

South Australia's Commissioner for Aboriginal Children and Young People Report 2020

'Family and Culture is Everything'

'Be Seen. Be Heard. Flourish.'

Page 17 portrait is of Kokatha child Bella Saunders with her mum, Janelle Saunders (on Bella's left side), and her Auntie, Sareena Saunders. Bella's ancestral lines connect her also with the Narrunga, Wirangu and Mirning peoples. Thank you kindly to Bella, her parents Janelle Saunders and Ashley Miller, and Sareena Saunders for allowing the use of this photo image. The photo licence approval provided by Colleen Strangways of Nharla Photography, South Australia. Any use of this photo image outside of this report requires the licensed approval of Nharla Photography and permission of Bella, and her mum Janelle and Auntie Sareena.

Likewise any use of all other photos in this report (for other purposes) requires the approval of the Commissioner for Aboriginal Children and Young People.



Note regarding language: The Commissioner for Aboriginal Children and Young People uses the term 'Aboriginal' to refer to people who identify as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander. This term is preferred by Aboriginal South Australians and the Commissioner. The terms 'children' and 'young people' are used interchangeably to refer to all children and young people. The term 'Aboriginal', 'Indigenous' and First Nations people are used interchangeably to refer to all children with whom the Commissioner engaged.

ISBN: 978-0-646-84395-7

© 2020 APRIL LAWRIE, COMMISSIONER FOR ABORIGINAL CHILDREN AND YOUNG PEOPLE, SOUTH AUSTRALIA

The Honourable John Gardner MP Minister for Education GPO Box 1563 Adelaide SA 5001



Dear Minister Gardner,

I am pleased to present to you the second report of the Commissioner for Aboriginal Children and Young People, outlining the activities and key focus areas of my work in 2020.

I have heard from Aboriginal young people and their communities that the year 2020, marked by the COVID-19 pandemic, was like no other. Issues of racial injustice, inequity and poverty have been amplified considerably. However, it has also revealed resilience and exemplary responses by Aboriginal communities who embraced biosecurity measures, safeguarding Elders and today's children and young people; our current and future leaders.

In these difficult circumstances I appreciated hearing their voice and advocating for the much-needed changes in child protection and youth justice. They want to see their rights fully upheld; especially the right to be safe and to thrive with strong family and cultural identity.

I provided evidence to the *Royal Commission into Violence*, *Abuse*, *Neglect and Exploitation of People with Disability* (Disability Royal Commission) focussing on lack of support from government for culturally appropriate models of service delivery and practice. I believe these models should be in place at prevention and early intervention stages, both for vulnerable Aboriginal parents and for children and young people with disability.

The Disability Royal Commission also highlighted inequitable outcomes for Aboriginal children and young people with disabilities across the public education system. The recent report on the *Inquiry into Suspension, Exclusion and Expulsion Processes in SA Government Schools*<sup>1</sup> makes the compelling case to stop excluding Aboriginal children with disability (largely undiagnosed) from school, a position I wholeheartedly support.

I have advocated to 'Raise the Age', as the very low age of criminal responsibility bears diabolical impacts for Aboriginal children and young people in South Australia. The child protection system is also currently at a pivotal point where it can either prevent or perpetuate intergenerational trauma. There are flow-on effects to the youth justice system either way.

The South Australian Government has now moved to enshrine the role of the Commissioner for Aboriginal Children and Young People in legislation. The Children and Young People Advocacy and Oversight (Commissioner for Aboriginal Children and Young People) Amendment Bill 2020 enables independence and a full suite of powers to the role. It will empower the Commissioner to press systems' accountability to improve outcomes for Aboriginal children and young people.

I am also encouraged by the introduction of the *Children and Young People (Safety) (Miscellaneous) Amendment Bill 2020.* The full extent of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) will be applied to all decisions about Aboriginal children, not just placement decisions. This development provides further grounds for the uptake and implementation of local-level Aboriginal Family Care Panels (AFCPs), recommended in my 2019 Annual Report, to enable community and family led decision-making.

This legislation, coupled with the first-ever Closing the Gap<sup>2</sup> targets to reduce over-representation of Aboriginal children and young people in out-of-home care and youth justice, will provide the South Australian Government with the opportunity to recalibrate the system.

Front and centre to these reforms is placing the voice of Aboriginal children and young people, their families and communities at the centre of decision making. I am committed to working with the SA Government to make this happen.

I look forward to discussing this report with you and other leaders and decision makers. Kind regards,

April Lawrie

Aprildawspe

Commissioner for Aboriginal Children and Young People

### ACKNOWLEDGEMENT OF COUNTRY

I would like to acknowledge the Kaurna people as the Traditional Owners of the lands and waters of the Adelaide region on which the office of South Australia's inaugural Commissioner for Aboriginal Children and Young People is established.

I also acknowledge all other Traditional Owners throughout South Australia for whom I seek to serve the best interests of their Aboriginal children and young people. In doing so, I pay respect to Elders and families, both past and present, and pay reverence to today's Aboriginal children and young people as they emerge as our future leaders.



### **ACKNOWLEDGEMENTS**

I would like to thank the many South Australian Aboriginal children and young people, and the wider community, for being generous with their time in having difficult conversations about their experiences with the various services and systems impacting Aboriginal children and young people, their families and their communities.

In staying true to upholding the voices of Aboriginal young people, a special thank you to Eli for allowing this report to include the lyrics of his rap song 'In My Blood'.

I also would like to give thanks and appreciation to Cynthia Fielding and Virginia Leek for their research and project work to help bring about this report. We are a small team, and they gave full support to ensure the Commissioner could fulfil their function and duties.

## TABLE OF CONTENTS

Executive Summary	
Progress Against 2019 Recommendations	8
Recommendation 1: Establish an Aboriginal Child Protection Peak Body	8
Recommendation 2: Establish Aboriginal Family Care Panels (AFCPs)	8
Recommendation 3: Legislate the role of Commissioner for Aboriginal Children and Young People	<u>C</u>
A Snapshot of the Roadmap for Action	C
Emerging Issues for 2020	10
COVID-19	10
Black Lives Matter	1
The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)	14
The Five Core Elements of the ATSICPP	]∠
Making the ATSICPP Work	15
The Aboriginal Family Care Model	
Resourcing for Early Intervention	16
Guardianship Orders – Placement Decisions and the ATSICPP	18
Current Policy Settings Proposed Legislative Changes and AFCPs	19
The Way forward for the ATSICPP	19
Contact with Family and Community as a Right	19
Other Person Guardianship to Non-Aboriginal Carers	20
Towards a new Child Protection Model for Aboriginal Children and Young People	20
Domestic and Family Violence	2 <sup>-</sup>
Reinforcing Aboriginal Children and Young People's Rights to a Voice Within the Child Protection System	2
Aboriginal Youth Justice	
In the Words of Eli	24
Raising the Age – Decriminalising Aboriginal Children and Young People	25
The role of Disability in Offending Behaviour	25
Efforts to Raise the Age	26
Youth Justice Reinvestment	26
Mandatory Youth Treatment Orders	
Cultural Safety in Youth Detention	28
Aboriginal Children and Young People in the Child Protection System and Detention - Dual System Children	
Aboriginal Children and Young People with a Disability	30
Closing the Gap and Child Protection	32
Closing the Gap and Out of Home Care	32
Closing the Gap and Youth Justice	32
Closing the Gap: The link between Health and Education - Racism	
Summary	34
Looking Ahead	
Outline of Key Activities Undertaken in 2020	
References	38
Appendix DCD Aberiginal Action Plan 2019, 20	42

### **EXECUTIVE SUMMARY**



Commissioner April Lawrie

My focus this year has been on the child protection system. As with all systems dealing with Aboriginal children and young people and their families, this system has been tested by COVID-19.

The presence of COVID-19 has further highlighted the sense of estrangement that Aboriginal children and young people in care feel from their families and communities, especially those in non-kinship care. It has also exacerbated the effects of poverty on Aboriginal families who may be struggling, confined to an environment where poor housing results in overcrowding, and/or who do not have ready access to the technology needed for online learning.

I have continued to hear from Aboriginal families and communities that their children and young people are still removed without the benefit of early intervention or without attempts at reunification. Once placed under guardianship, I have heard that children and young people are not always placed with Aboriginal kinship carers.

The numbers of Aboriginal children and young people subject to a guardianship order reached an unprecedented level this year: 866 of 2583 children removed were of Aboriginal descent, up from 612 in the previous year. Of a total of 911 children and young people, 307 Aboriginal children and young people were placed on orders for the first time. These figures mark an overall increase of 20%, 33.7% of whom were Aboriginal children and

young people. Likewise, of the 4370 children and young people in out-of-home care in 2019–2020, a new high of 1544 were Aboriginal (35.33 %, in comparison to 33.3% from the previous year).<sup>4</sup>

I believe the primary tool to effect change is the proper application of all five pillars of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) – Prevention, Partnership, Placement, Participation and Connection – across key systems that deal with Aboriginal children and young people, including child protection, justice, education and health

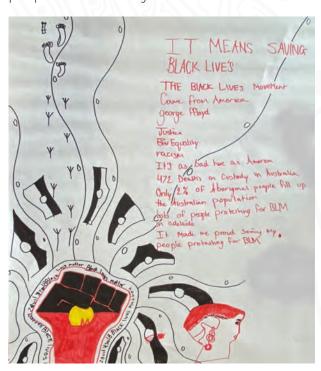
In the many state and national forums, I have attended this year, I have advocated strongly for the ATSICPP to be embedded in legislation, policy, programs, processes and practice. I have emphasised that the thread which holds the ATSICPP pillars together is the active preservation of the Aboriginal child's right to cultural identity and family through family-led decision making. I have sought the consistent application of all five pillars of the ATSICPP to enable early intervention and to move away from limited and "hit and miss" applications at the removal stage only. I have argued that this is best achieved by developing a true decisionmaking partnership between Department of Child Protection (DCP) and Aboriginal children and young people, their families and their communities.

Family-led decision making is key to implementing the ATSICPP. This can be enabled by establishing a strong link between DCP and community through the steerage of local-level Aboriginal Family Care Panels (AFCPs). In 2019 I undertook extensive community consultation which generated this model. It allows all supports to be rallied early to ensure that the child is kept safe within family, community and culture. Together with AFCPs, Aboriginal Community Controlled Organisations can be called in to deliver services to assist with early intervention and reunification and help stem the tide of removals. AFCPs will be an important means for reducing Aboriginal out-of-home care numbers, and therefore a critical response towards meeting Target 12 of the Coalition of Peaks and Australian Governments' 2020 National Agreement on Closing the Gap.⁵ (pg. 35-36)

To date, my ability to argue for this fundamental change has been hampered by the current structure of the *Children and Young People (Safety) Act 2017 (the Child Safety Act)*. Currently, this Act only applies one pillar of the ATSICPP, the placement hierarchy, at the point of removal.

On 22 November 2020, the South Australian Government introduced the Children and Young People (Safety) (Amendment) Bill 2020 (the Child Safety Bill) into parliament. The Child Safety Bill seeks to mandate the application of all five pillars of the ATSICPP to all decisions made about an Aboriginal child. I see this an opportunity for a truly collaborative approach with Aboriginal children and young people, their families and communities to ensure that the ATSICPP is applied as mandated. It does, however, concern me that family-led decision making as a cornerstone principle is not included in the Child Safety Bill. Regardless, I see the opportunity for structured family-led decision making to be included in statutory guidelines that describe and mandate how the ATSICPP is implemented in practice.

Any discussion on Aboriginal child protection must also be a discussion on youth justice and disability. This year I had the opportunity to give evidence to the Disability Royal Commission and present a broader perspective of the experiences of Aboriginal parents, and Aboriginal children and young people with disability.



I found that many Aboriginal people having contact with the child protection or youth justice systems have a disability, often undiagnosed, which poses significant added risk for child removal or imprisonment. Timely and early screening for disability in Aboriginal children must be implemented.

The 'Black Lives Matter' movement was prominent throughout the year, amplifying the critical importance of raising the minimum age of criminal responsibility. This is vital to change the current trajectory of Aboriginal children and young people from the youth justice system into the adult system.

I presented at national forums with Aboriginal children's commissioners from other states that signalled the continual brutality of the law and justice systems which lock up Aboriginal children and young people in numbers that are heavily disproportionate to their non-Aboriginal peers.

The age of criminal responsibility must be raised to 14 years to enable South Australia to comply with the international *Convention on the Rights of the Child* to combat these brutalising effects. The excessive intervention by the state in the lives of Aboriginal children, young people and their families, and the lack of accountability of government in improving outcomes after waves of state and national-level inquiries and a Royal Commission, is of serious concern.

Representing the voices of Aboriginal children and young people, their families and their communities, I am insistent that these voices become active in decision making and positive changes occur through the full and timely implementation of all five pillars of the ATSICPP. For what I've heard and what we as Aboriginal people know to be true is 'family and culture is everything'.



# PROGRESS AGAINST 2019 RECOMMENDATIONS

My 2019 inaugural report detailed recommendations and a roadmap for the future to improve a number of systems for Aboriginal children and young people, their families and communities.<sup>6</sup>

### Recommendation 1: Establish an Aboriginal Child Protection Peak Body

I was invited to provide a submission to the draft bill to amend the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and recommended that the Commissioner for Aboriginal Children and Young People be able to establish an advisory committee to provide Aboriginal community voice to the Commissioner. The final shape of the legislation could influence the model for the peak body, which I will continue to develop in consultation with the Aboriginal community.

