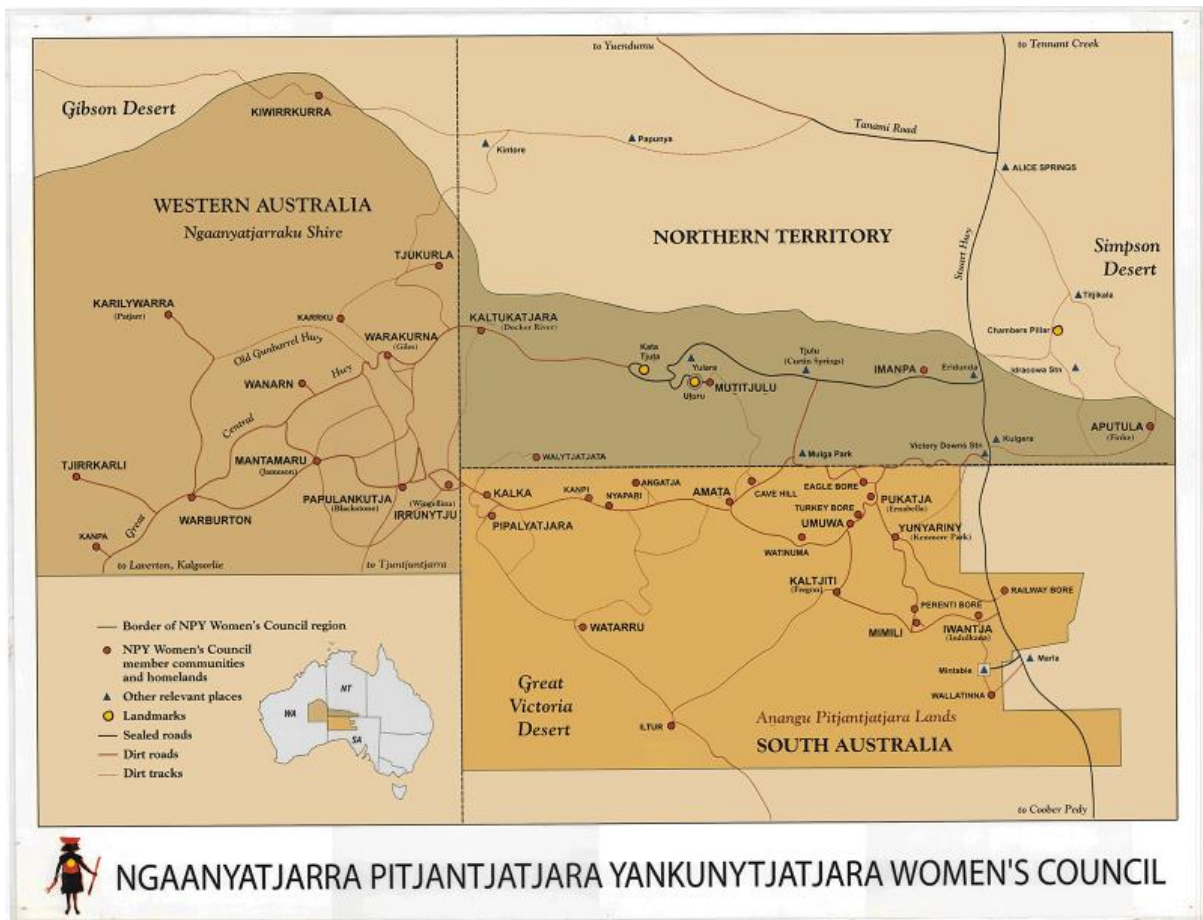


Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council

Our purpose is to support all Anangu, especially women and children, to have a good life, guided by culture and sound governance, through the collective agency of women.

Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council is led by women's law, authority and culture to deliver health, social and cultural services for all Anangu. NPY Women's Council nurtures strong Anangu voices and solutions for the region to provide better outcomes for future generations. We are advocates, capacity builders and service providers. The way we work is innovative and unique, and places our people and culture at the heart of what we do. NPYWC is governed and directed by Anangu (Aboriginal) women across 26 desert communities in the remote cross-border regions of Western Australia, South Australia and the Northern Territory – an area covering 350,000 sq km (See map below).



