community or health services to support Aboriginal and Torres Strait Islander children and/or families in contact with child protection, specifically to address legal needs or engage legal services (not including services funded to provide advice on placement, cultural planning, or other matters).

Jurisdictions were unable to provide data on this item

ACRONYMS

ACCO	Aboriginal and Torres Strait Islander community-controlled Organisation
ALAF	Aboriginal Legal Assistance Forum
ATSILS	Aboriginal and Torres Strait Islander Legal Services
CLE	Community Legal Education
EAG	Expert Advisory Group
ECCDPP	Early Childhood Care and Development Policy Partnership
FNAAFV	First Nations Advocates Against Family Violence
FVPLS	Family Violence Prevention and Legal Services
JPP	Justice Policy Partnership
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NFVPLS	National Family Violence Prevention Legal Services
NLAP	National Legal Assistance Partnership
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with a Disability
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

ENDNOTES

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- 99 Under the NLAP the Aboriginal Legal Service (NSW/ACT) received quarantined Commonwealth funding for the delivery of culturally appropriate services in a manner consistent with self-determination. However, the NLAP funding provided to the ALS is not provided in a way that disaggregates funding specifically to children and parents and / or child protection.

- 100 Information provided is available publicly through the NLAP Funding Schedule. Refer to: <https://federalfinancialrelations.gov.au/agreements/nationallegal-assistance-partnership-nlap>.
- 101 Ibid.
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- 103 Information is not available to be provided by Department of Child Safety, Seniors and Disability Services and the Department of Justice and Attorney-General.
- 104 The Department for Child Protection does not incur such expenditure as other parts of the system provide legal services to children and young people and their parents, where there are care and protection proceedings. The figures in this row outline the total funding provided to the Aboriginal Legal Rights Movement (ALRM) pursuant to the NLAP that could be used to support Aboriginal and Torres Strait Islander children and parents as parties in child protection matters. This funding is also intended to support other key priority groups under the NLAP. A breakdown of funding specifically for children is not available.
- 105 Core funds can be used to provide generalist legal assistance to Aboriginal and Torres Strait Islander peoples, including advice, representation and duty lawyer services, as well as community legal education and early intervention. Under this funding stream, the ALRM provides legal services in civil, criminal and family law matters. Core funds may be used to support children and parents.
- 106 The Family Law Pilot is designed to target the 'missing middle', which includes those who do not meet the eligibility criteria for the provision of legal aid that might otherwise not be eligible for legal assistance under standard financial disadvantage criteria but cannot otherwise afford private legal services. This program allows service providers to take on more complex family law matters.
- 107 This program allows the ALRM to provide state-wide legal assistance to vulnerable Aboriginal and Torres Strait Islander women, including women experiencing, or at risk of experiencing, domestic and family violence.
- 108 The purpose of this funding is to increase ALRM's capacity to deliver legal assistance to Aboriginal and Torres Strait Islander people involved in complex and / or expensive cases. Amongst other things, ALRM uses these funds for coronial inquests into the deaths of Aboriginal and Torres Strait Islander children in State care or under the guardianship of the Department for Child Protection.
- 109 This funding allows ALRM to act as Litigation Guardian for parents or interested adults in care and protection proceedings in the Youth Court.
- 110 The Department of Communities does not have access to data regarding to funding under the NLAP or the breakdown of expenditure. In addition, the Department of Justice confirmed that the requested information is not available, however, if required, a breakdown can be provided for each financial year by: (1) NLAP baseline; and (2) NLAP dedicated funding streams (e.g. coronial inquiries, vulnerable women, workplace sexual harassment). The Department of Justice also noted that the Aboriginal Legal Service of Western Australia (ALSWA) is the only ACCO legal service that receives NLAP funding in WA.
- 111 The Tasmanian Department for Education, Children and Young People did not provide any data. In addition, TALS did not receive the dedicated funding for child protection matters from any source.
- 112 Figures provided are the total funding allocated to these Aboriginal providers through the NLAP. The providers have discretion for determining what proportion of this total funding is expended on child protection, and other, matters. A more detailed breakdown of funding allocated (or expended) specifically for Aboriginal children and parents or child protection is not held by government.
- 113 Baseline and legal assistance for vulnerable women funding streams.
- 114 Funding allocated to Djirra through the NLAP is under the vulnerable women funding stream as a community legal centre (CLC). Djirra also receives Commonwealth funding through direct funding arrangements with the Commonwealth.
- 115 The Aboriginal Legal Service (NSW/ACT) Limited (**ALS**) and Wirringa Baiya Aboriginal Women's Legal Centre (**WBAWLC**) receive *National Legal Assistance Partnership 2020-2025 (NLAP)* baseline funding for core services and specific 'for purpose' funding, for example, for dedicated legal assistance services to women. These funds may be used by ALS and WBAWLC toward Care and Protection services (including advices, representation, community legal education, advocacy and others), however, the Department of Communities and Justice (**DCJ**) does not have visibility over expenditure at this level.