### Recommendation 2: Establish Aboriginal Family Care Panels (AFCPs)

Consultation with Aboriginal children and young people, their families and communities regarding the establishment of Aboriginal Family Care Panels (AFCPs) came to a halt in 2020 due to COVID-19 restrictions applied to Aboriginal communities by the *Biosecurity Act 2015 (Commonwealth)*. Although this was a major setback, it did provide the opportunity to continue the research and development of the concept design and to explore the most appropriate model for operating AFCPs across South Australia.

During 2020, the AFCP model concept was developed by:

- Comprehensive online search and review of local and international Indigenous community-led decision-making models, including:
  - South Australia Tiraapendi Wodli Port Adelaide Justice Reinvestment project; Buthera Agreement<sup>7</sup> 2018 (Narrunga Nations Aboriginal Corporation / SA Government)
  - o Queensland Murri Court; *Child Protection Act (1999) (QLD)*
  - New South Wales Aboriginal Child, Family and Community Care State Secretariat (AbSec) and Local Advisory Groups (LAGs)

- o New Zealand Maori decision-making
- o Victoria Victorian Aboriginal Child Care Agency (VACCA)
- Extensive search of South Australian Government records to recover historical information regarding the operations of the South Australian Aboriginal Child Care Agency forums. These forums provided a model for accessing the collective Aboriginal community voice on issues related to Aboriginal children and young people, their families and their communities.
- Sudget bid and other sourcing of funding for the establishment of AFCPs.
- Service mapping of child Safe Pathways, child protection and early intervention services.
- Gap analysis of Department of Child Protection (DCP) policies and guidelines.
- S Legislative analyses of the Children and Young People (Safety) Act 2017 and Children and Young People (Oversight and Advocacy Bodies) Act 2016 to identify legislative implications.
- Advocacy for amendments to the Children and Young People (Safety) Act and regulations.
- S Consideration of Family Is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOHC [Out of Home Care] in NSW – Professor Megan Davis, October 20198
- **o** Consideration of Family Matters recommendations and annual reports.
- Oconsideration of The Life they Deserve: Child Protection Systems Royal Commission Report 2016, South Australia.9

A model concept of the operations of the AFCP initiative has been developed for consultation with the Aboriginal community throughout the first half of 2021, and findings will be presented to South Australian Government at the conclusion of those consultations.

### Recommendation 3: Legislate the Role of Commissioner for Aboriginal Children and Young People

On 3<sup>rd</sup> December 2020, the South Australian Government introduced a bill to amend the Children and Young People (Oversight and Advocacy Bodies Act) 2016. It is expected to pass into law in 2021.

The Children and Young People (Oversight and Advocacy Bodies) (Commissioner for Aboriginal Children and Young People) Amendment Bill 2020 (the CACYP Amendment Bill) provides for the appointment of a Commissioner for Aboriginal Children and Young People (CACYP) with equivalent powers to the current Commissioner for Children and Young People.

The CACYP Amendment Bill states that the CACYP should address systemic issues that arise with respect to the rights, development and wellbeing of Aboriginal children and young people, and includes the ability to conduct systemic inquiries with the powers of a Royal Commission. These are the strongest powers ever given to an Aboriginal Children's Commissioner in Australia.

### A Snapshot of the Roadmap for Action

Subject to the passage of the CACYP Amendment Bill, I plan to conduct a review into child protection systems to examine how effectively the state government is adhering to the full ATSICPP. I will look at all significant decision-making and key nexus points for its application from early intervention onwards.

The review will pay particular regard to the application of the ATSICPP to the removal of Aboriginal babies from birthing services, the placement of siblings in care arrangements and the impact of the detention of other children on existing placements of Aboriginal children and young people.

In line with the 2020 National Agreement on Closing the Gap<sup>5</sup> (CTG agreement) Target 12 (pp. 35-36) and the recommendations of the Family Matters Campaign,<sup>10</sup> I will consider the role of family-led decision making as a key driver to reduce the numbers of Aboriginal children and young people in out-of-home care and cultural safety through service delivery by ACCOs. I will also look to how the ATSICPP in its entirety can be implemented in mandatory guidelines, regulations or statutory policy under the Child Safety Act.

In my ongoing work, I will continue to advocate to 'Raise the Age' of criminal responsibility. I will press for the creation of family, community and ACCO led intensive, early intervention and behavioural therapeutic services to decriminalise Aboriginal children and young people under the age of 14.

### **EMERGING ISSUES FOR 2020**

#### COVID-19

While COVID-19 brought unprecedented uncertainty to all Australians, many Aboriginal community members faced heightened disadvantages and inequity in health, education, housing, income and employment. Aboriginal children and young people, who make up half of South Australia's Aboriginal population, were particularly disadvantaged by a lack of internet access to social media and online learning.

During the periods of physical distancing, social media became the primary form of contact between Aboriginal children and young people. What the research shows is that Aboriginal and Torres Strait Islander people are less likely to have a household internet connection than other households (72% compared to 84%). Consequently, many Aboriginal children and young people had become reliant on public Wi-Fi hotspots in places such as fast-food restaurants and shopping centres. They were denied internet access during the COVID-19 outbreaks when these public areas were closed.

Closely related, COVID-19 further disrupted the education of many Aboriginal children and young people who may not have had access to computers or laptops. While students were only required to learn from home for a relatively short period of time, the risk is that any resulting gaps in knowledge could lead to lifelong learning disadvantages for students already facing poorer education outcomes than non-Aboriginal children and young people.

Moving forward, it is critical to ensure that the disruptions of 2020 do not adversely impact long-term learning outcomes. Further alternative resources need to be developed to ensure that children and young people, particularly those vulnerable and most isolated, remain engaged in learning opportunities during future unforeseen circumstances. This is particularly true of Aboriginal children and young people who are more vulnerable to COVID-19 and similar pandemics. They often have limited access to health care, live in rural and remote locations, and are more likely to experience economic and social disadvantage.<sup>12</sup> For example in the 2008 H1N1 influenza pandemic Aboriginal people were eight times more likely to be hospitalised than non-Aboriginal people.13

Many Aboriginal children and young people have experienced anxiety about these heightened vulnerabilities,<sup>12</sup> and addressing this is vital as the threat of COVID-19 remains. It is important to remember that Aboriginal people's veneration of family, culture and togetherness is a source of resilience and strength and should be viewed as key to preventing the spread of COVID-19 across Aboriginal communities.

Improved outcomes can be achieved through collaboration between policy makers and Aboriginal people, particularly those representing Aboriginal children and young people. How this state responds to the vulnerability of Aboriginal children and young people post COVID-19 will be the true measure of its reconciliation effort and its international obligations to uphold the right of Aboriginal children and young people to family and cultural identity.





### Black Lives Matter

The Black Lives Matter (BLM) protests<sup>14</sup>. began in the United States in May 2020 and went on to highlight the extensive systematic racism that exists nationally and worldwide. The injustices experienced by people of colour, especially minority population groups and indigenous communities came to the fore. In Australia, the BLM campaign brought renewed focus on the more than 400 Aboriginal deaths in custody since the 1991 Report of the Royal Commission<sup>15</sup> and the much-needed attention to the discrimination that Aboriginal people, including children and young people, experience every day.

Specifically, in South Australia the BLM movement forced a much-needed focus on the failure of the state to address and change:

- the brutality of the law and justice systems which continue to lock up young children, particularly young Aboriginal children, in youth detention;
- the excessive intervention by the state in the lives of Aboriginal children and their families and communities; and
- the lack the of government accountability in achieving positive changes and outcomes for Aboriginal children and young people, despite numerous state and national-level inquiries and Royal Commissions.

Aboriginal children and young people experience racism, discrimination, and oppression, not only in their everyday lives but also in their interactions with child protection, education and justice systems. These systems, in South Australia, and indeed nationally, do not promote equality or cultivate environments which are harmonious or safe for Aboriginal children and young people. This is reflected in the high numbers of Aboriginal children and young people who are at risk of death while in custody.<sup>16</sup>

Despite what Aboriginal people have been saying about Black Lives Matter and their own experiences of systemic racism, Australian governments have been slow to act. Alarming statistics and reports can be produced: 474 Aboriginal deaths since the 1991 Royal Commission into Indigenous Deaths in Custody is the proof and the reality of systemic racism.<sup>17</sup> Better outcomes are necessary and are possible.

The BLM movement highlights the injustices that beset Aboriginal children and young people, and their voices must be heard in this debate. In the expansive Aboriginal community engagement process I conducted throughout 2019 (Community Conversations with Aboriginal children and young people), I gained insight into what matters from the perspectives of our Aboriginal young people and their families and communities.

### **EMERGING ISSUES FOR 2020**

As told to me, Aboriginal children and young people know and experience racism constantly: within their neighbourhoods, school yards and classrooms; on the sports fields. It happens at the shops where they are followed by staff, the last to be served, or not served at all; and when they are walking down the street going to the shops, or to visit friends and family, only to be unnecessarily questioned by police. They told me they 'don't like to be singled out', 'looked at funny-way', or viewed with suspicion. They say it makes them feel unsafe and uncomfortable, it makes them scared, it makes them nervous, it teaches them not to trust. These are their experiences of being victimised.

What I am also hearing from Aboriginal children and young people is the mounting peer pressure on them to side with the counter-narrative of "All Lives Matter" by those who do not understand the genesis of the BLM movement or what it means to be Aboriginal in Australia. The unacceptable number of Aboriginal deaths in custody, pervading and systemic racism and the unacknowledged true history of this country and its race relations are valid issues, and yet Aboriginal young people are being made to feel selfish and unjust for focussing on Aboriginal rights despite BLM's clear and demonstrable relevance in Australia.

'Black pride' is key to counteracting racism for Aboriginal children and young people. The Department for Education's South Australian Aboriginal Secondary Training Academy (SAASTA) program aims for year 12 attainment while encouraging Aboriginal young people to demonstrate pride in their cultural identity, their connection, and their belonging – and encourages a desire to know more about who they are and what it is to be Aboriginal in today's modern world.

Aboriginal children and young people have said to me they know that 'lock up' and disadvantage is not a true reflection of Aboriginal identity. They want these stereotypes gone. They want cultural education from Aboriginal people in the community.

They want schools to teach the true history of Australia and to properly address racism within the student community and across leadership and teaching practices.

Aboriginal children and young people do not feel that their voices are being heard and listened to. It is time for systems to undergo fundamental structural change to recognise that Aboriginal children and young people, in partnership with their families and communities, are solution brokers and decision makers.





Aboriginal secondary student participants of the Tjindu Foundation program. Tjindu Foundation was established in South Australia in August 2020. Its purpose is to grow and develop Aboriginal young people into future leaders.

In 2020, I continued to advocate for systems to be transparent and accountable for their treatment of Aboriginal children and young people and to open up to family and community led decision making. I have argued for the inclusion of Aboriginal voicing bodies that reach into a child or young person's family and community, Aboriginal peak bodies, Aboriginal Community Controlled Organisations (ACCOs), and legislative reforms to ensure these voices are present and heard. This shared decision making is key to improving and engaging with the systems that can have such negative impacts on our Aboriginal children and young people.

Research shows that Aboriginal children and young people who have a strong cultural identity are more likely to have stronger social and emotional wellbeing and improved life outcomes.<sup>18</sup> A concerted effort needs to be made to improve the lives and opportunities of Aboriginal children and young people by empowering them, their families and communities to exercise their right to selfdetermination and to find the solutions to childhood disadvantage. The terrible reality of Aboriginal deaths in custody begins with the marginalisation of Aboriginal children and young people from their cultural identity, but it can be ended with the elevation of their voice and the support of their family and community. Supporting cultural identity in the face of systems that sever it requires significant integration of family and community-led decision making in those systems. There must be greater effort in policy and legislation, matched by adequate funding, to ensure that early intervention and cultural safety are entrenched in systems.

The Black Lives Matter campaign has pushed this issue into the foreground; now is the time to move forward and address the marginalisation of Aboriginal children and young people from their culture in South Australian legislation, policies, practice.



## THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE (ATSICPP)

The child protection system has been a key focus in 2020.

In the year 2019–2020 year over a third of the children and young people in care in South Australia were Aboriginal, despite accounting for only 5% of the overall number of children and young people in SA. This means that Aboriginal children and young people are 10 times more likely than others to be placed in care. If the current trend continues this rate will more than double by 2031. By that time, if there is no change there will be 140 in every 1000 Aboriginal children removed from their families. (pg. 10)

I have had the opportunity this year to provide extensive submissions to government to shape the reforms to the Child Safety Act and the Children and Young People (Oversight and Advocacy Bodies) Act 2016 (Child AOB Act). Significant amendments have now been proposed by government to both statutes. If implemented in partnership with Aboriginal children, their families and communities, these reforms could fundamentally alter the current trajectory to removal of Aboriginal children from their families.

Core to this fundamental change is the proper and full implementation of the entire ATSICPP (refer to figure 1).

Embedded within the full ATSICPP is recognition of the necessity for community and family voice in guiding and informing decisions made about the care of Aboriginal children and young people. The early and ongoing engagement of family and community plays a crucial role in successfully improving outcomes and maintaining the child's connection to the strength that comes from culture.

What has become abundantly clear in my dealings with government and discussions with Aboriginal children and young people, their families and communities is that, though often referred to, the ATSICPP is not well understood by policy makers. Its application is often overlooked in everyday practice within DCP and, most crucially, its role in early intervention and preventing removals is not clearly articulated.



The 5 Core Elements of the Aboriginal and Torres Strait Islander Child Placement Principle.<sup>21</sup> (pg. 3)

To some extent this is a failure attributable to its current limited iteration in the Child Safety Act where only the placement pillar applies<sup>22</sup> and only at the point where a child is removed. But this also disguises a deep policy failure as the ATSICPP is designed to apply much earlier to avoid removal where possible.