NPY Women's Council deliver the following services:

- Youth Services
- Children & Family Well-being Services
- Tjungu Aged & Disability Services
- Domestic & Family Violence Services
- Tjanpi Desert Weavers Social Enterprise
- Ngangkari Traditional Healing

Inquiry into the application of the Aboriginal Child Placement Principle and Placement of Aboriginal children in South Australia

NPY Women's Council provide the following submission to the inquiry into the application of the Aboriginal Child Placement Principle and Placement of Aboriginal children in South Australia.

What would you like to tell the Commissioner about your experience with the removal and placement of Aboriginal children in South Australia?

NPY Women's Council remains concerned about the experiences of Anangu children and families with the child protection system in South Australia. It is our opinion that more work is desperately needed to safeguard the rights of Aboriginal children, families and communities and to adequately recognise the importance of connection to family, community, language, culture and Country for all Anangu children.

NPY Women's Council strongly advocates for any and all efforts to ensure closer alignment of South's Australia's legislation and policies with the Aboriginal and Torres Strait Islander Child Placement Principles of Prevention, Connection, Participation, Placement and Partnership as articulated by SNAICC. We firmly believe that through adequate implementation of these principles and the principles of formal partnerships and shared-decision making, as articulated in the National Agreement on Closing the Gap, we will succeed in ensuring Aboriginal and Torres Strait Islander children are no longer overrepresented in the child protection system.

Early intervention

NPY Women's Council maintain adequate investment in prevention and early intervention initiatives is of critical importance to ensure children do not enter the out-of-home care system and instead can grow up within their own family and community.

We recommend, that active efforts should be initiated at the investigation point of statutory intervention and may include:

- conducting a strengths-based assessment that takes into account the cultural needs of the child and the lived realities of their community;
- developing a case plan in partnership with a child's family and community;
- providing early intervention supports to families before a child is removed, except in cases of imminent risk; and
- providing services that support the reunification of a child with his or her parent or Indigenous kin after the removal of a child.

Further information on our recommendations for early intervention and prevention initiatives are detailed later in this submission.

Removal

It is our experience that the threshold for removal in South Australia varies greatly from case to case, with limited oversight and insufficient mechanisms for removal decisions to be reviewed. NPY Women's Council is very concerned that under the current statutory scheme, there is no longer a requirement for the Court to find that a 'child was at risk of serious harm at the time of removal' prior to making an order pursuant to section 53 of the *Children and Young People (Safety) Act 2017 (SA)* ('Safety Act'). NPY Women's Council advocate for this threshold test to be restored in the legislation to ensure judicial oversight of the Department for Child Protection SA ('the Department') decisions and avenues for parents to challenge the legality of a removal.

NPY Women's Council also remain concerned that there is no legislative provision preventing a child being removed from their parent's care due to a parent or care-givers disability or poverty. Article 23 of the *United Nations Convention on the Rights of Persons with Disabilities* stipulates 'in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents'.

The Royal Commission into the Protection and Detention of Children in the Northern Territory also heard that the child protection system often confuses poverty with neglect which is consistent with NPY Women's Council's observations across both the Northern Territory and South Australia.¹

We suggest the Department consider implementing a provision similar to s 71 (2) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) which provides that:

The Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of –

(a) a parent's or primary care-giver's disability, or

(b) poverty.

Placement

The removal and subsequent placement of Anangu children on the APY lands in South Australia does not always follow the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) hierarchy. NPYWC maintain that the use of 'should' and 'if reasonably practicable' in the *Safety Act* at s 12(3)(a) effectively makes the placement principles discretionary, significantly undermining their efficacy. Instead, the *Safety Act* should require the Department to exhaust all possible options at one level of the hierarchy before considering a lower-order placement.

Additionally, no placement should be made unless the child's family and community representatives have participated in decision-making. NPY Women's Council notes family members (either parent or caregiver) with additional complexities such as

¹ Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report* (2016) vol 3A, 198.

disability or mental health concerns have been observed to have limited access and involvement in case-planning and in placement decision-making. Disability and mental health should not be a barrier to a long-term, culturally safe placement and instead the Department should be required to make active efforts to ensure their inclusion in decision-making processes.

NPY Women's Council have also observed, due to lack of resources or miscommunication, parallel placement planning is not often pursued. During the assessment and investigation period the Department has been unable to undertake kinship carer assessments resulting in children being placed off the lands in foster care or in kinship arrangements that are not approved by families. NPY Women's Council are funded to undertake kinship scoping across the APY lands however referrals from the Department often are not received in a timely manner. We recommend the Department's internal policies are strengthened to ensure thorough and adequate kinship scoping is undertaken in a timely manner. We also recommend that all kinship scoping for Aboriginal children be outsourced to place-based Aboriginal Community Controlled Organisations, including NPY Women's Council, to ensure culturally appropriate processes are used and the nuances and intricacies of kinship relationships are accurately and adequately captured.