- 116 ACT Government funding is provided to WLC's Mulleun Mura Program, which supports First Nations women experiencing DVF, particularly those requiring legal assistance and representation before the Federal Court and the Family Court of Australia in relation to child protection and family law. ACT Government funding is also provided to ALS for the establishment of a Care and Protection Legal Advocacy Service (CPLAS).
- 117 Information provided is available publicly through the ACT Budget papers and contract register.
- 118 Ibid.
- 119 Ibid.
- 120 Ibid.
- 121 Ibid.
- 122 Information is not available to be provided by Department of Child Safety, Seniors and Disability Services and the Department of Justice and Attorney-General.
- 123 The Department for Child Protection does not incur such expenditure as other parts of the system provide legal services to children and young people and their parents, where there are care and protection proceedings. Aboriginal and Torres Strait Islander children and young people are represented by a solicitor appointed by the Legal Services Commission. Parents may be represented by the Aboriginal Legal Rights Movement, the Legal Services Commission, Country Legal Centres, a private lawyer or be self-represented. In addition, the Attorney-General's Department does not fund child protection legal services for Aboriginal and Torres Strait Islander children and parents other than pursuant to the NLAP.
- 124 The Department of Communities does not have access to the breakdown of funding on child protection legal services separate from the NLAP. In addition, the Department of Justice noted that this information is not available.
- 125 The Tasmanian Department for Education, Children and Young People did not provide any data. It was also noted that the Tasmanian Government does not provide discrete funding to TALS for child protection matters. The Tasmanian Office of the Director of Public Prosecutions also does not receive a separate stream of funding for child protection matters, as this is part of their general appropriation.
- 126 This funding is not specific funding for services to Aboriginal and Torres Strait Islander people
- 127 ACT allocated funding is not identified for services regarding child protection legal services for all parents and children.
- 128 Information is not available to be provided by Department of Child Safety, Seniors and Disability Services and the Department of Justice and Attorney-General.
- 129 The Department for Child Protection does not incur such expenditure as other parts of the system provide legal services to children and young people and their parents, where there are care and protection proceedings. The figures in this row outline the total funding to the South Australian legal assistance sector, pursuant to the NLAP, that could be used to support children and parents as parties to child protection matters. This funding is also intended to support various other key priorities groups under the NLAP.
- 130 Baseline funding can be used to provide legal services to all clients who fall within the priority client groups listed in the NLAP, including Aboriginal and Torres Strait Islander people and children and young people. Services can include advice, representation and duty lawyer services, as well as community legal education and early intervention. Such services could be provided to parents and children.
- 131 This funding is used to provide family advocacy and support services, including legal support and advice for families affected by family violence in matters before the Federal Circuit and Family Court of Australia.
- 132 The Domestic Violence Unit / Health Justice Partnership funding allows the Legal Services Commission to provide wrap-around legal assistance and non-legal support to women experiencing, or at risk of experiencing, domestic violence.
- 133 The Legal Services Commission uses this funding to establish and deliver a Health Justice Partnership with the Women's and Children's Hospital for women experiencing, or at risk of experiencing, domestic violence.
- 134 This funding can be used to provide legal services in family law matters to clients who fall within the priority client groups listed in the NLAP, including Aboriginal and Torres Strait Islander people and children and young people. Services can include advice, representation and duty lawyer services, as well as community legal education and referrals.
- 135 This program is designed to increase the provision of free legal assistance to vulnerable South Australian women, with a focus on women experiencing, or at risk of experiencing, domestic violence.