I hope that the proposed amendments to the *Child Safety Act* mandating the application of all five pillars of the ATSICPP to all decisions, not just placement decisions made about at-risk Aboriginal children will help. My fear is that without more detailed legislative and policy work to address and outline how the interaction with family and community is to be structured, the move to meaningful, shared decision making and full implementation of the five pillars of the ATSICPP may remain an unfulfilled promise.

### Making the ATSICPP Work

The opportunity for all five pillars of the ATSICPP to be meaningfully and effectively applied in early intervention and prevention and beyond to a guardianship and placement decision will only occur if it is facilitated by adequate legislative direction, good policy and proper investment.

I cannot emphasise enough how much effort should be made at early intervention.

It is now four years since *The Life they Deserve: Child Protection Systems Royal Commission Report*<sup>9</sup> (the Nyland Report) concluded that under-investment over many years had hindered service provision in early intervention. The report recommended a cultural and investment shift from the removal of children and young people to early intervention measures.<sup>9</sup> (page XIV, XXIV)

This year in its Safe and Well 2020 Annual Report<sup>23</sup>, the South Australian Government points to number of partnership achievements with Aboriginal people over the last year regarding early intervention.

Principally, these relate to funding of Aboriginal Community Controlled Organisations (ACCOs) in early intervention programs including intensive family support services and kinship support services.<sup>23</sup> (pg. 16-18)

There has also been investment in the development of a co-design framework, *Aboriginal System Design Criteria*, <sup>24</sup> to enable partnership with Aboriginal people in the design and delivery of early intervention programs. This framework was released in 2020

I am concerned that this framework has missed the mark as it fails to have application in regional areas; at the local level. That said, I have yet to see early intervention programs and services funded through locally based ACCO's for the benefit of their Aboriginal children and young people, and their families and community. This approach highlights the importance of designing and delivering a service system that is culturally appropriate and culturally responsive within a community.

In view of the amendments proposed to the Child Safety Act to implement all five pillars of the ATSICPP, I urge the Department of Human Services (DHS) to reconsider the codesign framework to be inclusive of local level service design for families and communities. Consideration should be given to this framework being structured around the Aboriginal family care model that Aboriginal children, their families and communities have told me that they want and that they know works.

### The Aboriginal Family Care Model

In 2019 I conducted an extensive community consultation about the child protection system and based on the feedback received have developed the outline of a model that embodies the ATSICPP at the community level.

The Aboriginal Family Care concept is a self-determination model for Aboriginal community controlled services involvement in the delivery of genuine Aboriginal family leadership and participation in decision-making in Aboriginal child safety matters.

It is a deliberate design for partnerships at the local level, calling for various ACCOs in South Australia to be resourced to deliver the fundamentals of the model in their own communities. The model includes the role of an Aboriginal Family Liaison Officer. This person works through local level Aboriginal Family Care Panels to forge links and ensure Aboriginal family intelligence into planning and decision making about the safety and wellbeing of their children and young people.

The panel is core to the model and involves relevant family and community members (an Aboriginal family care panel - AFCP) to spearhead family led decision making at all significant decision making points from early intervention, up to and including placement after the 'removal' decision. I will take this model back to community in early 2021.

It is my view that it is crucial for the AFCP be included in decision making about Aboriginal children and families where early concerns require decisions to be made under the Child Safety Act about referral for family intensive family support or application for guardianship.

# THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE (ATSICPP)

It is at this point that an AFCP can ensure that a strong plan in line with ATSICPP is implemented by calling together all available family and community supports to the table. The same AFCP and the family and community first gathered can together decide how the child's relationship with family and community can be maintained in the event that DCP decide to intervene and this may even forestall the need for a guardianship application.

I am encouraged that DHS and DCP have committed to designing a child safety system that requires 'non-DCP responses to child protection' in the *Safe and Well* 2020 Annual Report.<sup>23</sup>(p. 26). This is a crucial point where the inclusion of AFCPs can make a significant difference to the outcomes for Aboriginal children.

It is my view that the interaction between AFCPs, the Aboriginal child's family and DCP can be facilitated by family group conferencing (FGC). Pursuant to section 21 Child Safety Act FGCs can be called by the Chief Executive DCP before court proceedings for guardianship are initiated and at any time, including during guardianship proceedings. The FGC process could be specifically adopted by regulations to the Child Safety Act to accommodate the Aboriginal family care panel model. Where there is no DCP involvement they can apply as a matter of policy.

As part of the AFCP model, in a community, an ACCO could have an Aboriginal liaison position to work directly with the Aboriginal family care panel. At a local level, DCP must always notify the liaison officer of any new child safety concerns involving an Aboriginal child in the community. An AFGC should then be held with the family taking the lead. This will allow family and community to support the Aboriginal child by caring for them if necessary whilst parents get back on their feet or in preparation for a guardianship order; fully compliant with the ATSICPP.

However, to ensure that removal does not become the default position, there must be adequate resourcing of early intervention measures in the first place and this is where I have deep concerns.

### Resourcing for Early Intervention

In the Safe and Well 2020 Annual Report, DHS report that 30% of its \$10 million per annum budget for the next four years for Intensive Child and Family Safety and Support Systems is allocated to recommissioning intensive family support services from ACCOs.<sup>23</sup> (p. 7) This is commendable but must be put into perspective.

The 2020 Family Matters Report notes that only 8.7% of the overall \$4 billion expended on child protection in South Australia is directed at family support services and intensive family support services. This is one of the lowest levels of expenditure in the nation and unless there is a major cultural and investment shift, will condemn more Aboriginal children to an acute removal response.

What is currently known is that one ACCO (Kornar Winmil Yunti) commenced an intensive support service for families with complex needs in August 2020 (after a delay for COVID-19).<sup>23</sup> (p.6) There were two families consisting of 13 individuals serviced during 2019-2020 reporting period.<sup>23</sup> (p.37)

Anecdotally, I understand that there are four or five Aboriginal families benefiting from the trial service provided by this ACCO, and that it is projected to assist 20 families over two years. As it is a pilot, the program is only funded for two years for \$2.2 million.

I do not know if any Aboriginal families are benefiting from the other mainstream intensive family support services, but by any measure, this effort, whether ACCO delivered or mainstream, is too little to make any dent on the appalling removal rates of Aboriginal children and young people. It is though, a good step in the right direction.



Another concern I have is the lack of ACCO's to provide coverage of delivery of intensive family support services to Aboriginal families across South Australia. Ideally local level ACCO's, connected to the community, is the preferred option so that Aboriginal families receive culturally responsive support. However, there are no considerable alternatives to the number of mainstream family support services available to the community, and not all have designated Aboriginal workers or teams. For vulnerable Aboriginal families there is a real fear that engagement with these mainstream services, is no different to the involvement of statutory services, and will lead to child removal. These are the scars of the 'protection era' and the blemish of systemic racism that Aboriginal families experience.

Again, I can only emphasise the need to adjust the current co-design criteria so that there is greater emphasis on support services provided to needy Aboriginal families at the community level by local level ACCO's. I urge a deep consultation about how the delivery of intensive family support services will deal with the very real fear held by many Aboriginal families that any contact with government funded services will lead to removal of their children. Aboriginal families need to be confident that the help they access will work optimally to support them keeping their children safe and supported.

# THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE (ATSICPP)

### Guardianship Orders – Placement Decisions and the ATSICPP

The application of the AFCP model where guardianship decisions are made will also deal with current concerns about compliance with the placement hierarchy of the ATSICPP as required by section 12 (3) Safety Act<sup>22</sup>.

Anecdotal information I have received from children, their families and community and legal practitioners suggests that important family members are not approached until it is too late and placement decisions have already been made. This is especially crucial where emergency and other placements with non- Aboriginal carers give rise to attachment arguments or where babies are removed at birth without regard to the ATSICPP, in the antenatal period in co-operation with mother. It is also vital where residential care is seen as the only placement option.

Though DCP data suggests the rate of placement of Aboriginal children and young people in accordance with the ATSICPP is 63.7%, the more telling figures are these. Only 31.5% of Aboriginal children are placed in kinship care with a relative or kin (noting DCP's kinship care includes non-Aboriginal kin and sometimes a close friend or neighbour), 10.4% are placed with other Aboriginal carers or in Aboriginal-specific residential care.<sup>9</sup>

Most information that DCP practitioners have about where Aboriginal kin or community can be reached is given by Principal Aboriginal Consultants (PACs) and the family scoping unit. Family and community have told me that this information may not be sought by the social worker at all or may be sought only after a placement decision has already been made to confirm it.

It is understood that PAC roles are aligned to regions to enable the connections with family and community. Clearly this approach is deficient as the current avenues to family and community are not working as they should, and this is borne out in the data.

I am also concerned about the effectiveness of the consultation required during the application of the placement hierarchy. The Chief Executive DCP or the Youth Court is required to 'where reasonably practicable, consult with, and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation' about the application of the ATSICPP before placing an Aboriginal child or young person.<sup>22</sup> (s. 12(2) Safety Act)

There is no transparency about the level of consultation that occurs where placements are not reported in court. Where the matter is before the court family and community have told me that often no comment is made by the recognised Aboriginal or Torres Strait Islander organisation (RATSIO) about DCP's failures to make serious efforts to comply with the ATSICPP placement hierarchy.

As there is only one RATSIO gazetted this may compromise its ability to make proper connections with family and community state-wide.

The Nyland Report recommended that multiple RATSIOs be gazetted to reflect the diverse and enduring range of Aboriginal cultural connections.<sup>9</sup> (p. 460, and Recommendation 189, pg. 183). I can only urge DCP to give this their urgent consideration.

Engaging with Aboriginal families and forming connections with the Aboriginal community is not well understood or done properly, and is no surprise that there is little recourse to Family Group Conferences (FGC) even though it is statutory option for both the court and the CE DCP (section 22 Safety Act).<sup>22</sup> These are a vital cog in the implementation of the ATSICPP and to the AFCP model I have proposed.

If the AFCP model is followed from early intervention through to the statutory removal phase current concerns about the application of the ATSICPP placement hierarchy at the point of removal can be mitigated. It may even be that AFCPs can become gazetted RATSIOs to cement their role as a consultative mechanism and ensure that FLDM is progressed.

### Current Policy Settings -Proposed Legislative Changes and AFCPs

Now is the time to include the AFCP model in legislation and policy. It is in line with the application of the full ATSCIPP in the *Children* and Young People (Safety) (Amendment) Bill 2020 and with the commitments made in the DCP 2020-2023 child protection strategy, 'Every Effort for Every Child: South Australia's Strategy for Children and Young People in Care'<sup>25</sup>, the DCP Aboriginal Action Plan and the whole of government policy "Safe and Well." <sup>19</sup>

The DCP 2020-2023 policy seeks to:

- apply the ATSICPP to all placement decisions (p.12);
- embrace family-led decision making and Family Care Committees (pg. 11, 13);
- recruit more Aboriginal carers and organise support for kinship carers by ACCOs (pp. 13-14);
- work to identify family and kin to care for Aboriginal children (p. 14);
- grow the Aboriginal workforce;
- increase the range of ACCOs to deliver needsbased services (p. 14);
- of review the Aboriginal identity cultural support tool (ACIST) (p. 20); and
- work with the Commissioner for Aboriginal Children and Young People to improve care for Aboriginal children and young people (p. 20).<sup>25</sup>

The DCP Aboriginal Action Plan 2019–2020 (Appendix) also makes a similar commitment to the ATSICPP. It contains laudable policy aims to address all five elements of the ATSICPP, including the pivotal role of families and communities in decision making. However, the pathway to early intervention is unclear.

Likewise, Safe and well has a high-level policy aim of partnering with Aboriginal families and communities in decision making about Aboriginal children and young people at risk from early intervention through to removal. I was encouraged to see a commitment to creating Family Care Committees in the 12 months up to December 2020,<sup>23</sup> (p. 13).

Ultimately, seeking knowledge about connection to family and community is a misplaced role for government. Aboriginal children and young people, families and communities have told me this during consultations.

Knowledge about a child or young person's connections lies with family and community, and they should be respected and enabled as knowledge holders. As DCP state in *Safe and well*, 'Aboriginal people have the knowledge and experience to make the best decisions regarding the safety and wellbeing of their children'. <sup>19</sup> (p. 6)

### The Way forward for the ATSICPP

In 2021 it is my aim to consult further with Aboriginal children their families and communities about the model for AFCPs, the role they can play in FLDM about at-risk Aboriginal children and the true implementation of the ATSICPP. With its coming new legislative mandate to implement the full ATSICPP in all decisions about Aboriginal children made under the Child Safety Act, I urge DCP and DHS to support my endeavours. They are commensurate with their policy aims of developing true partnerships with Aboriginal children, their families and communities.

I believe Aboriginal children; their families and communities have provided me with this family led decision-making model to exercise their international human right to self-determination. I ask the South Australian government to respect the exercise of this right as a sign of its commitment to the UN Declaration on the Rights of Indigenous People.

## Contact with Family and Community as a Right

In my submission this year to the to the Child Safety Amendment Bill, I called for the Youth Court's powers to order contact to be restored.

I believe that this should be an essential rights-based decision. It is the last tranche of the ATSICPP. It ensures that no matter how disconnected an Aboriginal child or young person is from immediate family, contact with culture is maintained through contact with extended family and community.

I am opposed to this decision being left to the Contact Assessment Review Panel (CARP), an administrative panel whose decisions are not even subject to review by the South Australian

# THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE (ATSICPP)

Civil and Administrative Tribunal (SACAT). I have heard from families of Aboriginal children of many instances of contact being denied to immediate and extended family. This denial may well demonstrate a failure to comply with ATSICPP by the CARP but there is no merits-based review open.