Additionally, Anangu families and community connections far exceed the South Australian border with families spread out across the Northern Territory and Western Australia. In our experience Anangu families have experienced delays and barriers to children being placed with family who reside in different states. We suggest the Department's interstate information sharing policies are strengthened to better support children living in the tri-state area.

The *Safety Act* also requires that before placing an Aboriginal or Torres Strait Islander child, the Chief Executive or the Court 'must, where reasonably practicable, consult with, and have regard to, any submissions of a recognised Aboriginal or Torres Strait Islander organisation' (s12(3)(c)). The *Safety Act* specifies that a 'recognised Aboriginal or Torres Strait Islander organisation' is an organisation that the Minister has

declared so by notice in the Gazette, after consulting with the Aboriginal community or a section of the Aboriginal community.

It is our understanding that only one organisation has been declared in the Gazette as a 'recognised Aboriginal or Torres Strait Islander organisation'. This is the Aboriginal Family Support Service (AFSS) based in Adelaide. According to their website, their Cultural Consultancy service, provided through their role as a Gazetted organisation, is based solely in Adelaide with cultural representatives available to attend Family Care meetings in Berri, Ceduna, Coober Pedy, Port Augusta and Port Lincoln.

While not taking away from the important work of this organisation, NPY Women's Council remain concerned that they are currently not servicing the APY region and consequently there is no 'recognised Aboriginal or Torres Strait Islander organisation' providing support to Anangu families or providing recommendations based on firsthand knowledge working in the region. As such this provision is effectively redundant for families in the northern half of South Australia. We therefore strongly encourage the Minister to declare additional organisations in the Gazette as recognised Aboriginal or Torres Strait Islander organisations to ensure greater accountability and permit stronger advocacy from Aboriginal community controlled organisations.

Ultimately, NPY Women's Council acknowledges that the APY lands are remote and can be costlier and more labour intensive to service than urban and other remote areas. However, we strongly maintain that this is not an adequate reason to deliver a sub-standard service to this region. Nor, should the principle of 'timely decision-making' be used as a justification for failing to apply the Aboriginal and Torres Strait Islander Child Placement Principles to children on the APY lands. Indeed, it is our experience that these arguments have been used to place children in non-Aboriginal foster-care placements in urban environments despite strong family across the tri-state area. Instead a significant reframing of attitudes and procedures is required to ensure the Department is actually acting in the best interests of children from this region.

18 year orders

NPY Women's Council continue to be very concerned with the Department's ability and tendency to seek orders that place Aboriginal children under the guardianship of the Chief Executive until they attain 18 years of age from the outset of legal proceedings.

We understand these long-term orders are usually sought to promote stability and permanence for children and we agree that stability of relationships and identity are vitally important to children's wellbeing and must be maintained. We also agree that Aboriginal children, like all children, have a right to live in safety and in stable and supportive family and community environments.

However, we strongly advocate that stability and permanency for Anangu children is grounded in their connection with family, kin, culture, language and country. We endorse SNAICC's definition that 'permanence for Aboriginal and Torres Strait Islander children is identified by a broader communal sense of belonging; a stable sense of identity, where they are from, and their place in relation to family, mob, community, land and culture'.² We reject narrow understandings of permanency and attachment centering on a singular emotional connection which is inconsistent with Anangu parenting practices.

Consequently, we do not believe long-term 18 year orders and mechanisms to expedite permanent care based on 'timely decision-making' are appropriate to achieve stability for Anangu children in out-of-home care. Nor is the Department's internal view that removal from parental care is best to occur before two years of age. Instead, these policies and procedures are more likely to cause harm and exacerbate inter-generational trauma to families and communities. As such, we believe significant reform is needed, led by Aboriginal and Torres Strait Islander communities and their organisations, to develop legislation and policies for permanent care of their children based on their unique kinship systems and culturally-informed theories of attachment and stability.

² SNAICC, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care, Policy Position Statement* (2016), 7.

