



COMMISSIONER FOR
ABORIGINAL CHILDREN
& YOUNG PEOPLE

**Inquiry into the application of the Aboriginal and
Torres Strait Islander Child Placement Principle in the
removal and placement of Aboriginal children in South
Australia**

BACKGROUND PAPER



From the Commissioner for Aboriginal Children and Young People

My role is to promote and advocate for the rights and interests of Aboriginal children and young people in South Australia. This includes inquiring into matters related to the rights, development and wellbeing of Aboriginal children and young people at a systemic level.

Since commencing as Commissioner in 2018, I have listened to the voices of Aboriginal children and young people across South Australia. I have heard about the importance of culture, family and community to Aboriginal children and young people, and for some Aboriginal children, the negative experiences of being removed and disconnected from culture, family and community.

The core strength of Aboriginal children is their cultural identity. It is their birthright. It is held for them by their family and community.

According to the *Family Matters Report 2021*, South Australia has the second highest rate of Aboriginal entry into out of home care nationally and the highest rate of Aboriginal children placed on long term guardianship or custody orders. It has the lowest rate of reunification (7%). It has the second lowest proportion of expenditure on family support services (8.8%) and the third lowest proportion of expenditure on Aboriginal Community Controlled Organisations (3.4%).

Despite strong legislative direction since 1993 requiring the inclusion of Aboriginal children, families and communities in decision-making, and the placement of removed children within their families, communities, and culture, there have been many examples where this has not been reflected in practice. Community voices have identified continued government control over decisions for Aboriginal families.

In response, I am undertaking an Inquiry into the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle and its five elements of prevention, participation, placement, partnership and connection.

I believe a major shift of decision-making power about Aboriginal children is required to help prevent the repetition of the systemic failures of the past. Without change, it is predicted that by 2031 there will be as many as 140 of every 1000 Aboriginal children in State care¹. This should not be allowed to happen and can be stopped.

¹ South Australia Guardian for Children and Young People, 2020, *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021*, Office of the Guardian for Children and Young People, Adelaide

This Inquiry comes at a time when we have commitments from the South Australian Government to uphold the rights of Aboriginal people and to share decision-making with them through the National Agreement on Closing the Gap, and *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031*. I hope the outcomes from this Inquiry will help position the government to deliver on these commitments.

About the Inquiry

The Inquiry will be conducted by the Commissioner for Aboriginal Children and Young People under Section 20M of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*. The Inquiry will examine and make recommendations about the policies, practices and procedures of State Authorities as they relate to the rights, development and wellbeing of Aboriginal children and young people, with a specific focus on addressing the systemic barriers to the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children in South Australia.

The Inquiry will include engagement with Aboriginal children and young people, their families and communities, Aboriginal sector stakeholders, State Authorities and their licenced entities; through public forums, submissions, private sessions and hearings.

A research program will accompany the public aspects of the Inquiry to provide a better understanding of systemic responses to Aboriginal children and young people and their families.

The Inquiry commences on 30 June 2022 and will be completed in July 2023. The Commissioner will provide a final report with recommendations on completion of the Inquiry.

The full terms of reference for the Inquiry are available on the Inquiry webpage.

The impact of historical child removals on Aboriginal people

Past removal laws and assimilationist policies created a Stolen Generation whose members are parents, grandparents and great grandparents to the current generation of children. The 1997 National Inquiry into Separation of Aboriginal children from their families (the *Bringing them Home Report*) estimated that between 10-33% of all Aboriginal children were removed between 1910 and 1970². Currently, 9% of the total

² Human Rights and Equal Opportunity Commission (HREOC), 1997, *Bringing them home: report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*, HREOC, Canberra.

population of Aboriginal children in South Australia are removed, and Aboriginal children are 10 times more likely be in care than their non-Aboriginal counterparts³.

There has been much inquiry into the impacts of removal from family, community and culture on Aboriginal children and young people. It is clear that connection to family, community, and culture is crucial to producing positive and healthy outcomes. The *Bringing Them Home Report* outlined a number of detrimental outcomes of child protection intervention and removals for Aboriginal children. The Report revealed the impacts of these policies in terms of spiritual, emotional and physical trauma, from broken connections with land, culture, language, families and child-rearing practices. These findings are also highlighted in the 2019 *Family is Culture Review Report* by Professor Megan Davis.