The failure to properly implement the ATSICPP placement hierarchy in legislation to ensure that contact is a right's based decision, means that the Aboriginal child or young person's right to be brought up within family (Article 1 CROC), the right of children and young people who have been separated from their families to stay in contact with them (Article 9 CROC), the right of every Aboriginal child and young person, in community with others, to enjoy his or her own culture, religion and language (Article 30 CROC), and the right of every Indigenous person to self-determination (Article 3 UNDRIP) are not being fully afforded by the child protection system in this state.<sup>26,27</sup>

While Aboriginal children and young people continue to be separated from their families, community and culture, their right to a secure future and strong Aboriginal identity is severed if they are denied the opportunity for contact with family and community as a right.

I will continue to advocate for legislative amendments to ensure that contact decisions are restored to the Youth Court.

## Other Person Guardianship to Non-Aboriginal Carers

Other Person Guardianship (OPG) Orders to non-Aboriginal carers should not be made for Aboriginal children. The making of an OPG Order means the ATSICPP has no ongoing application. Once the order is made there is no ability for a contact decision to be made. For those Aboriginal children who have been subject to such an Order, their right family and cultural identity is denied. It is non-Aboriginal adoption by stealth.

The Child Safety Act should be amended to ensure that OPG does not apply where such an order is sought by non-Aboriginal applicants. I have made this submission to the Minister, but it was not taken up in the current round of amendments.

### Towards a new Child Protection Model for Aboriginal Children and Young People

Due to past failures, it is clearly time to reimagine models of care in the child protection system.

In the coming year I will advocate for a commitment and the development of a plan to establish an Aboriginal community controlled child protection agency. The creation of the agency will enable the delegation of the Chief Executive's powers with respect to guardianship and custody of Aboriginal children and young people. Increasing the number of Aboriginal identified child wellbeing practitioners in the child protection service system will assist with the aim of providing culturally appropriate intervention and diversion support whilst also engaging with Aboriginal families when they deal with matters related to their children.

Such an approach complements calls across Australia for a National Commissioner for Indigenous Children and Young People. These calls have been supported by over 80 Indigenous non-government organisations and children's commissioners. The Commissioner should be an Indigenous Australian, independent of the government, and have powers that enable them to investigate matters that affect Indigenous children and young people and ensure accountability for systemic reforms at the national level.

This role will promote the systematic change that is required to reduce the overrepresentation of Aboriginal children and young people in OOHC and reduce the unprecedented rate of removals. There should also be a network formed amongst other Commissioners for Aboriginal Children and Young People around Australia to ensure specific needs of the children and young people in these jurisdictions are accounted for in national legislation. Overall, appointing a National Commissioner for Indigenous Children and Young People in legislation will support strategies like Closing the Gap and ensure a more collaborative approach is achieved within governments.

### Domestic and Family Violence

In addition to the structural changes that I believe are required to fully implement the ATSICPP, further consideration of the role of domestic and family violence services in safeguarding Aboriginal children and young people within their culture is also required.

Aboriginal and Torres Strait Islander women and pregnant women are considered high risk groups for domestic and family violence in Australia.<sup>28</sup> Domestic and family violence and its high incidence in Aboriginal communities needs to be considered and understood in its historical, cultural and social contexts. Factors to consider include Aboriginal people's experiences of lost land and traditional culture, disempowerment of their Elders, the breakdown of community kinship systems and Aboriginal law, and poverty and racism.<sup>29,30</sup> Studies indicate that 42% of Aboriginal children and young people are exposed to domestic violence in their households, which can be linked to the fact that Indigenous females are up to 35 times more likely to experience domestic and family violence than non-Indigenous Australian women.<sup>28</sup> When domestic violence exists in a relationship, it is likely to increase in severity and frequency when the woman is pregnant, during the period of her most vulnerability.31

Exposure at a young age to family violence can cause severe and long-lasting trauma. The impact that domestic violence has on a child or young person's brain is significant; their brains are still developing and change according to their experiences and environment.<sup>32</sup> Research also indicates that children and young people exposed to traumatic experiences exhibit higher rates of mental health disorders, drug use, alcoholism, self-harm and suicide attempts. Therefore, there needs to be a move from reactive to proactive approaches to intervening in Aboriginal families experiencing domestic or family violence.

A community education strategy is needed in Aboriginal communities to raise awareness about the problem of domestic and family violence as there is often a lack of knowledge and understanding of its manifestation, and where one can go to find support or therapeutic services.<sup>30</sup>

Domestic and family violence prevention and early intervention services are critical to reduce the number of child protection cases, particularly Aboriginal child removals. When a parent demonstrates protective behaviours towards their children, they should be supported to take this stand, without removal being the first option or reunification not being pursued. However, Aboriginal families face many barriers to accessing domestic and family violence services and often available services are not culturally appropriate which undermines any trust in these services.

I encourage a greater investment in early intervention programs that address domestic violence, designed in partnership with Aboriginal children and young people, their families and communities in line with the ATSICPP. I encourage service delivery by ACCOs and strong guidelines to be developed about how these services can be accessed to support reunification and guide reunification decisions by DCP.

### Reinforcing Aboriginal Children and Young People's Rights to a Voice Within the Child Protection System

Article 12 CROC<sup>26</sup> provides that a child who is capable of forming his or her own views has a right to have them heard.

Every Aboriginal child and young person is entitled to have their human rights and their children's rights protected, respected, and given effect by state agencies exercising the powers and functions that affect them.<sup>33</sup> (s. 5 OAB Act)

In addition, where Aboriginal children and young people are in OOHC, the Child Safety Act establishes the Charter of Rights for Children and Young People in Care.<sup>34</sup>

Although the charter itself does not create legally enforceable rights, it broadly sets out rights that may have some resonance in law. The Charter<sup>34</sup> applies in addition to the rights a child or young person has to be heard in judicial proceedings and decision making processes that affect them pursuant to the Child Safety Act.<sup>22</sup>

# THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE (ATSICPP)

Despite all the rights afforded to Aboriginal children and young people they are only entitled to legal representation in guardianship proceedings when their matter is in court. After a guardianship order is made if children and young people want to exercise their rights they are not entitled to legal representation, although they may be represented if they manage to get to the SACAT.

When it comes to initially seeking review of important decisions that can affect their welfare and involve an understanding of the ATSICPP they are on their own. An Aboriginal child or young person's ability to assert these rights is dependent on their awareness of the how the ATSICPP applies to decision making that affects them, and an understanding of what the review mechanisms are. I am really concerned that this may be lacking.

Central to the proper application of these rights and principles are four things:

Firstly, it is critical that Aboriginal children and young people know their rights regarding decisions made about their time in care. Creating awareness around these rights develops self-confidence and independence for the child or young person.

It also helps children and young people develop a voice, enabling them to take part in decision making and connect to services.

Secondly, Aboriginal children and young people must be aware that they have the right to create their identity by maintaining connections with their family, communities, culture and beliefs. It is their right to have the participation of family and community in decision making that affects them. This is the ATSICPP in action.

Thirdly, it is critical to educate Aboriginal children and young people to enable them to make informed decisions about their future. It also vital to ensure their cultural safety and to allow family and community into decision making as enablers and protectors of their children's rights in accordance with the ATSICPP.

Finally, it is vital that Aboriginal children and young people have access to legal practitioners who are equipped to maintain their cultural safety and pay due regard to the ATSICPP. I am convinced that funding should be applied to the Aboriginal Legal Rights Movement (ALRM) an ACCO. It is currently unfunded for this role. It should be funded as it the best service to enable separate representation of Aboriginal children that is culturally safe. It will be a strong advocate for the application of the ATSCIPP which is necessary not only in the Youth Court and SACAT but before the CARP and other DCP review processes.

ALRM should also be funded to regularly provide legal education to Aboriginal children in OOHC and to assist them in seeking reviews of decisions that impact their rights and well-being. These are children who are most marginalised from their families and culture and deserve help through a bewildering system that could see them total disconnected from their culture.

In 2021 I will seek to hear from Aboriginal children in the child protection system about how their rights are being protected. I will also be advocating strongly for the application of funds to ALRM for separate representation of Aboriginal children in the child protection system.

It is now accepted that the ongoing effects of colonisation, racism, discrimination, and the trauma of past forced family separation and child removals have led to Aboriginal children and young people experiencing compounding levels of disadvantage not experienced by their non-Aboriginal peers.

Almost half of all Aboriginal and Torres Strait Islander adults report that they or their relatives have been removed from their natural family. Locking up Aboriginal children and young people is another form of separating them from their sense of family, community, culture and identity. Our children and young people belong with their family in their community, this is their inherent right. It is a right protected by Article 30 of the Convention on the Rights of the Child (CROC), and reflected in the right to self-determination enshrined in Article 3 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). 26,27

Members of the Stolen Generations and their children in particular are more likely to be forced into or experience poorer physical and mental health outcomes, inadequate housing, substance abuse, lower incomes, and overpolicing leading to over-incarceration.<sup>36</sup>

### ABORIGINAL YOUTH JUSTICE

I have heard from our children and young people that the idea of a criminal pathway is seen as a 'rite of passage'. Due to the criminalisation of Aboriginal people as a race, they are concerned that this path is being placed before them with no alternative route available. This is compounded by the experiences of family members and the outcry from the police and the general public that label our Aboriginal children and young people as offenders and criminals.

Children and young people have spoken to me about the racial discrimination they experience on a daily basis that leads them into the justice system. I have heard from Aboriginal children and young people and their families that police target them. They experience unnecessarily high levels of police surveillance, with many charged where they could have been warned or cautioned.

This year the June 2020 Great Responsibility: Report on the 2019 Pilot Inspection of Karlana Tapa Youth Justice Centre (KT YJC) was released.<sup>37</sup> The Training Centre Visitor noted that, of the 300 individuals admitted to the KT YJC each year, approximately 50% are Aboriginal 37 Aboriginal children and young people are 32 more times likely to be in detention than non-Aboriginal children and young people in SA.38 The 2020 Productivity Commission Report on Government Services (ROGS) records that the average daily number of children and young people in detention in SA in the reporting period was 27, 17 of which were Aboriginal. The data alone suggests that systems are failing to address the underlying reasons why Aboriginal children and young people are so grossly over-represented in

FILA

As the National Aboriginal and Torres Strait Islander Legal Services Co-Chair Cheryl Axelby has said, 'Our children are being stopped by police, put in handcuffs and thrown into police and prison cells at up to 43 times the rate of non-Indigenous children in some jurisdictions'.<sup>39</sup>

I am concerned that if there is systems failure perpetuating the criminalisation and detention of our children and young people, the cause of it must be uncovered. As with the child protection system, I have heard that Aboriginal children and young people in custody are alienated from family and community and that little effort is made to connect them. Whilst there is an obligation to keep this connection alive through the Aboriginal Youth Justice Principle, 40,41 as is the situation with the ATSICPP, the task of locating family and community – where not immediately obvious– is poorly understood and therefore not attempted.

It is my firm belief, based on international evidence from countries where the minimum age of criminal responsibility is 14 and on the very successful justice reinvestment program in Bourke, NSW, that early intervention through an expanded Youth Justice Reinvestment strategy is key to reducing the high numbers of Aboriginal children and young people in detention and in the youth justice system.<sup>42</sup> This should be supported and developed in partnership with Aboriginal children and young people, their families and communities. What is urgently required, however, is for the age of criminal responsibility to be raised.



### ABORIGINAL YOUTH JUSTICE

#### In the Words of Fli

Listen to what young Aboriginal people like Eli, a 13-year-old Narungga male, have to say about the issue of youth justice in relation to identity and belonging. After viewing the documentary *In My Blood It Runs*, Eli has centred his voice and his reflection of the film through music to express his youth justice story alongside that of 10-year-old Djuan, the documentary's focus. Eli's lyrics are all his own words and are a reminder and a call to action to raise the age of criminal responsibility. Here is Eli's song 'In My Blood':

3 kids, 1 Mum, No dad, 1 love.

1 young kid skippin' school daily

Learning white culture on a white page gee

1 young kid runnin a muck

Didn't care bout the cops

And didn't give a f\*\*\*

Everyday Getting chucked in the back of a wagon

All because he got caught lagging

Had a family of 4 at his back

Going back to a house that was trashed

The clothes on his back that were thrashed

Belonged to his cousin who was smashed

Everyday of his life on the grog

Drinkin' his life away non stop Not a cousin worth a penny that had dropped

Always jumpin' fences when it comes to the cops

The young kid didn't know when to stop going overboard

With a skip jump and hop

Haunted by the scenes of the kids on TV just like him

But in custody didn't think it would come to this

Just wanted a normal life that was his not owned by the system

Wanted a change his ways so he didn't end up in prison

In my blood it runs my culture my ways

Now I'm growin' up and it's time for me to change

Shoudda woudda coudda wanna change his ways but he didn't know how

How to seize the day stared him in the face was his anger and his rage shadowing his life to different path to take

Sittin' in the corner feeling all of that shame that shame turned to red and he knuckled through the pane

He quickly fled disappeared from the scene and he went to a place that was all about dream

Just a young kid with them older boys he was runnin' a muck making all that noise echoed in his mind

Was that teacher's voice saying to the kid you only got one choice

Keep on this path you'll continue to fail

Keep on this path you'll be headin' to jail

Keep on keepin' on and you'll be in Dondale just one of these kids who fell off the rails

Sent him to his homeland back with his dad

And he starts to learn there's more to life than what he has

More than just a place with desks and books

More than just learning about Captain James Cook

Somewhere in-between he finds a space to dream

he goes back to a place where life ain't what it seems

he starts to discover what life really means

Listenin' to the ground beneath his feet

Feel the blood in his veins like the currents in the stream

Feel the wind breathe beneath his knees

See the sun glow and glisten through the trees cos the culture of his people is where his blood bleeds

He didn't know what he was capable of until he went to Sandy Bore.