In light of this, we support SNAICC's calls for a two-year hold on 18 year orders for Aboriginal and Torres Strait Islander children while child protection legislation, policy and practice guidelines and decision-making processes are reviewed and amended to ensure effective safeguards and differential recognition of the unique rights of Aboriginal and Torres Strait Islander children to safe and stable connections to kin, culture and community.³

Furthermore, due to the remoteness of the APY lands and limited service provision, it is essential that parents are given the necessary time and support to address the child protection concerns and for departmental workers to engage and build rapport with families and community. However, it is our experience that the principle of 'timely decision-making' is seen as a greater priority and used as a justification for seeking 18 year orders without giving parents an opportunity to put necessary safeguards in place. While broader reform work suggested above is undertaken, as an alternative to a two-year hold, NPY Women's Council recommend the *Safety Act* be amended to provide that the Department may only seek an order pursuant to s 53(1)(g) of the *Safety Act* after 24 months have elapsed since the Initiating Application was filed.

In accordance with Article 9 of the *United Nations Convention on the Rights of the Child*, the right of continued contact between parents and their children in care must be included in the *Safety Act*. The *Safety Act* should also support high quality, well-resourced supervised contact visit programs as an important intervention strategy for parents and children, providing parents and their children with the opportunity to repair and develop strong attachments and healthy relationships.

The *Safety Act* also needs to articulate the responsibility of the Department in coordination and managing these visits, making sure that parents and children are consulted in the process and expenses are covered by the Department. This is particularly important when parents and family members are living in remote areas and/or considerable distances from the child.

³ SNAICC, *Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care, Policy Position Statement* (2016), 5.

Current practice also places unrealistic expectations on families to facilitate contact/access, especially if the child is placed in a different state to parents. We recommend the Department implement stronger policies to support family to travel interstate to have contact with children. The *Safety Act* should also emphasise the responsibility of the Department to consider Aboriginal child-rearing practices and Aboriginal culture in decision-making when determining contact arrangements.

NPY Women's Council also note particular care must be taken by the Department when children are placed with paternal family when domestic and family violence has been present prior to a removal. Placing children in paternal family may meet the ATSI CPP however there is a real possibility of harm to the mother and maternal family. The Department must ensure there are appropriate safeguards in place before endorsing such a placement. Further, contact should not be determined by the paternal family in these situations and the Department must play a more active role in facilitating contact with the mother and maternal family.

Most significantly, NPY Women's Council are very concerned that s 93(2) of the *Safety Act* allows for the Department to determine for any reason that there is to be no contact at all between the child or young person and another person, including parents and other family members. This is in direct contradiction to the Aboriginal and Torres Strait Islander Child Placement Principles and s12(3)(b) of the *Safety Act* which provides that a 'child or young person should be given the opportunity for continuing contact with their family, community or communities and culture'. We consider it vital that the Court oversee any non-contact decisions to ensure appropriate accountability and there are appropriate review mechanisms in place.

This is particularly pressing given, under section 95 of the *Safety Act*, a person only has 14 days to apply to the Contact Arrangements Review Panel for a review of any contact arrangements. We suggest this section also be amended to remove any timeframes for requesting a review. Due to the vital importance of contact with family and community for Anangu children it is essential that all persons have an opportunity at any time to seek additional contact with the child or to amend the current contact

arrangements. Successful contact is also an essential consideration when reviewing placements and seeking a variation of orders. Given this, it is important that people are able to advocate for additional contact outside the 14 days. This is especially so when we consider the time sometimes needed to address protection concerns which more often than not vastly exceeds 14 days.

NPYWC also believe that a participatory Monitoring and Evaluation practice and process must be part of the contact principles to ensure the continuous critical reflection of the practice and improvements. There must also be transparency of results to ensure greater accountability.

How were Aboriginal family and community involved in discussions and decisions about the care and placement of the child(ren)?

NPY Women's Council has found that the consultation processes between the Department and children, families and carers should be improved to encourage genuine partnership and participation in decision-making.

Family Group Conferences are integral to actively involving family members in decision-making around children in care. However, there are various issues with their current delivery which should be improved to promote genuine consultation and decision-making with families.

NPY Women's Council recognises the complexities associated with facilitating the views and interests of multiple parties within Family Group Conferences. Despite this, it is important that the Department centralises the views and wishes of the child within decision-making to ensure that their voice is heard and their best wishes are upheld. NPY Women's Council has found that the voice of the child can often be lost in decision-making, particularly in remote regions with limited options to have a Child Advocate involved. This is despite section 23(4)(c) of the *Safety Act* requiring that the co-ordinator of a family group conference 'must, as far as reasonably practicable, ensure that... a suitable person is arranged to act as advocate for the child or young person at the conference'. The only reason given where the co-ordinator need not

comply is if satisfied the child or young person has made an informed and independent decision to waive their right to be represented (s 24(5)).