- 136 The Domestic Violence Unit funding allows the Women's Legal Service South Australia to provide wrap-around legal assistance and non-legal support to women with the greatest need and reduced capability to obtain support for themselves.
- 137 This funding supports the Legal Services Commission to deliver timely and effective representation in family law matters, in response to increasing costs in the Federal Circuit and Family Court of Australia.
- 138 This funding supports increased legal assistance for vulnerable women in regional areas of South Australia.
- 139 This funding allows Community Legal Centres to act as Litigation Guardian for parents or interested adults in care and protection proceedings in the Youth Court.
- 140 The Department of Communities does not have access to data regarding to funding on child protection legal services for all parents and children or a breakdown of expenditure. In addition, the Department of Justice confirmed that this information is not available.
- 141 The Tasmanian Department for Education, Children and Young People did not provide any data. In addition, TALS does not track specific expenditure against individual matter types.
- 142 Information is not available to be provided by Department of Child Safety, Seniors and Disability Services and the Department of Justice and Attorney-General.
- 143 The Department for Child Protection and the Attorney General's Department confirmed that there are no specialist Aboriginal courts for child protection in South Australia.
- 144 The Tasmanian Department for Education, Children and Young People and TALS did not provide any data.
- 145 Marram-Ngala Ganbu is a Koori hearing day. Marram-Ngala Ganbu seeks to provide a more effective, culturally appropriate and just response for Koori families through a court process that enables greater participation by family members and culturally-informed decision-making. Marram-Ngala Ganbu currently operates in two locations in Victoria, Broadmeadows Children's Court and the Shepparton Law Courts. Marram-Ngala Ganbu sits weekly in Broadmeadows, and fortnightly in Shepparton, and in 2023-24 there was an average of around 11 families per hearing in each location. Also note that Victoria also operates a Children's Koori Court model – however this hears criminal, and not child protection, matters.
- 146 Ibid.
- 147 For child protection/care matters, the Winha-nga-nha List is a dedicated court list for Aboriginal and/or Torres Strait Islander families involved in care proceedings at the Dubbo Children's Court, which commenced in September 2023.
- 148 It was noted by the ACT Government Agencies (i.e. Justice and Community Safety Directorate and Community Safety Directorate) that some of these activities are funded but that the funding is not disaggregated. Therefore, it is not possible to report on each activity. Legal Aid ACT, Women's Legal Centre ACT, Canberra Community Law, Aboriginal Legal Services (NSW/ACT) and CARE Community Law (vulnerable women debt clinic) all offer services and may be able to provide information proportion of total expenditure.
- 149 Legal representation for Aboriginal and Torres Strait Islander children and families in relation to child protection matters is funded through the CPLAS.
- 150 Ibid.
- 151 It was noted by the Department of Child Safety, Seniors and Disability Services that for children and families under a delegated authority (DA) arrangement where legal advice is required, DA organisations would need to refer families to: Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services, Queensland Indigenous Family Violence Legal Service or other community legal services. This would then require the ATSICCOs to report this engagement to DCSSDS to capture the information in the Interactive Client Management System in appropriate data fields.
- 152 The Department for Child Protection does not incur such expenditure as other parts of the system provide legal services to children and young people and their parents, where there are care and protection proceedings. Aboriginal and Torres Strait Islander children and young people are represented by a solicitor appointed by the Legal Services Commission. Parents may be represented by the Aboriginal Legal Rights Movement, the Legal Services Commission, Community Legal Centres, a private lawyer or be self-represented.
- 153 The Aboriginal Power Cup is an early intervention program that encourages young Aboriginal students to continue their secondary education and make positive life choices.

- 154 The Aboriginal Justice Advocacy Service provides advice and advocacy on behalf of Aboriginal South Australians and their interactions with the justice sector through the provision of prompt responses to Government requests for advice on proposed policy and legislative reforms, as well as timely information on observed trends relating to Aboriginal justice, including child protection and youth justice matters.
- 155 Operation Flinders is a crime prevention and early intervention program for young offenders and young people at risk of offending between the ages of 13 and 18 years. In 2021–22, 16% of clients serviced were Aboriginal or Torres Strait Islander young people. In 2022–23, 20% of clients serviced were Aboriginal or Torres Strait Islander young people. Between July 2023 and December 2023, 16% of clients serviced were Aboriginal or Torres Strait Islander young people.
- 156 This service provides specialist assessment and treatment services to children from birth to 18 years of age and their families, where there is a suspicion of child abuse, psychological maltreatment and / or neglect.
- 157 The Aboriginal Justice Advocacy Service provides advice and advocacy on behalf of Aboriginal South Australians and their interactions with the justice sector through the provision of prompt responses to Government requests for advice on proposed policy and legislative reforms, as well as timely information on observed trends relating to Aboriginal justice, including child protection and youth justice matters.
- 158 The Tasmanian Department for Education, Children and Young People did not provide any data. In addition, TALS do not track specific expenditure to matter types; however noted the following:
- the Tasmanian Government has provided funding to TALS for community legal education and activities;
 - TALS support legal representation and provide paralegal supports; however, this is not tracked against specific matter types; and
 - TALS deliver early intervention programs through NLAP vulnerable women funding.
- 159 Funding allocations in Victoria do not specify the amount or proportion of expenditure in categories like this. Instead providers have discretion for determining how the allocated funding is expended to meet the needs of their clients (and government does not hold information on the expenditure by providers in these categories).
- 160 Legal settlements were not included in the figures in this row.
- 161 The 2023–24 figures were as at 22/05/2024 with a pro rata calculation used to obtain estimated annual costs for all expenses except for the actual legal expenses.
- 162 Information is not available to be provided by Department of Child Safety, Seniors and Disability Services and the Department of Justice and Attorney-General.
- 163 The Department of Communities maintains in-house counsel for functions relating to the Housing Authority and Disability Services. The total Legal Services salary expenditure for the agency captures all legal practitioners and supporting legal staff who service all of these practice areas and cannot be broken down for child protection specifically.
- 164 The Tasmanian Department for Education, Children and Young People did not provide any data. TALS do not have a specific team who provide child protection supports as this forms part of their greater Family and Child Safety team covering all matter types in this area of law.
- 165 N/A for DJCS – the department with primary responsibility for child protection in Victoria is DFFH.
- 166 DCJ is not able to comment on the overall legal budget expended by DCJ on in-house legal officers. The External Legal Expenditure for Child Law is provided in this row.



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