### Raising the Age – Decriminalising Aboriginal Children and Young People

In 2020 I attended and presented at multiple forums where I advocated strongly for raising the minimum age of criminal responsibility (MACR) to fourteen in line with United Nations recommendations.<sup>43</sup>

Current legislation in South Australia provides that a child can be charged with a criminal offence from the age of ten.<sup>44</sup> (s. 5)

Accepted medical and scientific research has found that at age 10, and up to the age of 14, the brain is developmentally incapable of forming the required level of criminal intent. It has been established that a child or young person's immature brain development predisposes them to risk taking and impulsive behaviours which increases their likelihood of engaging in criminal behaviour. The neurological processes that are used by a child or young person for decision making and behaviour control are a part of the brain which is fundamentally undeveloped compared to that of an adult.<sup>45</sup>

In addition, the Australian Early Development Census has found that ongoing, entrenched and systemic disadvantages can disrupt a child or young person's brain architecture. This disruption leads to a lower threshold of activation for a child or young person's stress management system, manifesting in learning difficulties, behavioural problems and adverse mental and physical health outcomes. This is particularly critical to children under the age of 14 who are experiencing significant brain growth and development. At this time, brain development is focused on consolidating the neurological pathways that are most used and removing those that are not.46 These compelling factors must be front and centre when consideration is given to raising the MACR for Aboriginal children and young people.

There is a shocking over-representation of Aboriginal children and young people who are driven to the youth justice system by poverty, racism and intergenerational trauma. Incarceration of an Aboriginal child represents a gross incursion into their right to community, family, culture, liberty and wellbeing, particularly where they are not even capable of understanding the criminality of their actions.

## The Role of Disability in Offending Behaviour

Aboriginal children may also have traumaimpacted developmental delays and disabilities (which will often go undiagnosed). In these circumstances the United Nations Committee on the Rights of the Child has said that children with developmental delays 'should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility'.<sup>47</sup>

Many Aboriginal children with a disability often have their disability masked and classified as a behavioural problem.<sup>47</sup> Also present too often is the prevalence of poverty and lack of engagement with education leading to at-risk and offending behaviour. The reality is that these Aboriginal children are criminalised, particularly those with disabilities such as Foetal Alcohol Syndrome Disorder (FASD), Autism and Autism Spectrum Disorder, and Attention Deficit Hyperactivity Disorder (ADHD).

In Australia, the most comprehensive investigation into the mental and cognitive health of young people in detention was undertaken in Western Australia by the Telethon Kids Institute. The Banksia Hill Youth Detention Project<sup>48</sup> set out to investigate the prevalence of FASD in the Banksia Hill Detention Centre detainee population. These were, in large part, Aboriginal children. The investigation found that nine out of 10 incarcerated youth at Banksia Hill, the only youth detention facility in Western Australia, had some form of serious neuro-disability. Of the 99 young people between 10 and 17 who completed a full assessment, more than one in three had FASD and, despite long contact with education, child protection and the justice system in Western Australia, only two had been previously diagnosed. Similarly, a recent study conducted by the Youth Justice Assessment and Intervention Services (DHS)<sup>49</sup> into youth detention in South Australia found, after conducting a screening assessment for disability-related needs, that:

- from the total population assessed in the project (N = 36), 21 identified as Aboriginal or Torres Strait Islander – that is 58% of the total population screened;
- of the 21 Aboriginal young people screened, 12 (57.14%) had 'new needs identified' and 4 (19.04%) had an NDIA access request recommended; and

### ABORIGINAL YOUTH JUSTICE

of the 21 Aboriginal young people screened, eight were also under guardianship of the Chief Executive DCP and two of the eight had 'new needs identified'.<sup>49</sup>

There is demonstrated evidence that links disability to offending. These children are already disconnected from the education system. Disengaged, they live on the margins and are often influenced by older at-risk children who are usually dysfunctional role models. The justice system is not the place for these children, it teaches them that crime and detention are the patterns of life as they see nothing else.

### Efforts to Raise the Age

It is often said that all children in the justice system are protected by the principle of doli incapax. This is a rebuttable legal presumption that prima facie children are deemed not to have the capacity to form criminal intent. It is easily rebutted.

There has been much criticism of this principle by lawyers, including the SA Law Society and the Australian Law Reform Commission who have called for the MACR to be raised and for the state of a child's understanding to be recognised based on current medical evidence and not on a rebuttable presumption. I have heard from lawyers and others working in the justice system that the impact of this presumption in practical terms is minimal, and that objections to rebuttal evidence from the prosecution are rarely raised due to legal complexity. It is clearly not successfully protecting children in the justice system.

Raising the MACR aligns with Australia's international treaty obligations. The Committee on the Rights of the Child (2019), basing its resolution on the scientific evidence and in alignment with the UN Convention on the Rights of the Child, called for all states to raise their minimum age of criminal responsibility to 12 at minimum and preferably 14 years old.<sup>50</sup> Australia has recently been under scrutiny by the UN for not adhering to these recommendations and having a minimum age of criminality which is substantially lower than most countries.<sup>51</sup> Thus, Australia, and South Australia, have a human rights obligation to amend the age of criminal responsibility.

I call for the Attorney General of South Australia to immediately move to raise the age of criminal responsibility to 14 years. This should be accompanied by an increase in investment in the justice reinvestment programmes and therapeutic trauma based interventions and early assessment for disability.

I also call for the Commonwealth Council of Attorney's General to release its draft report on methods for dealing with anti-social behaviour if the age is raised and to restore MACR to its national agenda.

### Youth Justice Reinvestment

Currently there is one Aboriginal-led program justice reinvestment program in South Australia in Port Adelaide. It is funded by DCP (at a modest amount of \$400,000 per annum). The Tiraapendi Wodli Port Adelaide Justice Reinvestment project is part of the community-led Port Adelaide Aboriginal Families Thrive Action Plan (2019-21), which aims to prevent involvement in the youth justice system and support the community to intervene early in family violence and child protection. Funding has been committed for a further year to June 2021, but whilst this is a start, it is not enough.

An Aboriginal child or young person should not see incarceration as a rite of passage, and their presence on the street should not mean that they become targets for the police or thrown into the child protection and youth justice systems. This early and negative interaction with police feeds Aboriginal children and young people into systems that alienate them from families and communities. It is where the disconnection from family and community begins. This needs to be turned around.

When Aboriginal children and young people first attract negative attention in systems, there should be a concerted effort to direct them away from the youth justice system. To this end I support the Change the Record Campaign, Australia's only national Aboriginal-led justice coalition of legal, health and family violence prevention experts. Their objective is to end the incarceration of, and family violence against, Aboriginal and Torres Strait Islander people.<sup>52</sup>

The Change the Record Campaign have identified key principles for reform:<sup>52</sup>

- 1) Invest in communities, not prisons
- 2) Local communities have the answers
- Recognise the driving factors of imprisonment
- 4) Focus on safety
- 5) Services, not sentences
- 6) Community policing, not policing the community
- 7) Smarter sentencing
- 8) Eliminate unnecessary imprisonment
- 9) Adopt community justice approaches
- 10) Young people don't belong in prison
- 11) Rehabilitation, not just punishment
- 12) Reintegration not recidivism

Change the Record have issued a blueprint for change, acknowledging that the incarceration of both Aboriginal children and adults is a national crisis requiring a national response. The blueprint for change is grounded in a firm understanding of Aboriginal culture and identity. Respect for the principle of community control and self-determination through participation in developing and implementing policies and programs for change is fundamental to any successful approach.<sup>52</sup>

I will continue my strong advocacy for raising the MACR and will be seeking the views of Aboriginal children, their families and communities about this matter in 2021.

## Mandatory Youth Treatment Orders

In 2020 I considered Phase I of the Draft 'Model of Care for Youth Treatment Orders' pursuant to Controlled Substances (Youth Treatment Orders) Amendment Act 2019 (the Youth Treatment Orders Act). The government is moving to proclaim the first tranche of the legislation to operate on children and young people detained in Kurlana Tapa Youth Justice Centre. I have expressed my objections to the proclamation of this legislation as I believe that the early interactions with police that I have described, will also make Aboriginal children and young people more likely to be subject to mandatory drug treatment orders.

Mandatory drug treatment is an approach which is not endorsed by the UN and represents breaches of Article 3 and Article 37 of CROC. It could also offend the UN's Optional Protocol to the Convention against Torture (OPCAT). Whilst the Youth Treatment Orders Act is yet to be proclaimed, its position on the statute books makes the need for early intervention programs to divert Aboriginal children and young people away from drug use and imprisonment even more pressing.

I am also concerned that this is a last resort measure that is being applied when there are few targeted options for voluntary drug treatment available to Aboriginal children and young people. None have been developed in partnership with Aboriginal children and young people, their families and communities.

That this mandatory scheme is to be first rolled out in a detention environment is of particular concern to me as it raises the possibility of Aboriginal children and young people being punished for behaviours related to drug treatment or drug withdrawal.

There is also a fundamental disconnect between the objects of treatment, which are therapeutic and the punitive environment in which they are being delivered. It is likely that treatment of this kind, if explored in a truly holistic way, may trigger strong traumainduced responses, and children and young people should not be alone in a hostile and punitive environment to cope with these effects. This is especially concerning for Aboriginal children and young people who also suffer deep intergenerational trauma and who should feel culturally safe at all times.

I urge the government to reconsider the imminent proclamation of phase one of this legislation. Instead government should commit to proper investment in culturally safe voluntary drug and alcohol treatment programs delivered by ACCOs available to Aboriginal young people in detention and the regions as well as more generally. I would also like remission on sentences to be considered to incentivise participation where the Aboriginal young person is in youth detention.

### ABORIGINAL YOUTH JUSTICE

### Cultural Safety in Youth Detention

It is my view that the underpinning of cultural safety is deficient in the youth detention environment. As with the current limited application of the ATSICPP in the Child Safety Act, I am yet to be convinced about how successfully the Aboriginal and Torres Strait Islander Youth Justice Principle (the AYJP) is being applied. 40,41 This principle has the objective of maintaining an active connection between an incarcerated Aboriginal child and culture, community and family. Maintaining this link is of particular concern when children and young people cross over from the child protection system to the youth justice system, and when they are already disconnected from family and community.38

Noting with great concern the numbers of Aboriginal children and young people imprisoned, the *Training Centre Visitor's Annual Report 2019–20* also found that the application of the Aboriginal and Torres Strait Islander Youth Justice Principle (AYJP) was wanting. It found that on all five indicators the AYJP did not achieve the cultural referral and reporting required by the legislation.

I believe that consideration should be given to applying the partnership mechanisms I have advocated for in the child protection system – Aboriginal Family Care Panels, family-led decision making and Family Group Conferencing – to youth justice, to ensure that the Aboriginal child or young person's identity, connection to family and community and culture are maintained. This is compelling and necessary when there is a disconnect from immediate family or when the Aboriginal child is subject to guardianship orders and placed with non-Aboriginal foster carers or in residential care.

I look forward to learning more about the current place of culture in the youth justice system and working to improve the proper application of the AYJP to Aboriginal children and young people in OOHC and in detention, who are at their most vulnerable to cultural, family and community disconnection

### Aboriginal Children and Young People in the Child Protection System and Detention - Dual System Children

The disconnection from family, community and culture is compounded for Aboriginal children and young people who are both subject to guardianship and incarcerated.

There is no publicly available data on the number of Aboriginal children and young people who are subject to both a guardianship order and a detention order in South Australia. Nationally, however, in 2019 it was reported that Aboriginal children and young people were 16 times more likely to be involved in both systems than non-Aboriginal young people over the 5 years from July 2014 to June 2020. Of the Aboriginal children and young people in detention, 25% were in OOHC.<sup>16</sup>

The SA Guardian for Children and Young People (GCYP) reports, 'Since we began receiving data on the rates of admissions to KTYJC in 2018, the proportion of admissions by those in care has jumped from 30.8% to 39.4%. In 2019-20, more than 28.3% of all individuals admitted to Kurlana Tapa Youth Justice Centre (KTYJC) were also in care at the time of their admission'.<sup>38</sup>



The available data reflects what Aboriginal children and young people and their families have told me that the disconnection of Aboriginal children and young people from family and community through the child protection system sows the seeds for their over-representation in the youth justice system.

Aboriginal children and young people in care often have poor life outcomes, particularly as a result of their interactions with the youth justice system. <sup>53</sup> Aboriginal children and young people in both systems are also more likely to commit more serious offences than non-Aboriginal children and young people involved in the youth justice system. The reasons linking these two factors are complex, but in 2017-18, Aboriginal children and young people were 6.5 times more likely than non-Indigenous children and young people to be the subject of a substantiated risk of harm in care. <sup>53</sup>

I have heard that where there is a placement breakdown resulting in police involvement, remand in custody may be the consequence as these children and young people cannot make bail as there is no placement for them. But I have also heard about Aboriginal children in residential care having had their stable placements disrupted to make room for youth released from detention or remanded on bail. I am deeply concerned about both these matters and will be looking into the possible systemic causes for both of these issues in 2021.



Where children and young people are both in residential care and the youth justice systems there is a complete disconnect from family and community. Whilst the AYJP exists, without enablers such as the GCYP and Training Centre Visitor, Aboriginal children and young people are powerless to ensure this is followed.