In addition, facilitating Family Group Conferences in the remote communities of the APY lands is often delayed, with scheduling occurring once or twice a year usually with minimal notice. This significantly delays sound consultation and participation from families around their matters. Due to the limited service delivery and transience of Anangu families it is essential that adequate notice is given to allow families time to seek legal advice and support navigating the conference.

Section 21(1) of the *Safety Act* sets out the purpose of Family Group Conferences as an opportunity for a child or young person and their family 'to make informed decisions as to the arrangements for the care of the child or young person'. It is not, as is more often than not the case, an opportunity for the Department to inform the family of their plans for the child with no attempt to use the conference as a decision-making body. NPY Women's Council has observed departmental decisions for children not to be returned to parental care only being communicated to parent/s only minutes prior to the commencement of an FGC. Key decisions should be communicated to parents in appropriate timeframes to allow information to be processed and most significantly legal advice and service support to be accessed. NPY Women's Council remain concerned that conferences are used inappropriately on the APY lands. Instead, we suggest these conferences need to occur much earlier and treated as the shared-decision making bodies they were designed to be.

In your experience what worked well?

NPY Women's Council commenced delivering kinship stabilisation support and family scoping on the APY lands in July 2021 which is funded by DCP SA. Through this funding NPY Women's Council has been able to provide families who haven't previously received intensive support, culturally-safe and therapeutic case management. NPY Women's Council has also commenced family scoping activities on the APY lands and identifies strong kinship carers for children and young people. NPY Women's Council also provides interstate support to kinship carers in the APY lands as many

carers have connections to family and community across the tri-state region. This has been a particular strength in relation to our family scoping activities. Through the development of this partnership NPY Women's Council hope to see improved outcomes for Anangu children and families on the APY lands.

In your experience what didn't work well?

In addition to the discussion above, integrated and holistic support services continue to be limited in the APY lands with minimal support options available to families and who experience significant wait times when accepted into a service. Specific culturally safe programs and workshops to develop parenting skills particularly for children aged 0-5 years of age remains limited. Parents have expressed their desire to engage in these types of services that provide preventative alternative to child protection involvement and interventions.

NPY Women's Council continues to observe limited understanding and recognition of the strength community and culture Aboriginal families and communities bring. Including, differences in child-rearing practices, particularly in relation to community care which is an inherent part of Aboriginal culture. Approaches and practice in responding to family violence, particularly regarding cultural safe practices that engage users of violence and shift away from all parental responsibility being placed on mothers continues to be of concern. Housing availability, quality of housing and expectations of public housing management also continues to put greater pressure on families and lead to child protection involvement. There needs to be more robust strategies to address the social context that contributes to the over-representation of Aboriginal children and families subject to child protection involvement.

What do you think can be done to improve things? Rethinking the system.

Therapeutic early intervention supports

Aboriginal children and families living on the APY Lands need access to early intervention support services provided by Aboriginal Community Controlled Organisations in order to prevent child protection intervention. NPY Women's Council advocate for a requirement that the government fund therapeutic interventions

targeted to support families whose children have been identified as at risk of harm or abuse. However, interactions with these services should remain voluntary and not mandated by the Department.

NPY Women's Council support the Child Protection Systems Royal Commission (Nyland Report) recommendation to resource Aboriginal Service Providers to provide early intervention support to children and families to minimise a child's risk of harm and of entering the Child Protection System. Currently, there are no State funded Aboriginal child and family support services funded to provide this support in the APY lands.

Walytjapiti is NPY Women's Council's family support service that has been operating in the APY lands since 2012. This program has been funded by the Commonwealth Government for 10 years to provide Child and Family Intensive Support in 4 communities on the APY Lands. The Walytjapiti program is frequently holding wait lists for children and families at risk of entering the Child Protection System in the APY lands. This service receives no State based funding despite the Nyland Report recommending at recommendation 211:

Provide additional funding to the Walytjapiti program, and ensure that the Agency keeps case files open for participants until satisfied of the ongoing wellbeing over a sustained period.

Further;

Recommendation 212: Commission an early intervention service for families in remote communities for whom the Agency has lower level concerns and who would benefit from support to prevent escalation of issues.