While assimilation policies were officially discontinued, the current data carries the hallmarks of the institutional racism that characterised the protectionist era. The removal of Aboriginal children from their families, culture, language and land has effects that span generations.

Suffering poverty and intergenerational trauma, vulnerable Aboriginal children and their families are highly visible to a system that disempowers them and still relies on paternalistic decision-making assumptions that are consciously and unconsciously race based. They are likely to be seen with cultural bias that mistakes Aboriginal child rearing practices for neglect, that associates poor housing with neglect, and that targets pregnant women who experience domestic violence for removal of their children at birth.

Past and current experiences of systemic racism have left Aboriginal people distrustful of government and exhausted by systems that are complex and culturally unsafe, condemning generation after generation to life on the margins, interfacing with a system where removals beget removals.

Core to improving the outcomes for vulnerable Aboriginal children is keeping them connected with family community and culture. Effective intervention is about getting families linked into early help and culturally appropriate intervention services. This much has been known and recognised in legislation and policy dealing with child protection since the 1980's. Yet the pivotal role of Aboriginal children, families, and communities in keeping the child connected has changed over time and their role in decision-making has progressively diminished with serious consequences.

³ South Australia Department for Child Protection, 2019, *Safe and well : supporting families, protecting children: The Government of South Australia's strategy for keeping families and children safe and well*, Department for Child Protection, Adelaide

The Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle⁴ (the Principle) was developed in recognition of the harm and suffering caused by the forced removal of Aboriginal and Torres Strait Islander children from their families, communities and culture, with the purpose that it be applied in child protection interventions for Aboriginal and Torres Strait Islander children.

The goals of the Principle are to enhance and preserve Aboriginal and Torres Strait Islander children's connection to family and community, sense of identity and culture; to recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters; to support self-determination in such matters; and to reduce the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system.

The Principle has five inter-related elements:

- Prevention - protecting children's rights to grow up in family, community and culture by redressing the causes of child protection intervention and family.
- Partnership - ensuring the participation of community representatives in service design, delivery and individual case decisions.
- Placement - placing children in out-of-home care in accordance with the Principle's established placement hierarchy.
- Participation - ensuring the participation of children, parents and family members in decisions regarding the care and protection of their children.
- Connection - maintaining and supporting connections to family, community and culture and country for children in out of home care.

The South Australian Government has committed to the application of the five elements of the Principle in policy documents such as *Safe and Well, Every Effort for Every Child*.

The placement hierarchy is contained in the *Children and Young People (Safety) Act 2017*, which requires preference to be given to placing Aboriginal children with family members, members of their community, or people of Aboriginal cultural background. If it is not possible for an Aboriginal child or young person to be placed with any of these people the child or young person should be given the opportunity for continuing contact with their family, community or communities and culture.

These provisions should provide a strong basis for Aboriginal children, once removed to remain connected to their family and culture, but the record for implementation of the Placement element of the Principle is poor. Past estimates based on case audits have suggested the Principle has been fully applied in as few as 13% of child protection cases involving placement of Aboriginal and Torres Strait Islander children⁵.

⁴ <https://www.familymatters.org.au/aboriginal-torres-strait-islander-child-placement-principle/>

⁵ Arney, F, Iannos, M, Chong, A, McDougall, S, & Parkinson, S, 2015, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, CFCA Paper No. 34, Melbourne: Child Family Community Australia information exchange.

The disproportionate numbers of Aboriginal children and families coming into contact with the child protection system and Aboriginal children being placed in out of home care, point to a need for culturally safe services and urgent prevention efforts that apply all five elements of the Principle.

The Data

Recent South Australian research has identified that over 85% of children and families reported to child protection have been reported before and 53% of families had been the subject of five or more reports⁶. The high extent of repeated reporting about child protection concerns is a potential sign of unmet need for children and families.

Aboriginal children form around 5% of the current population of children under the age of 17 in South Australia, but of the families reported to child protection in the study above, 27% include at least one Aboriginal child. At a population level, 15% of Aboriginal children in South Australia have had a substantiated child protection report by the age of three years; and one quarter of Aboriginal children in SA have had a substantiation by the time they are 18 years of age⁷.

Aboriginal children are also over-represented in concerns reported to child protection during pregnancy. One in four unborn children who are the subject of a child protection report are Aboriginal. Most families reported prenatally have three or more risk factors, including family violence, parental alcohol and other drug use, parental mental health concerns, parent criminal activity or their own child abuse histories. Supports must be able to address the intergenerational impacts of removal and trauma, and to address multiple co-occurring problems in pregnancy and infancy⁸.