Aboriginal children and young people have the right to remain connected to their family, community and culture in these two systems, but the rights set out in the AYJP and the ATSICPP need to be more strongly recognised, understood and abided by. It is possible that the AFCP model could be applied to help link Aboriginal children and young people with family and community while they are in detention. I will be advocating with the Minister for Human Services for this to be explored with the Minister for Human Services.

Essentially, the key lies in partnerships; developing mechanisms that ensure a clear pathway to family and community for children and young people that allows families full participation in the life of their children. It is, after all, the standard set by international law.

As I have advocated, raising the MACR is critical to reducing the number of Aboriginal children and young people in both the child protection and youth justice systems, coupled with increased funding for justice reinvestment programs that are developed in collaboration with Aboriginal communities.<sup>54</sup> This recommendation is based on the United Nations Committee on the Rights of the Child, which encourages Indigenous people to design and implement youth diversion strategies which are culturally appropriate and consider the needs of the children.<sup>54</sup>

## ABORIGINAL CHILDREN AND YOUNG PEOPLE WITH A DISABILITY

Despite the presence of trauma pervading the lives of vulnerable at-risk Aboriginal children and young people; their likely experience with disabilities are often overlooked and misunderstood. Those closest to the Aboriginal child or young person in the education, health, youth justice and child protection systems commonly mislabel disability, particularly "invisible disabilities" such as ADHD, FASD and Autism Spectrum Disorder, as a behavioural problem associated with poverty or lack of engagement with the education system, or as criminal behaviour. 55

I've heard stories of systemic neglect of Aboriginal children and young people and how their families were unable to access disability support services; these systemic barriers are preventing Australia from fulfilling its international human rights obligations.<sup>56</sup>

Around one in five Aboriginal children and young people (22%), and 48% of Aboriginal people aged over 18 years, have a disability.<sup>57</sup> However, there are no appropriate, culturally-grounded assessment tools available to identify disabilities in Aboriginal children and young people. Aboriginal children and young people living with a disability are affected by systemic issues related to age, gender, sexuality, race and disability which amplifies their experience of disadvantage and creates a minority group within a minority group.<sup>57</sup>

An undiagnosed disability usually impedes an Aboriginal child or young person's likelihood of accessing the right health care, leading to poor health and social consequences.<sup>57</sup> Furthermore, and unfortunately, institutionalised racism and prejudiced behaviours are normalised in the health care system. For example, a study conducted by the National Congress of Australia's First Peoples found that 50% of Indigenous people experienced racism when attempting to access health care services.<sup>58</sup>

It is therefore crucial that systemic changes occur to remove the neglect and racism experienced in health services by Aboriginal disabled children and young people.<sup>57</sup>

Most disability support services are non-Aboriginal institutions, which are not always culturally appropriate or able to support the most vulnerable disabled Aboriginal children and young people and their families. Furthermore, when Aboriginal children, young people, and families interact with the health system, they are turned towards acute responses instead of early help services.

This has many implications, as these families are often dealing with multi-dimensional, multi-faceted and complex issues that require a holistic, early-intervention approach which includes intensive family support as well as delivering an acute response.

Therefore, disability help services need to be provided by Aboriginal community-controlled organisations so that Aboriginal families have a high degree of confidence and can access services which they feel can meet their needs in a culturally appropriate way. The ATSICPP can be incorporated across health providers to ensure best practice for inclusive and appropriate services for Aboriginal disabled children and young people.

I call for increased funding for mandatory early childhood assessment for disability using culturally grounded assessment tools, along with continued assessments at regular intervals in childhood and adolescence. In the spirit of the Closing the Gap Agreement, this should be done in partnership with, or by an Aboriginal Community Controlled Health Organisation, and must include schools and early childhood education centres.



Table: The deterioration of rights across the life course of an Indigenous person<sup>58</sup> (pg. 6)

LIFE-STAGE ASPECT	Peri-Natal	Early childhood	Schooling years	Young people	Justice	Health	Ageing
Indigenous	Low awareness of disabillity Environmental factors, increased likelihood of low birth-weight	Low awareness of disability Exposure to trauma Increased likelihood of OOHC - off country, unstable home setting	Low awareness of disability "Bad black kid syndrome" - punitive schooling over supported disability	Less likely to secure employment Increased likelihood of police contact	Denial of rights - over incarceration	Subconscious bias - institutional racism	Reduced life expectancy Disabillity happens earlier in life and with more co-morbidities
Disability	Low birth weight and environmental factors in developmental disability	Disability assessments aren't carried out to the extent that they need to be	Undiagnosed and unsupported disability	Less likely to secure employment  Communication impairments, reduced capacity to negotiate confilct	Denial of rights - indefinite detention and fitness to plea for people with cognitive and psychiatric disability	Subconscious bias - diagnostic over shadowing	Inadequate public infrastructure especially in remote communities

This table is also referred to as 'Issues facing First Nations people with disability and people with disability in different settings across their life course'. Cited in Issues Paper 2020: The experience of First Nations People with Disability in Australia (Royal Commission into Violence Abuse, Neglect and Exploitation of People with Disability).



# CLOSING THE GAP AND CHILD PROTECTION

### Closing the Gap and OOHC

The National Partnership Agreement on Closing the Gap 2020 for the first time introduced a target to 'reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in OOHC by 45 per cent' by 2031.<sup>5</sup>

It is worth repeating that last year 1,338 Aboriginal children and young people in South Australia were in OOHC, making up 34.2% of the total number of children involved with these services. <sup>4</sup> This figure is substantial when considering that Aboriginal children and young people comprise only 5% of the population of children and young people in South Australia.

Safe and well<sup>23</sup> aims to partner with Aboriginal children and young people, their families and communities to tackle the systemic racism that permeates decisionmaking in the care and protection systems.

The new target will support the systematic and structural transformation that is required to reduce the number of Aboriginal children and young people who encounter the child protection system. Progress towards this target will be measured through the number of children and young people in the child protection system and identifying where their placement sits within the hierarchy established in the ATSICPP.

As stated earlier, achieving this substantial reduction in OOHC by 2031 will require significant additional investment by the government,<sup>4</sup> prioritising early intervention and prevention services. In 2018–19, only 17% of the \$5 billion invested by the government for child protection was directed to prevention and intervention services. Acute stage intervention should be a last resort solution. Prioritising early intervention and prevention will improve health, wellbeing and life outcomes for Aboriginal children and young people.

## Closing the Gap and Youth Justice

I call upon the South Australian Government to honour the promise made in the CTG Agreement to reduce the rate of Aboriginal and Torres Strait Islander young people (aged 10–17 years) in detention by at least 30% by 2031. This can start now by the government moving to raise the age of criminal responsibility to 14 years and by entering into an CTG implementation plan with the Aboriginal Peak body in SA to increasing funding for ACCO community led justice reinvestment programs.

In doing this, the state government will be working in partnership with Aboriginal people in line with Priority Reform Two of the agreement.

There must be a new approach, one which focuses on greater investment in early intervention, prevention and diversion strategies. I have heard from Aboriginal leaders and ACCOs that they have the solutions. What is needed is a whole-of-government strategy developed in partnership that allows the Aboriginal communities and their ACCOs to deliver programs that address the root causes of offending, with an emphasis on building stronger and safer communities.

I will be looking closely at South Australia's implementation plan for this Closing the Gap target. I hope that a true partnership approach is taken to the development of this plan.





### Closing the Gap: The link between Health and Education -Racism

There is also a link between poor health outcomes and racism in schools<sup>59</sup> that must be addressed as part of the Closing the Gap initiative to improve health outcomes for Aboriginal children and young people.

The systemic racism which takes place in Australian schools has been found to be associated with poor mental health, sleep difficulties, obesity and asthma in Aboriginal children and young people.<sup>59</sup> Therefore, no matter how much work is done to improve the interaction between the health care system and Aboriginal children and young people, the change will be limited.<sup>59</sup>

Just fixing the health system is not going to be the answer. The Education Department's Aboriginal Education Strategy (2019-2029).<sup>60</sup> was released in December 2018 to support Aboriginal students in reaching their full potential. Reducing racist behaviours amongst children and young people in schools and addressing systemic racism in education policy and practice must also be made a significant priority if we are to bring about real change.<sup>59</sup>

The Report on the Inquiry into Suspension, Exclusion and Expulsion Processes in SA Government Schools tabled in parliament in 2020¹ provides many insights into this issue. Informed by this report, I will be seeking Aboriginal children's views on racism in systems in 2021 and how to tackle it.



### **SUMMARY**

This year, South Australia witnessed yet another unprecedented rise in the appalling rate of removals of Aboriginal children and young people from their families and communities. The continuing disproportion in the numbers of Aboriginal children and young people incarcerated in youth detention compared to their non-Aboriginal counterparts.

Unlike other years where the steady rise in numbers was almost unseen, in 2020 the plight of our most marginalised has been illuminated by a strong and insistent Aboriginal voice; one that reminds decision-makers that for Aboriginal children and communities 'family and culture' is everything.

Increasingly heeded by mainstream Australians and supported by direct action on the streets, the Black Lives Matter campaign has brought the terrible effects of racism on the lives of Aboriginal people front and centre. It has been echoed by strong calls from Aboriginal people for South Australia to raise the mandatory age of criminal responsibility to 14 in line with its human rights obligations and incontrovertible medical evidence. Above all, the BLM movement has highlighted the truth that Aboriginal people know; 'removals beget removals'. (pg 37)

This year, the Royal Commission into Violence and Abuse of People with a Disability shone a light on those most vulnerable of Aboriginal children and young people: those with a disability in OOHC.



The call for self-determination for Aboriginal people enshrined in the UN Declaration on the Rights of Indigenous People and articulated in the Uluru Statement from the Heart is gaining traction.

The 2020 Closing the Gap Agreement for the first time put Aboriginal people in a decision-making role and puts reduction in Aboriginal child removals and Aboriginal children in custody on the table for action.

I am gratified that this year the South Australian Government has responded to this movement by introducing amendments to both the *Children and Young People* (Oversight and Advocacy Bodies) Act 2016 and the *Children and Young People* (Safety) Act 2017 to strengthen the rights and voices of Aboriginal children and young people and make the application of all five pillars of the ATSICPP mandatory for all decisions made about them.



### LOOKING AHEAD



I look forward to 2021 with the hope that new powers will be given to the Commissioner for Aboriginal Children and Young People before the year closes.

My focus for 2021 remains the child protection system, where I will continue to hear from Aboriginal children and young people about their experiences and how their rights, development and wellbeing are impacted. I will also continue to advocate for increased funding to be applied to early intervention and reunification measures designed by Aboriginal children and young people, their families and communities. Core to this will be family led decision making as key and a deep connection to community through AFCPs.

I will advocate for and review the mandatory application of the five pillars of the ATSICPP to all decisions made about Aboriginal children and young people under the Child Safety Act. It is necessary for Aboriginal children and young people, their families and communities to steer policy and practice design about the ATSICPP. This product should be enshrined in statutory policy and regulations under the Child Safety Act.

As part of this process I will continue to work with closely with DCP and DHS to ensure that the model for AFCPs, created and designed by Aboriginal children and young people, their families and communities and recommended in my 2019 report, becomes the model for delivery of family-led decision making. I will ensure that the model is applied at every point where a significant decision is made about an Aboriginal child in the child protection system.

I will be looking hard at the cultural competency of separate representatives appointed for Aboriginal children and young people under the Child Safety Act in guardianship applications. I will highlight the need for Aboriginal children and young people to be separately represented in the SACAT and the CARP. I will also seek to raise awareness amongst Aboriginal children and young people of their right to be heard in the child protection system.

I will continue to advocate for raising the age of criminal responsibility from 10 to 14 years, an increased commitment to justice reinvestment, family support programs, early diagnosis of disability in Aboriginal children and young people, and mental health services.

I will be urging that the design of all these programs should be developed in partnership with Aboriginal children and young people, their families and communities, and that strong family and community decision-making linkages are included. I will urge the government to look to ACCOs for service provision.

I will also be looking closely at the roll-out of Mandatory Youth Treatment Orders and how these impact on the rights, development and wellbeing of Aboriginal children and young people, who I am afraid will be unfairly and systemically targeted.

I will be paying attention to the Education system. The Centre for Inclusive Education's 2020 Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian Government Schools: Final Report; commissioned by the Education Minister in South Australia as this has seen a renewed focus on school exclusion practices that target children with disabilities, children in care and Aboriginal children.

I will be talking with Aboriginal young people and their families and communities about the key findings concerning Aboriginal children and young people in the *Final Report*. For the most part, the alarming issue disproportionately high number of Aboriginal children subject to these practices in the education system.

In these ways I will be actively seeking out the voices of Aboriginal children and young people in all systems affecting their rights, development and wellbeing. I will listen and act on their behalf and in accordance with their wishes to protect them and their relationships with their families and communities, and to safeguard their rights to self-determination, safety and connection with family.

### OUTLINE OF KEY ACTIVITIES UNDERTAKEN IN 2020

### Outline of Key Activities Undertaken in 2020

#### **Achievements:**

- Provided advocacy and assistance to 22 families from regional and metropolitan Adelaide concerning DCP decisions and actions relating to their Aboriginal children and young people.
- Engaged with over 50 Aboriginal and non-Aboriginal workers from 14 non-government organisations regarding issues and assistance for Aboriginal children and young people and their families.
- Engaged with over 60 Aboriginal and non-Aboriginal officers from six government organisations regarding decisions, and policy and practice issues impacting Aboriginal children and young people and their families.
- Developed Aboriginal Family Care Panels model for South Australia.
- S Collaborated with Paul Vandenbergh to develop and establish the Tjindu Foundation, an Aboriginal Corporation centred on Aboriginal student engagement and their leadership and cultural development, August 2020.