This recommendation has not been implemented in the remote communities of the APY Lands. NPYWC recommends that this legislative review provides an opportunity to diversify the investment to shift greater resources to early intervention support to families and communities to meet the needs of their children. NPYWC believe that

through this investment, the rates of aboriginal children entering the OOHC system will reduce.

Mental Health Services

NPY Women's Council are also deeply concerned about the South Australian Government's decision to reduce access to child and adolescent mental health services on the APY Lands. Child Adolescent Mental Health Services (CAMHS) on the APY Lands were cut last year, moving from a place based service to a stripped back, fly-in-fly-out service, leaving children and young people on the APY Lands with an unsustainable model of care and as well as a higher chance of slipping through the cracks.

This is deeply concerning. Now, Anangu children and young people do not have access to specialised mental health, sexual assault and trauma services and additionally receive minimal disability and education support in the region. This is particularly evident when children and young people are placed in kinship care arrangements with complex needs and have very little avenues for specialist support for themselves and the children within their care. NPY Women's Council recommend a service analysis be conducted into the remote context of the APY lands immediately.

Socio- economic disadvantage

NPY Women's Council believe that many children at risk of entering the Child Protection System in our region are experiencing ongoing structural and systemic disadvantage which places them at greater risk of harm. NPY Women's Council strongly advise that the legislative position should include increased opportunities for all children to have their rights met within their home communities particularly those living in poverty and who have limited access to clean water, nutritious food, safe housing, and the best health care.

A recent Research survey conducted by NPY Women's Council found that healthy diets are not affordable when they cost more than 30% of household income.⁴ For Anangu on the APY lands, those on welfare payments, would have to spend more than half (51%) of their income to access a healthy diet in their home communities which means healthy diets are not affordable for most families in the APY lands.

Worse still, since May 2021, the cost of a healthy diet has increased by 10% in the APY lands. Incomes on the APY lands increased by only 2% to 5% over the past year. Survey findings show that more needs to be done in the APY lands to improve affordability of healthy foods and drinks, to help improve nutrition and health outcomes for Anangu. NPYWC recommend that NGO service providers who are providing direct support to children and families who are at risk of entering the Child Protection system are adequately resourced to provide brokerage and material assistance to decrease the compounding stressors that children and families face each day.

Is there anything else you would like to tell the Commissioner?

Tri-State Legislative Reform

NPYWC have consistently supported Anangu children and families who have experienced ongoing systemic failures and convoluted processes as a result of the three child protection laws that are applied in the tri-state region in which they live (*Care and Protection of Children Act 2007 (NT)*, *Children and Community Services Act 2004 (WA)*, *Children and Young People (Safety) Act 2017 (SA)*).

Child protection officers' authorisation to exercise mandated child protection functions under each jurisdiction's legislation stops at the border. Borders can be barriers to acting protectively for the child's safety because of legislative and

⁴ Lewis M, Herron L, Bryce S, Wells L, Balmer L, Rainow S, Lee AJ. *Summary results brief: Cost and affordability of healthy, equitable and more sustainable diets, and store food environments, in the APY Lands*, June 2022. Brisbane: School of Public Health, The University of Queensland; 2022.

administrative barriers. Additionally, there are differences in legislation in the three jurisdictions of WA, SA and NT, and in particular, there are different thresholds for statutory intervention across the three jurisdictions.

Additional issues

- Notifications on children are recorded in the State in which the notification was made, cumulative harm is not assessed in the cross border context.
- Investigations are closed when families cross State borders
- Risk assessments differ across borders
- Carer assessments differ across borders
- Transfer of cases in OOHC are complicated, access arrangements are often not considered.
- Three jurisdictions are holding files on the same children, all holding different information.

We propose the *Safety Act* we amended adopting the following recommendations:

- *Safety Act* to recognise other jurisdictions child protection officers. This can be done as a separate piece of legislation similar to the Cross Border Justice Scheme or each state can amend its own child protection legislation to enable officers in each of the relevant jurisdictions to carry out specific duties in the cross border region.
- An additional legislative opportunity would be to establish mirror legislation that is replicated in all three Acts; *Care and Protection of Children Act 2007* (NT), *Children and Community Services Act 2004* (WA), *Children and Young People (Safety) Act 2017* (SA). Through Mirror Legislation each Child Protection Agency in the tri-state region can ensure functions are extended and replicated throughout the region.