Contrasting with the high levels of need, South Australia has the second-lowest expenditure nationally on family support services at 8.8%, compared to the highest in Victoria at 25.8%. In the last five years, South Australia's investment into family support and intensive family support services has decreased from 14.6% to 8.8%⁹.

South Australia has the third lowest proportion of expenditure on Aboriginal community-controlled organisations (ACCOs), at 3.4% of expenditure¹⁰. Recent Australian research has identified that non-Aboriginal service providers providing services for child abuse prevention may lack the cultural frameworks and governance, cultural and language content and cultural safety in service provision that best meets the needs of Aboriginal clients. Instead, many programs being provided by non-Aboriginal organisations have

⁶ Octoman, O, Arney, F, Chong, A, O'Donnell, M, Meiksans, J, Hawkes, M, Ward, F & Taylor, C, 2022, *Tailoring service and system design for families known to child protection: A rapid exploratory analysis of the characteristics of families*, Child Abuse Review.

⁷ Segal, L, Nguyen, H, Mansor, MM, Gnanamanickam, E, Doidge, JC, Preen, DB, Brown, DS, Pearson, O, Armfield, JM, 2019, *Lifetime risk of child protection system involvement in South Australia for Aboriginal and non-Aboriginal children, 1986–2017 using linked administrative data*, Child Abuse & Neglect, Volume 97.

⁸ Meiksans, J, Arney, F, Flaherty, R, Octoman, O, Chong, A, Ward, F, & Taylor, C, 2021, *Risk factors identified in prenatal child protection reports*, Children and Youth Services Review, Volume 122.

⁹ SNAICC, *Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*

¹⁰ SNAICC, *Family Matters Report 2021*

relied on basic cultural awareness and/or competency training to meet minimum standards for cultural competency¹¹.

As of 30 June 2021, there were 4647 children under guardianship orders in South Australia and 1675 of these children were Aboriginal and Torres Strait Islander. The number of children aged 0-17 in care had increased by 277 (6.3%) from 2020 to 2021; of this number, 131, almost half, were Aboriginal and Torres Strait Islander children and young people¹². According to the *Family Matters Report 2021*, South Australia has the second highest rate of Aboriginal entry into out of home care nationally.

Reunification rates in South Australia are the lowest in the nation, with 44 of 584 children and young people in out of home care (7.5%) reunified in the period 2020-2021. This is a concerning low percentage in comparison to the highest in Victoria at 31.3%¹³.

South Australia placed 61% of Aboriginal children with relatives, kin or other Aboriginal care in 2021, 54.8% of which were placed with relatives or kin (including non-Aboriginal kin). The proportion of Aboriginal children placed with Aboriginal relatives or kin was 31.2%¹⁴.

It has long been recognised that measuring compliance with the Principle using these indicators obscures a much more complex and complicated story that does not reflect the proper application of the Principle in practice, either at first placement for the child or for subsequent placements. Case audits from other jurisdictions and recent research have identified that behind these figures, there are many placement decisions made that are not in accordance with the Principle. Aboriginal organisations and family members may be consulted about placement decision-making either on a once-off basis, as a 'tick box' statutory requirement late in the decision-making process, or not at all¹⁵.

The data signals ongoing challenges in ensuring the best possible outcomes for Aboriginal children and families interacting with the child protection system in South Australia. The Inquiry will seek to uncover the systemic barriers that sit behind these figures and provide recommendations to address these barriers so that vulnerable Aboriginal children can remain safe and connected to their family, community and culture.

¹¹ Cox, S, Bromfield, L, Chong, A & Arney F, 2021 *Opportunities to Strengthen Child Abuse Prevention Service Systems: A Jurisdictional Assessment of Child Welfare Interventions*, Journal of the Society for Social Work and Research.

¹² South Australia Department for Child Protection, 2021, *2020-21 Annual Report*.

¹³ SNAICC, *Family Matters Report 2021*.

¹⁴ Australian Government Productivity Commission, *Report on Government Services 2022 Part F*, Section 16, Table 16A.22.

¹⁵ Arney, F, Iannos, M, Chong, A, McDougall, S, & Parkinson, S, 2015, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, CFCA Paper No. 34, Melbourne: Child Family Community Australia information exchange.