#### Written submissions to:

- S Chief Executive of the Department for Child Protection: Therapeutic Service Delivery Model for Residential Care.
- **5** The Education Minister: Bill of amendments to Children and Young People (Oversight and Advocacy Bodies) Act 2016.
- The Child Protection Minister: Midterm review of the Children and Young People (Safety) Act 2017.
- The Child Protection Minister: draft Children and Young People (Safety) Act 2017 Bill.
- Ohief Executive of the Department for Child Protection: Disability Access and Inclusion Plan
- SNAICC Options Paper: Call for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People, 22nd November 2020.
- Soyal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability: Issues for Aboriginal parents/ carers with disabilities.
- SNAICC: National Framework for Protecting Aboriginal and Torres Strait Islander Children.

International Society for the Prevention of Child Abuse and Neglect 2021 (ISPCAN) Conference: Abstract submitted.

#### Media engagements:

- InDaily newspaper article feature on Commissioner for Aboriginal Children and Young People about issues of DCP removal of Aboriginal babies from birthing services, 29<sup>th</sup> June 2020.
- Advertiser SA Weekend magazine feature article on the Commissioner for Aboriginal Children and Young People's priority work in addressing systemic issues in Aboriginal child protection, 5<sup>th</sup> September 2020.
- Three separate interviews by ABC Radio about the role and priority work of the Commissioner for Aboriginal Children and Young People.
- InDaily newspaper article feature on Commissioner for Aboriginal Children and Young People about a bill to legislate the role giving powers equal to the CCYP, 3<sup>rd</sup> December 2020.

#### Meetings with:

- Sick Persse, SA Department for Education Chief Executive (bimonthly).
- South Australian Government- Department for Education, Chief Executive's Aboriginal Expert Advisory Panel (quarterly).
- South Australian Government Department for Child Protection, Chief Executive's Aboriginal Expert Advisory Committee (quarterly).
- DCP Leadership group Chief Executive Cathy Taylor, Deputy Chief Executive Fiona Ward, and Aboriginal Practice Director Tracy Rigney (quarterly).
- The Aboriginal Housing Reference Group, ensuring youth homelessness, the needs of Aboriginal children and young people and their families, and the needs of those who are in or providing out-of-home care are addressed in the Aboriginal Housing Strategy for South Australia (ongoing).
- Seaders of the Secretariat of the National Aboriginal and Islander Children's Corporation (SNAICC) (three).
- The Minister for Child Protection (two).
- National Aboriginal Leadership Group codesigning the successor plan for the National Child Protection framework (two).
- Dr Anita Horner (Colorado, USA), advice meetings to discuss:

   (i) Children's Decision Making, First Nations Issues
   (ii) Kempe Call to Action to Change Child Welfare Conference.

- O CREATE SA leadership and with Aboriginal youth.
- Selationships SA about Family Group Conferencing.
- Seed the seed of the seed o
- The Telethon Institute, concerning CFARNS evaluation.
- Health Performance Council Aboriginal Leaders Forums.
- SHINE SA and Nunkuwarrin Yunti, about issues and services for Aboriginal youth.
- Scotch College providing advice about scholarship assistance for Aboriginal young people studying maths.
- 6 Child Development Council and the Children and Young People's Guardian's Office.
- O CAFFSA Family Matters Working Group (up to March 2020).
- Australia and New Zealand Children Commissioners and Guardians Forums.
- Joint meeting of Aboriginal Children's Commissioners and Family Matters Campaign co-chairs.
- Solution Anne Hollands, newly appointed National Children's Commissioner.
- Aboriginal Children's Commissioner, Queensland Commissioner and Family Matters co-chairs.

#### **Public communications:**

- Formal written replies to questions arising out of NAPCAN webinar.
- Published 'In this together' letter of statement on CACYP Facebook page for National Reconciliation Week about Aboriginal children and young people's experience during the COVID-19 pandemic and the strength of culture, Wednesday 27<sup>th</sup> May 2020.
- Published 'We are the Elders of Tomorrow, Hear Our Voice' letter of statement on CACYP Facebook page for National Aboriginal Children's Day, 4th August 2020.

### Panellist/speaker at:

- Premiere screening of In My Blood It Runs at Mitcham Cinema, 19th February 2020.
- 3<sup>rd</sup> National Indigenous Child Protection Forum: 'Centering families for better outcomes for Aboriginal children and young people' speech (Convened by Akolade), Cairns, 26<sup>th</sup>-28<sup>th</sup> March 2020.
- National Reconciliation Week: Reconciliation SA webinar, 'Let's Talk Race Relations in SA – the Black Lives Matter movement', Wednesday 23<sup>rd</sup> June 2020.



- **5** The Hon. Kyam Maher's Parliamentary briefing with the Aboriginal Legal Rights Movement on Custody Notification Services, 2<sup>nd</sup> July 2020.
- NAPCAN Week webinar series: 'Achieving better outcomes for First Nations Children and Young People' webinar hosted by Aboriginal Children's Commissioners, 10th September 2020.
- SAASTA's Hospitality students' graduation event, 22<sup>nd</sup> September 2020 (officiated).
- **o** SACOSS webinar on 'Raise the Age', 24<sup>th</sup> September 2020.
- Searly Years and Child Development Division Leaders Day: 'the Couch' guest speaker, 12<sup>th</sup> October 2020.
- DCP state-wide Aboriginal training forum, 21st October 2020.
- NAIDOC Week: 'Mabo to Uluru Statement from the Heart' webinar (convened by Department of Human Services), 11<sup>th</sup> November 2020.
- Saw Society Human Rights Committee: 'Raise the Age' webinar, 17th November 2020.
- Second Launch of Family Matters Report 2020: 'Calling for a National Aboriginal Children's Commissioner' webinar, 19th November 2020.
- The Disability Royal Commission, tendered evidence with Queensland Commissioner Natalie Lewis to Public Hearing #8, 26<sup>th</sup> November 2020

### REFERENCES

- 1 Inquiry into Suspension, Exclusion and expulsion in SA Government Schools, Centre for Inclusive Education, 26 October 2020 <a href="https://www.education.sa.gov.au/sites/default/files/report-of-an-independent-inquiry-into-suspensions-exclusions-and-expulsions-in-south-australian-government-schools.pdf">https://www.education.sa.gov.au/sites/default/files/report-of-an-independent-inquiry-into-suspensions-exclusions-and-expulsions-in-south-australian-government-schools.pdf</a>
- 2 Closingthegap.gov.au. 2020. Closing the Gap targets and outcomes | Closing the Gap. [online] Available at: <a href="https://www.closingthegap.gov.au/national-agreement/targets">https://www.closingthegap.gov.au/national-agreement/targets</a>
- 3 Department for Child Protection. Department for Child Protection 2019-20 Annual Report. 2020. Adelaide, South Australia
- 4 Department for Child Protection.
  Department for Child Protection 2018-19
  Annual Report. 2019. Adelaide, South Australia
- 5 Coalitionofpeaks.org.au. [online] Closing the Gap Agreement 2020. Available at: https://www.closingthegap.gov.au/sites/ default/files/files/national-agreement-ctg.pdf
- 6 Lawrie A. What Matters to Aboriginal children and Young People, their Families and Communities. South Australia's Commissioner for Aboriginal Children and Young People Inaugural Report, 2019. Adelaide., South Australia
- 7 https://www.dpc.sa.gov.au/\_\_data/assets/pdf\_file/0006/118554/Buthera-Agreement.pdf
- 8 Davis, M., 2019. FAMILY IS CULTURE -Final Report, INDEPENDENT REVIEW INTO ABORIGINAL OUT-OF-HOME CARE IN NSW. [online] Familyisculture.nsw.gov.au. Available at: <a href="https://www.familyisculture.nsw.gov.au/?a=726329">https://www.familyisculture.nsw.gov.au/?a=726329</a>
- 9 Nyland M. The life they deserve: Child protection systems royal commission report. Report no. 0994269323, 2016. Child Protection Systems Royal Commission. Adelaide, South Australia <a href="https://www.agd.sa.gov.au/sites/default/files/complete\_report\_child\_protection\_systems\_royal\_commission\_report.pdf">https://www.agd.sa.gov.au/sites/default/files/complete\_report\_child\_protection\_systems\_royal\_commission\_report.pdf</a>
- 10 Hunter S-A, Burton J, Blacklaws G, et al. The Family Matters Report 2020. Melboune, Australia. [online] Available at: <a href="https://www.familymatters.org.au/the-family-matters-report-2020/">https://www.familymatters.org.au/the-family-matters-report-2020/</a>>

- 11 Australian Bureau of Statistics. Abs.gov.au. Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016. [online] Available at: <a href="https://www.abs.gov.au/ausstats/abs@.nsf/mf/2071.0">https://www.abs.gov.au/ausstats/abs@.nsf/mf/2071.0</a>
- 12 Australian Institute of Health and Welfare. 2019. Rural & remote health: Summary. [online] Available at: <a href="https://www.aihw.gov.au/reports/rural-remote-australians/rural-remote-health/contents/summary">https://www.aihw.gov.au/reports/rural-remote-health/contents/summary</a>
- 13 Crooks K, Casey D and Ward JS. First Nations people leading the way in COVID-19 pandemic planning, response and management. Medical Journal Australia 2020; 213: 151-152.
- 14 Gottbrath, L., 2021. In 2020, the Black Lives Matter movement shook the world. [online] Aljazeera.com. Available at: <a href="https://www.aljazeera.com/features/2020/12/31/2020-the-year-black-lives-matter-shook-the-world">https://www.aljazeera.com/features/2020/12/31/2020-the-year-black-lives-matter-shook-the-world</a>
- 15 Report of the Royal Commission into Aboriginal Deaths in Custody 1991 <a href="http://www.austlii.edu.au/au/other/IndigLRes/rciadic/index.html">http://www.austlii.edu.au/au/other/IndigLRes/rciadic/index.html</a>
- 16 Australian Institute of Health and Welfare. aihw.org.au. Youth justice in Australia 2018–19. Canberra: [online] Available at: https://www.aihw.gov.au/reports/australias-welfare/youth-justice
- 17 Allam L, Wahlquist C, Evershed N, et al. The 474 deaths inside: tragic toll of Indigenous deaths in custody revealed. The Guardian, 2021.
- 18 Macedo DM, Smithers LG, Roberts RM, et al. Does ethnic-racial identity modify the effects of racism on the social and emotional wellbeing of Aboriginal Australian children? PLOS One 2019; 14: e0220744.
- 19 Department for Child Protection. *Safe* and *Well: supporting families, protecting* children, (p. 11), 2019. Adelaide, South Australia. Department for Child Protection.
- 20 Office of the Guardian for Children and Young People. gcyp.sa.gov.au. Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021, . https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/05/ROGS-Report-Aboriginal-CYP-in-Care-and-YJ-Detention-2021.pdf

- 21 Secretariat of National Aboriginal and Islander Child Care. snaicc.org.au. Understanding and Applying the Aboriginal And Torres Strait Islander Child Placement Principle: A Resource for Legislation, Policy, and Program Development. Melbourne, Victoria. Australia [online] Available at: <a href="https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\_applying\_ATSICCP.pdf">https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\_applying\_ATSICCP.pdf</a>
- 22 Children and Young People (Safety) Act 2017. Parliament of South Australia. [online] Available at: https://www.legislation. sa.gov.au/LZ/C/A/CHILDREN%20AND%20 YOUNG%20PEOPLE%20(SAFETY)%20ACT%20 2017/CURRENT/2017.25.AUTH.PDF
- 23 Department for Child Protection. childprotection.sa.gov.au. Safe and Well: supporting families, protecting children 2020 annual report. 2020. South Australia. [online] Available at: <a href="https://www.childprotection.sa.gov.au/\_data/assets/pdf\_file/0004/135148/">https://www.childprotection.sa.gov.au/\_data/assets/pdf\_file/0004/135148/</a> Every-effort-for-every-child-February-2020\_final.pdf>
- 24 Department of Human Services. Aboriginal Co-design Principles. Government of South Australia. 2019. [online] Available at: https://dhs.sa.gov.au/\_data/assets/pdf\_ file/0011/93872/Aborignal-System-Design-Criteria.pdff
- 25 Department for Child Protection. Every Effort for Every Child: South Australia's strategy for children and young people in care 2020-2023. Adelaide. Government of South Australia.
- 26 United Nations Convention on the Rights of the Child. Unicef.org.au. Contains 54 articles in all [online] Available at: <a href="https://www.unicef.org.au/our-work/information-for-children/unconvention-on-the-rights-of-the-child">https://www.unicef.org.au/our-work/information-for-children/unconvention-on-the-rights-of-the-child</a>.
- 27 United Nations declaration on the rights of Indigenous peoples. 2007. Geneva: United Nations. Contains 46 Articles in all. [online] Available https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\_E\_web.pdf
- 28 Prentice K, Blair B and O'Mullan C. Sexual and family violence: overcoming barriers to service access for Aboriginal and Torres Strait Islander clients. Australian Social Work 2017; 70: 241-252.

- 29 Department of Child Safety Youth and Women. Dsdsatsip.qld.gov.au. 2021. Domestic and family violence and its relationship to child protection: Practice Paper. April 2018 [online] Available at: <a href="https://www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/prac-paper-domestic-violence.pdf">https://www.dsdsatsip.qld.gov.au/resources/childsafety/practice-manual/prac-paper-domestic-violence.pdf</a>
- 30 Australian Department of Social Services. The national plan to reduce violence against women and their children 2010-2022. 2016. Canberra: Australian Department of Social Services.
- 31 Australian Institute of Health and Welfare. Family, domestic and sexual violence in Australia, 2018. 2018. Canberra: Australian Institute of Health and Welfare.
- 32 Wall L, Higgins D and Hunter C. Traumainformed care in child/welfare services (CFCA Paper No. 37). 2016
- 33 Children and Young People (Oversight and Advocacy Bodies) Act 2016. Parliament of South Australia. [online] Available at: https://www.legislation.sa.gov.au/LZ/C/A/CHILDREN%20AND%20YOUNG%20 PEOPLE%20(OVERSIGHT%20AND%20 ADVOCACY%20BODIES)%20ACT%202016/CURRENT/2016.48.AUTH.PDF
- 34 Office of the Guardian for Children and Young People. 2020. https://gcyp.sa.gov.au/ charter-of-rights/. [online] Available at: <a href="https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/04/Charter-of-Rights-FULL.pdf">https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/04/Charter-of-Rights-FULL.pdf</a>
- 35 Australian Institute of Health and Welfare. The health and welfare of Australia's Aboriginal and Torres Strait Islander peoples, 2015. Canberra: Australian Institute of Health and Welfare
- 36 Australian Institute of Health and Welfare. Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over. 2018. Canberra: Australian Institute of Health and Welfare.
- 37 Office of the Guardian for Children and Young People. gcyp.sa.gov.au. Great responsibility: Report on the 2019 pilot inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre). South Australia. [online] Available at: <a href="https://www.gcyp.sa.gov.au/wordpress/wp-content/uploads/2020/07/TCVU-inspection-report-2020-web.pdf">https://www.gcyp.sa.gov.au/wordpress/wp-content/uploads/2020/07/TCVU-inspection-report-2020-web.pdf</a>

### REFERENCES

- 38 Office of the Guardian for Children and Young People. gcyp.sa.gov.au. A perfect storm? Dual status children and young people in South Australia's child protection and youth justice systems report 1. 2019. . [online] Available at: https://www.gcyp.sa.gov.au/wordpress/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf
- 39 Change the Record. New statistics confirm we must urgently #RaiseTheAge and stop imprisoning Aboriginal children, [online] Available at: https://changetherecord.org. au/change-the-record/posts/new-statistics-confirm-must-raisetheage (2020, accessed 24 March 2021)
- 40 Youth Justice Administration Act 2016 section 3(3). legislation.sa.gov.au. Parliament of South Australia. [online] Available at: https://www.legislation.sa.gov.au/LZ/C/A/YOUTH%20 JUSTICE%20ADMINISTRATION%20ACT%20 2016/CURRENT/2016.6.AUTH.PDF
- 41 Youth Justice Administration Regulations 2016. Part 5. legislation.sa.gov.au. Parliament of South Australia. [online] Available at: https://www.legislation.sa.gov.au/LZ/C/R/YOUTH%20JUSTICE%20ADMINISTRATION%20 REGULATIONS%202016/CURRENT/2016.220. AUTH.PDF
- 42 Just Reinvest NSW Inc. Impact of Maranguka Justice Reinvestment: KPMG Impact Assessment. [online] Available at: https://www.justreinvest.org.au/impact-of-maranguka-justice-reinvestment/ (2018, accessed 25 May 2021).
- 43 Human Rights Law Centre hrlc.org.au. Major UN human rights review highlights need for Australia to raise the age of criminal responsibility. 2021 [online] Available at: https://www.hrlc.org.au/news/2021/1/20/unreview-highlights-need-for-aust-to-raise-theage-criminal-responsibility
- 44 Young Offenders Act 1993, s 22(2), Gazette 31.12.1993 p.3190. legislation.sa.gov. au. Parliament of South Australia. [online] Available at: https://www.legislation.sa.gov.au/ LZ/C/A/YOUNG%20OFFENDERS%20ACT%20 1993/CURRENT/1993.57.AUTH.PDF

- 45 Luna B and Wright C. Adolescent brain development: Implications for the juvenile criminal justice system. In: K. Heilbrun DD, & N. E. S. Goldstein (ed) APA Handbook of Psychology and Juvenile Justice. Washington: American Psychological Association, 2016, pp.91–116.
- 46 Brain development in children. 2019. Australian Early Development Census aedc. gov.au. Canberra, Australian Government. [online] Available at: https://www.aedc.gov.au/resources/detail/brain-development-in-children
- 47 Committee on the Rights of the Child: Forty-Third Session, Geneva, 11 29 September 2006: GENERAL COMMENT No. 9 (2006) The rights of children with disabilities Clause 73(c) [online] Available at: https://www.refworld.org/docid/461b93f72.html
- 48 Alcohol and Pregnancy & FASD telethonkids.org.au. Banksia Hill Detention Centre Project. [online] Available at: <a href="https://alcoholpregnancy.telethonkids.org.au/our-research/research-projects/Banksia-hill-detention-centre-project/">https://alcoholpregnancy.telethonkids.org.au/our-research/research-projects/Banksia-hill-detention-centre-project/</a>
- 49 Disability Screening Project Report: Identification of Population Needs at the Adelaide Youth Training Centre (Kurlana Tapa). May 2020. dhs.sa.gov.au. Department of Human Services.. Adelaide, South Australia [online] Available at: https://dhs.sa.gov.au/\_data/assets/pdf\_file/0003/93927/Disability-Screening-Assessment-Project-Report-2020. pdf
- 50 Committee on the Rights of the Child. Forty-fourth session Geneva, 15 January-2 February 2007: General Comment No. 10 (2007) Children's rights in juvenile justice. Clause 33 [online] Available at: <a href="https://www.00HChr.org/en/professionalinterest/pages/crc.aspx">https://www.00HChr.org/en/professionalinterest/pages/crc.aspx</a>
- 51 https://www.theguardian.com/australia-news/2021/jan/19/un-countries-challenge-australias-indigenous-incarceration-record-in-human-rights-review?fbclid=lwAR2NMeBH3FHGYGJG9m2BRqHjo8WUIu4FRPOW8K8Q7NPVIISq1QNPBy\_VwKA

- 52 National Justice Coalition. Change the Record: [online] Available at: https://www.changetherecord.org.au/
- 53 Baidawi S and Sheehan R. 'Crossover kids': offending by child protection-involved youth. Trends and Issues in Crime and Criminal Justice 2019: 1-23.
- 54 Cunneen C, Russell S and Schwartz M. Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction. Current Issues in Criminal Justice 2020: 1-21. DOI: 10.1080/10345329.2020.1813386.
- 55 Nelson G, Pearson N and Reid C. We're black—We don't matter': the neglected special needs of First Nations students in Queensland schools. 2016. Brisbane. [online] Available at: http://www.youthdetentionreview.qld.gov.au/\_data/assets/pdf\_file/0019/2584/Submission-Disability-Review.pdf
- 56 Australian Human Rights Commission. Annual report 2017-2018. Sydney. humanrights. gov.au [online] Available at: https:// humanrights.gov.au/our-work/commissiongeneral/publications/annual-report-2017-2018
- 57 Royal Commission into Violence Abuse, Neglect and Exploitation of People with Disability. First Nations engagement principles. 2020. Brisbane. [online] Available at: https://disability.royalcommission.gov. au/system/files/2020-06/first-nationsengagement-principles.pdf
- 58 Avery S. Intersectional dimensions on the right to health for Indigenous peoples: a disability perspective. 2016. ohchr.org First Peoples Disability Network Australia. [online] Available at: https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Health/FirstPeoplesDisabilityNetworkAustralia.pdf
- 59 Shepherd CC, Li J, Cooper MN, et al. The impact of racial discrimination on the health of Australian Indigenous children aged 5-10 years: Analysis of national longitudinal data. International Journal for equity in health 2017; 16: 1-12. [online] Available at https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-017-0612-0
- 60 Department for Education. Aboriginal Education Strategy. 2019-2029, Adelaide, South Australia <a href="https://www.education.sa.gov.au/sites/default/files/dept-ed-aboriginal-education-strategy-2019-2029.pdf">https://www.education.sa.gov.au/sites/default/files/dept-ed-aboriginal-education-strategy-2019-2029.pdf</a>



### APPENDIX – DCP ABORIGINAL ACTION PLAN 2019–20



The Aboriginal and Torres Strait Islander Child Placement Principle, was developed through strong and sustained advocacy from Aboriginal leaders, families, organisations and experts.

From its beginnings as a community led campaign, it has grown into the cornerstone of Aboriginal child protection practice.

Through this first Aboriginal Action Plan 2019-20, DCP acknowledges the Principle as a guiding framework for action, and recognises the importance of the commitment to active efforts across each the five core elements – Prevention, Partnership, Placement, Participation and Connection.

This is essential for long term change and to achieve the vision of the Family Matters campaign.



#### **IDENTIFICATION**

DCP acknowledges the importance of identification as a precursor to implementation of the Principle.

Self-identification by a child or the child's family is the only requirement for practitioners to begin applying the Principle in their work with children and families.

### **PREVENTION**

Protecting each child's right to grow up in family, community and culture by redressing causes of child protection intervention

#### Support the development of targeted and intensive early support for vulnerable families:

- Co-design and trial an Intensive Family Preservation Service in the Western suburbs delivered by an Aboriginal Community Controlled Organisation
- Embed Aboriginal Service Provision requirements across service agreements to increase cultural safety and responsiveness

#### Ensure families have the opportunity to engage with culturally safe supports within an integrated and holistic service system:

- Engage and focus across government effort to deliver systems change through the Portfolio Management Board and system redesign taskforce
- Prioritise the identification of Aboriginal children with disability and significant developmental delay and support access to appropriate services (with a key focus on rural and remote areas)
- Develop and implement guidelines for DCP Legal Services and complaints staff to support culturally safe and responsive client contact (i.e. National Redress Scheme, FOI and general complaints)
- Partner with the Courts
   Administration Authority and the
   Office of the Guardian for Children
   and Young People to develop a
   cultural awareness program for
   judges and magistrates

### PARTNERSHIP

Ensuring the participation of community representatives in all child protection decision making including service design, delivery and individual case decisions

#### Resource roles in DCP to lead and inform the design and delivery of culturally safe and responsive services:

- Increase Aboriginal employment from 4.8% to 5.5% (towards 10%)
- · Recruit an Aboriginal Practice Lead
- Recruit 10 Aboriginal trainees
- Host two 2-day state forums for all Aboriginal staff to engage on key issues, practice and policy

#### Build the coverage and capacity of Aboriginal organisations to lead service delivery:

- Increase procurement from Aboriginal Community Controlled Organisations from 0.5% to 3% of spending
- Develop a procurement plan for a trial of Aboriginal kinship carer supports provided by Aboriginal organisations

#### Strengthen partnerships with Aboriginal stakeholders to inform service design, delivery and practice:

- Establish an independent expert Aboriginal advisory committee
- Actively engage with Aboriginal Community Controlled Health Organisations in each region
- Continue to partner with Reconciliation SA, SA NAIDOC Committee and the Family Matters campaign



### PLACEMENT

Placement in out-of-home care is prioritised in accordance with the placement hierarchy

Embed practice and procedures that increase DCP capacity to effectively and fully implement the Principle:

- Ensure a genogram extending at least 3 generations has been developed for all new children and young people in out of home care within 3 months of entry
- Update C3MS to include all South Australian Aboriginal language groups to enable caseworkers to more accurately reflect a child or young person's Aboriginal identity
- Increase the percentage of Aboriginal children and young people placed in accordance with the placement hierarchy from 65% to 70%
- Embed the Winangay Aboriginal Kinship Carer Assessment Tool and implement as a key practice focus

Work with Aboriginal partners and service providers to embed Aboriginal governance in decisionmaking, service design and delivery:

- Engage an Aboriginal organisation to design and deliver a specialised residential care model for Aboriginal young people
- Develop an Aboriginal specific NDIA pre-planning tool to support access to culturally responsive disability services

### **PARTICIPATION**

Ensuring the participation of children, parents and family members in decisions

Embed practices and procedures that ensure Aboriginal children and families can participate in decision making:

- Set up and commission Family Group Conferencing with an emphasis on cultural safety and responsiveness for Aboriginal families
- Develop and implement a Child and Youth Engagement Strategy, involving Aboriginal children and young people
- Develop a practice approach to enhance family-led decision making with an emphasis on cultural safety and responsiveness for Aboriginal families
- Trial a therapist clinic to support Aboriginal kinship carers

Ensure Aboriginal children and families have access to support from professionals with high cultural competency:

- Implement a 4-step training program (Footprint) for non-Aboriginal staff to undertake an Aboriginal cultural capability learning journey
- Review and update the Psychological Services Guidelines for working with Aboriginal children, young people and families to improve engagement
- Partner with SNAICC to deliver workshops to DCP staff to increase understanding and implementation of the Principle

### CONNECTION

Maintaining and supporting connections to family, community, culture and country for children in care

Protect children's rights to maintain cultural connections:

- Increase the use of the Aboriginal Cultural Identity Support Tool for Aboriginal children in care from 20.2% to 40% (towards 100%)
- Where English is a second language for an Aboriginal child or young person, ensure an appropriate Aboriginal language interpreter is present for discussions relating to Viewpoint questionnaires

Hold DCP accountable to the Principle including maintaining cultural connections for children:

- Embed the commitment to the Buthera Agreement in the State Government's Aboriginal Affairs Action Plan
- Develop and implement the first DCP Reconciliation Action Plan
- Support the SNAICC National Conference and support DCP leaders and staff to attend.

